EXCISE TAX TECHNICAL CHANGES ACT

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

SECOND SESSION

ON

H. R. 7125

AN ACT TO MAKE TECHNICAL CHANGES IN THE FEDERAL EXCISE TAX LAWS, AND FOR OTHER PURPOSES

JULY 15, 16, AND 17, 1958

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EXCISE TAX TECHNICAL CHANGES ACT

TUESDAY, JULY 15, 1958

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

The committee met, pursuant to call, at 10:20 a. m., in room 312, Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd (chairman), Kerr, Frear, Long, Anderson, Douglas, Martin, Williams, Flanders, Malone, Bennett, Carlson, and Jenner.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The meeting will come to order. The hearing today is on the bill H. R. 7125, the Excise Tax Technical Changes Act of 1957. Due to the time element involved, each witness is limited to 10 minutes for presentation of his prepared statement but he has the privilege of submitting a written substantiating statement for the record. All statements for inclusion in the printed record should be received not later than Wednesday, July 16.

I submit for the record the reports on this bill by the Department of the Treasury, as submitted by Mr. Dan Throop Smith, Deputy to the Secretary of the Treasury and the Bureau of the Budget as submitted by Phillip S. Hughes, assistant director for legislative reference, Bureau of the Budget.

(The reports follow:)

(See also Securities and Exchange Commission report, p. 244.)

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, July 15, 1958.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request of July 8, 1957, for the views of this Department on H. R. 7125, the Excise Tax Technical Changes Act of 1957.

At the time of the enactment of the Internal Revenue Code of 1954, most of the excise tax provisions of the law were not changed to any great degree because of time limitations. H. R. 7125 represents a step toward revision of the technical aspects of excise taxes which were not considered in 1954. While some changes are proposed in practically all taxes, major revisions are contemplated in the taxes on communications, documentary stamps, distilled spirits, and also in the general credit and refund provisions.

Because of the number of proposed changes in the bill, mention is being made of only a few of the more important ones.

The large scale revision of the taxes on communications would involve a change of the terminology and definition of the taxable types of services. Prominent among the changes are revisions of the taxes imposed on "local telephone service" and "long distance telephone service." These have been redesignated as "general telephone service" and "toll telephone service," respectively. The changed titles also involve changing definitions. For instance, "general telephone service" is defined as "any telephone or radio telephone service furnished in con-

nection with any fixed or mobile telephone or radio telephone station which may be connected (directly or indirectly) to an exchange operated by a person engaged in the business of furnishing communication service, if by means of such connection communication may be established with any other fixed or mobile telephone or radio telephone station." The redefinition of local telephone service has a number of objectives, one of which may be mentioned here merely as an example. Under present law, common carriers are exempt from tax on leased wire service used in the conduct of their business. However, charges for leased wires used for oral communication which are entirely within a local telephone area are not exempt, since such service is classified as local telephone service. As the area encompassed by local telephone service is being gradually expanded by technological changes, the carriers find that their exemption for leased wire service is being gradually contracted. The new definition of general telephone service would avoid this problem by excluding leased wire service entirely from its scope as such wires cannot be connected, directly or indirectly, with general telephone service.

The proposed revision of the documentary stamp taxes contains both substantive and clerical changes. Probably the most significant of these is the use of actual value for the base of the taxes on issuance and transfer of stocks. Under present law these taxes are related to the par value of the stock. This arrangement results in artificial distinctions, since stock may be issued with a par value significantly less than the actual value in order to obtain a low rate of tax. Under the bill, the tax on the transfer of capital stock would be 4 cents on each $100 (or major fraction thereof) of the actual value of the certificates transferred. The tax, however, could not exceed 6 cents per share. The minimum tax on any transaction would be 4 cents. Under present law, the tax is 5 cents on each $100 (or fraction thereof) of the aggregate par or face value of the certificates transferred and 5 cents per share in the case of the transfer of no par value stock. Where the stock, whether par or no par, is sold for $20 or more per share, the rate of tax is 6 cents rather than 5 cents. On original issuance of stock the rate now is 11 cents per $100 (or major fraction thereof) of the par or face value of each certificate. Where the stock has no par value the tax is 11 cents on each $100 (or fraction thereof) of the actual value of each certificate, except that if the actual value is less than $100 per share the tax is 3 cents on each $20 (or fraction thereof) of the actual value of each certificate. H. R. 7125 proposes imposing a tax of 10 cents on each $100 (or major fraction thereof) of the actual value of each certificate.

The bill would add to the situations under which articles or services may be sold tax free and the conditions and methods by which credits and refunds of overpayment of tax may be obtained. A significant change in the tax-free sales area is the provision for exemption from retailers, manufacturers, and transportation and communication taxes for sales to nonprofit educational institutions, provided the purchases are made for their exclusive use. At the present time purchases of the taxed items by public schools are exempt from tax. The term "nonprofit educational organization" is defined by reference as a nonprofit educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on.

Another change in this area would grant credit or refund of manufacturers excise taxes where taxpaid articles have been exported prior to any other use. Under present law, a credit or refund may be granted only where there was knowledge at the time of the original sale by the manufacturer that the article was being purchased for export. This provision required advance knowledge on the part of dealers as to their export needs. Under the provision of the bill, it is immaterial for purposes of obtaining the credit or refund whether the article was intended to be exported at the time of its sale by the original manufacturer.

Chapter 51 of the Internal Revenue Code relating to distilled spirits would undergo a general revision under the terms of the bill. At the time of the enactment of the 1954 code a more limited revision of the distilled spirits provisions was made than in the case of the provisions relating to the other alcoholic beverages and tobacco products. At that time, however, the Treasury Department indicated that it was engaged in a review of the distilled spirits provisions for later submission to the Congress. Most of the proposed revisions in chapter 51 incorporated in H. R. 7125 represent the Treasury suggestions promised in 1954. The extent of the changes proposed is such as to preclude listing at this point, but one major conceptual change may be mentioned. In H. R. 7125 it is

proposed to eliminate the present legal concepts under which nine completely separate establishments are necessary to perform the activities relating to the production, storage, denaturation, processing and bottling of distilled spirits. In their stead, provision is made for a single functional distilled spirits plant. Operations performed prior to payment or determination of the distilled spirits tax would be conducted on "bonded premises," and operations related to the rectification or bottling of distilled spirits on which the tax has been paid or determined would be conducted on "bottling premises."

The Treasury Department believes that a technical excise bill has considerable merit because the excise tax portion of the Internal Revenue Code was not given detailed consideration during formulation of the 1954 code. As a matter of fact, as was just indicated above, the revision of the provisions with respect to distilled spirits largely represents suggestions the Treasury Department developed in cooperation with the industry. The same is true of most of the changes also incorporated in the bill with respect to the other alcoholic beverages and tobacco products. Furthermore, the revenue losses resulting from most of the revenue-losing items in the bill are relatively small and to some extent are offset by revenue increases in other parts of the bill. According to the report of the Committee on Ways and Means (H. Rept. No. 481, 85th Congress, 1st sess.), the overall net revenue loss is given as $15 million. In this respect, the bill can be considered acceptable as a reform measure and not as a revenue bill.

There is, however, 1 important revenue feature not included in the $15 million estimate. This is the proposal in section 202 of the bill for the institution for tobacco products of a return system for the payment of taxes with a prescribed return period of not less than 7 days, the first such period to begin not later than August 4, 1958. The House report estimates that the revenue loss for the fiscal year 1959 due to the delay in payment proposed would be $57 million. Because of this, the Department is strongly opposed to this provision.

It was recognized during the formulation of the 1954 code that the prepaid tax stamp system used for the payment of taxes on alcoholic beverages and tobacco resulted in the need for additional working capital by manufacturers of such products as contrasted with the monthly deposit or return system used for the payment of most other excise taxes. Consequently, the 1954 code stated that the Secretary could provide for the payment of the alcohol and tobacco taxes by return for such period as he wished. However, the Treasury Department told the congressional tax committees that if it instituted a return system, it would not require less than a weekly period. Because of the revenue loss involved, the Department has not found it possible to permit a return system consistent with the minimum time period it promised if such a system were instituted. Daily return systems have been provided, however, for beer, wines, and cigars upon representation by the industries that they would be willing to use such a system because of certain packaging and compliance conveniences involved. A similar system is being considered for the use of the distilled spirits industry.

The Treasury Department also is seriously concerned about one other provision of the bill, section 115 relating to constructive sale price for manufacturers excises. Under present law, when a manufacturer sells at retail, provision is made for computation of his taxable price on the basis of the price for which such articles are sold in the ordinary course of trade by manufacturers or producers thereof. This has generally been interpreted as being the highest price for which such or similar articles are sold by the manufacturer to retailers. If the manufacturer makes no sales to retailers but does sell to wholesale distributors, the constructive price for his sales at retail is his highest price to wholesale distributors. Present law, however, makes no provision for readjustment of taxable selling price in cases where sales are made by manufacturers to retailers. The bill would make several changes in the present constructive price provision to reduce the taxable price, both in the case of sales at retail and in the case of sales to retailers. In the case of such sales, if the manufacturer also regularly sells to wholesalers, and certain other conditions are met, his taxable price would be the highest price for which he sells such articles to wholesale distributors, or the price for which the articles are actually sold, wichever is lower.

The Treasury Department finds it necessary to object to this proposed change. The revision, of course, would result in some revenue loss. The report of the Committee on Ways and Means gives an estimate of $3 million but indicates that this is a "subjective evaluation." Of most importance, however, is the

general principle involved. The proposal involves a partial attempt to define a "normal" or "equalized" manufacturers selling price.

The present constructive price provision applies only where manufacturers sell at retail, or at less than arms length and at less than fair market price. The latter provision, which is not affected by the bill, is to prevent the manufacturer artificially controlling the price being used as a tax base. The provision for adjustment of taxable price of sales at retail recognizes that such situation is not a usual method of doing business by manufacturers and that the retail price tends to be substantially higher than the price at other levels of distribution at which manufacturers sell. Since manufacturers do not make a large proportion of their sales at retail, not a great deal of use is made of this provision.

Prior to the retail level, manufacturers customarily perform several distribution functions. Manufacturers may sell directly to retailers; to wholesalers who sell to retailers; and to wholesalers who sell to other wholesalers. The same manufacturer may use all three methods. Even where 2 competing manufacturers sell only to wholesalers who sell to retailers, there may be considerable differences in the functions of the wholesalers in the 2 cases. In one case the manufacturer may perform a great deal of advertising and other services for the wholesaler, while in the other the whole burden of distribution may be on the wholesaler. Such differences in the distribution functions carried on by manufacturers obviously can result in different sales prices by manufacturers for comparable products. But in all cases, the sales are made under a customary method of distribution by manufacturers undertaken in a manner designed to give the manufacturers their maximum profits. Thus, while there is an often repeated belief that the normal manufacturer's price is a price to large volume wholesalers, this is not really the case.

Furthermore, there is a question as to whether "equalization" of the tax base beyond that provided for in present law really would achieve greater equity. Formulas designed to put the same amount of tax on sales at different levels may upset competitive relationships rather than equalize them. For instance, the provision in H. R. 7125 provides for the use, in general, of the manufacturer's highest price to wholesale distributors as the taxable price in case of sales to retailers and at retail. One manufacturer has already pointed out, however, that this proposal would put him at a competitive disadvantage. Both he and his competitors sell to retailers and to wholesalers so that the proposal in the bill presumably would give both groups a lesser taxable price. But this manufacturer's competitors sell to wholesalers who provide significant distribution functions, and these competitors therefore would receive a significant reduction of taxable price on sales at retail and to retailers. This one manufacturer, however, sells to certain wholesalers who provide only warehousing functions and therefore pay a relatively high price for his products. Thus the competitors of this one manufacturer would receive a larger reduction on their sales at retail and to retailers than he would. This example gives concrete evidence of the finely attuned competitive relationships that might be upset by trying to find a uniform base for the manufacturers excise taxes.

The attempt to define a normal or equalizing price not only has conceptual deficiencies, but also administrative ones. Manufacturer's invoice prices represent actual prices which are shown in the records of taxpayers. An excise tax on the invoice price can be readily determined. However, once a movement away from the use of the invoice price is made, additional complications for taxpayers in complying with the tax and for auditors in reviewing taxpayers' returns are sure to arise. Either taxpayers have to use a formula of some type to adjust sales price, or they have to assume they sold at the price used in another type of transaction. In any case, the question then arises as to whether the formula should be used, whether it was correctly used, or what adjustment should be made if some other type of sales price is substituted; with all the consequent possibility of conflict between taxpayers and the tax auditors.

The validity of this objection is acknowledged in the report of the Committee on Ways and Means on H. R. 7125. According to the report, H. R. 7125, goes only part way toward imposition of manufacturers excise taxes on a uniform basis for similar articles because there are significant administrative problems in going the full way. We believe that there are significant administrative problems in any attempt to use prices which are not actual selling prices for the purpose of an ad valorem tax.

We would also like to point out that the proposed revision of the distilled spirit provisions contains a provision to extend the bonding period which is

quite controversial and which was not proposed by the Treasury Department. Under present law, which has been in effect for some 60 years, tax must be paid on distilled spirits within 8 years from the time of entry into bond. The bill provides (sec. 201) for an extension of this tax-free bonding period from 8 to 20 years. Such extension would be applicable not only for spirits entered into bond after the effective date of the bill but for spirits already in bond at such time.

The Treasury Department is not directly concerned as to whether the bonding period is extended or not. Extending the bonding period would have little effect on revenues, as there already exist methods of avoiding payment of tax at the end of the 8-year period, such as through redistillation. However, the proposed change can have competitive effects between different segments of the industry which your committee may wish to consider.

The proposed extension of the bonding period would enable spirits to be sold after a longer aging period than is economically possible under present law. Thus producers who have large stocks of spirits nearing the 8-year limitation at the present time would be at an advantage in selling products aged longer than 8 years after the law was changed as proposed. In view of the fact that the 8-year limitation has been in effect for so many years and the industry has operated on the assumption that such limitation would continue in effect, some consideration might be given as to whether it would be fairer to all concerned to make the extension to 20 years effective only with respect to stocks entered into bond after the effective date of the bill. Those producers who have large stocks nearing the 8-year time limit at the present time, and on which they did not wish to pay tax, would be able to take advantage of another provision of the bill which permits commingling of warehoused spirits of different ages with postponement of tax till due on the youngest spirits in the mixture. Age representation would be limited to that of the youngest spirits in the mixture.

Other parts of the bill which the Treasury Department suggests should be revised are as follows:

1. SECTION 101

Section 101 of the bill contains a proposed list of taxable semiprecious stones. We suggest the deletion of "coral" from this list as most coral is not sold for use as a semiprecious stone.

2. SECTION 102

Section 102 would exempt from the retailers excise tax on clocks and jewelry (sec. 4001 of the code) a clock, clockcase, or movement if it is part of a control or regulatory device, or is sold as a repair or replacement part for such device. This provision is designed to exempt the clock portion of thermostats. Under present law, where a clock is combined in an article not subject to manufacturers excise tax, the seller at retail of the combined article must pay tax on the part of the price attributable to the clock portion. The House Ways and Means Committee report supports the proposed exemption on the ground that the problem of determining the taxable portion by retail sellers of the control or regulatory device is not warranted by the small amount of revenue involved.

The Treasury Department believes that the proposed exemption is not desirable. The exemption is intended to apply to clocks which actually are used to tell time just as the other clocks which would remain taxable. It is true that sellers have to determine the taxable clock portion of the combination article. However, the general rule followed in such cases is that the taxable price is the separate price of the taxable article if sold separately, or the manufacturer's relative cost of the taxable and nontaxable portions of the combination article. The latter ratio can be worked up by the manufacturers of these articles and readily made available to the dealers selling at retail.

3. SECTION 111

Under present law (sec. 6416 (b) (2) (F)), the manufacturer of taxable automotive parts and accessories may obtain a credit or refund of the tax paid thereon (with minor exceptions) if the part or accessory is ultimately used or resold for use for repair or replacement purposes for farm equipment (other than taxable motor vehicles). To obtain a credit or refund, the manufacturer must receive from the retailer a certificate that the article was used by him, or resold by him, for the exempt purpose. The certificate must contain a list of the names and addresses of each purchaser.

Section 111 of the bill proposes that the parts on which credit or refund may now be obtained may instead be sold tax free by manufacturers on certification by the purchaser that the parts are to be used or resold for repair or replacement purposes on farm equipment. Provision is made for a similar tax-free certification procedure if the first purchaser resells to another dealer. The section also provides that the manufacturer shall cease to be liable for the tax when he sells tax free if he in good faith has obtained the required certificate. The revision in the method of obtaining exemption for these repair parts is supported in the House report by the argument that the present credit or refund system requires so much paperwork that few credits or refunds are claimed.

The Treasury Department believes that the proposed procedural change would represent an undesirable precedent. In the first place, the provision permits an unlimited chain of tax-free sales between the manufacturer and the ultimate purchaser, provided proper certification is received at each step. The tracing of the validity of such sales could become very complex because of the lack of a limit on the number of tax-free transfers. Willful misuse of exemption certificates is punishable under the law, but would be very hard to prove. The procedure used for many years has been to limit sales on a tax-free basis, often limiting them to those direct from the manufacturer to the consumer whose status is the cause for exemption. Section 119 of the bill, which sets up a uniform system of exemption procedures (for other than the sales being considered here) continues this approach of limiting tax-exempt sales, never permitting more than one intermediate purchaser. It should be pointed out, of course, that where the final purchaser is such that a direct sale to him would have qualified for tax exemption, a refund or credit is available even though more than one intermediate purchaser may be involved. Section 111 of the bill thus goes contrary to past experience as to the need for control over tax-exempt sales and which the bill proposes to otherwise retain.

Another undesirable feature of section 111 is the removal of tax liability from the manufacturer who has received in good faith an exemption certificate from his vendee. The rule which has long been applied is that a tax-exempt sale by a manufacturer for resale is not finally exempt unless the manufacturer receives notification within a specified time that a resale has been made which fully qualified the product for exemption. If such certificate is not received within the prescribed time by the manufacturer, he is liable for the tax. Then if later on a resale of the article is made for a tax-exempt purpose, credit or refund may be obtained. This time limit rule is retained in section 119 of the bill for tax-exempt sales for resale in the case of products other than automobile parts for use in repairing farm equipment.

Section 111 contains no such time limitation because of the removal of any further liability from the manufacturer upon receipt in good faith of an exemption certificate. This aspect of section 111 would further aggravate the problem of assuring the correct use of exemption certificates by purchasers because the manufacturer would have no incentive to check on the bona fide of the tax-free movement of his product.

4. SECTION 114

Section 114 in the bill proposes to tax tape or wire recorders and players of the type in competition with phonographs. The Department suggests revision of the wording of the draft law to make clear that such recorders or players would not be taxed as part of the radio and phonograph group if they fall within any of the categories of items taxable as business and store machines.

5. SECTION 119

H. R. 7125 consolidates and revises the rules for exempt sales. In so doing, section 119 contains a provision similar to that in section 111, namely, absolving the manufacturer of liability where he sells an article tax free if he in good faith accepts certification from the purchaser that the article will be used by him for one of the exempt purposes provided. This would apply where the article is sold tax free for use as ship supplies, to a State or local government, or to a nonprofit educational organization. No provision, however, is made for collection of the tax in the event of a later diversion to a taxable use. To assure collection of the tax in such cases, it is suggested that a provision be inserted in the bill to provide that the person making the taxable sale or use shall be liable for the tax in the same manner as if he were the manufacturer of the article. This procedure is now in effect under present law where articles subject to a manufacturers' tax

are sold tax free for further manufacture. The purchasing manufacturer under present law is the statutory manufacturer of the article and liable for tax in case he sells or uses the article for other than an exempt purpose.

The Department also suggests further review of section 110 as it relates to tax-free sales by a manufacturer to a State or local government.

6. SECTION 181

Section 181 of the bill makes a number of changes in the general admissions and cabaret taxes. The Department would like to suggest one addition to this section. Present law (sec. 4281 (a) (1) (C) (i)) provides exemption from the admissions tax in the case of admissions to an athletic game between teams composed of students from elementary or secondary schools, or colleges, provided the entire gross proceeds inure to the benefit of a hospital for crippled children. The Service has ruled (in Rev. Rul. 56-570, C. B. 1956-2, 881) that this exemption only applies where the players are students at the time the game is played. However, it is believed that an exemption for admissions to a game where the players were students within a reasonable time (say 6 months) prior to the time the game is played is desirable and would be a logical extension of the present exemption. There are a number of instances in which all-star high-school football games are played after the close of the school year for the benefit of hospitals for crippled children.

7. SECTION 182

The tax on club dues and initiation fees includes therein by the terms of section 4242 of the code assessments for any purpose or any payment, contribution, or loan required as a condition precedent to membership. Amounts collected from club members for the purchase or construction of capital facilities thus are subject to tax. Section 182 (b) of the bill proposes to exempt from tax any assessment for the construction or reconstruction of any social, athletic, or sporting facility of a social club. Exemption is justified in a report of the House committee on the grounds that construction of facilities or the replacement of old facilities represents a heavy expense relative to their annual upkeep.

The Treasury Department considers this proposed exemption undesirable. It would involve the largest single revenue loss ($6 million) of any section of the bill, other than the one time loss with respect to the proposed change to a return system for tobacco products. In addition, the proposed exemption would give an advantage to members of clubs owning their own facilities. Clubs using rented quarters must pay for the capital invested therein through the rent payment. This is reflected in the annual or periodic dues which would continue to be taxable. Club members paying for capital facilities in a lump sum would be exempted from tax on this cost.

8. SECTION 184

Section 184 of the bill proposes to exempt from the tax on amounts paid for the transportation of persons charges for so-called air taxis, defined as aircraft having a gross takeoff weight of less than 12,500 pounds; a seating capacity of less than 10 adults; and not operating on an established line. This exemption is similar to the exemption now contained in section 4263 (b) of the code for motor vehicles. This latter exemption applies to vehicles with a seating of less than 10 if not operated on an established line. Exemption is provided according to the House report to put the two types of "irregular" transportation on an equal basis and to aid what is characterized as a new industry.

The Treasury Department believes that the proposed exemption is undesirable. The revenue loss of $2 million is one of the larger items involved in this technical bill. Furthermore, the air taxi service represents an entirely different type of transportation than the motor vehicle service now exempted from tax. Most of the latter is local taxicab travel. The aircraft transportation covered by the bill represents an expensive convenience type of transportation.

9. SECTION 141

(a) Transfers of capital stock

Under present law (sec. 4321), sales or transfers of capital stock are taxed at the rate of 4 cents on each $100 (or fraction thereof) of the aggregate par or face value of the certificates transferred (or shares where no certificate is issued); and at the rate of 5 cents per share in the case of a transfer of no par

value stock. Where a stock is sold for $20 or more per share, the rate is 6 cents rather than 5 cents. The bill proposes to change the tax to 4 cents on each $100 (or major fraction thereof) of the actual value of the certificates sold or transferred (or of the shares where no certificates are sold or transferred). In no case, however, would the tax be more than 6 cents on each share.

The revised method of taxation is intended to relate the tax to the value of the transaction rather than some arbitrary figure of par value of the shares or certificates. The principle is not carried through completely because of the limitation of the maximum tax per share to 6 cents, which means that the tax will be the same for all shares selling at $150 or more. It is understood that the purpose of this limitation is to minimize the tax on specialists who buy and sell for their own account. It was argued that specialists in high priced stocks would be subject to a much greater proportionate increase in tax if the shift to taxing the actual value of shares was instituted.

The Treasury Department believes that the general principle of taxing transfers on the basis of the actual value of the securities is an improvement over the present system which relates tax to par value. However, it has two objections to the change as proposed by the bill. It believes that the rate of tax should be set at 5 cents rather than 4 cents so as to be sure of maintaining the revenue from this source.

The Treasury Department also believes that a maximum limitation on the tax per share is undesirable. If the purpose of the change is to relate the tax to the value of the transfer, then the tax should not be limited because of the price of an individual share. We see no reason why a $10,000 transaction made up of $1,000 shares selling at $10 each should be taxed more heavily than a similar transaction consisting of 5 shares selling at $2,000 each.

(b) Recapitalizations

In a recapitalization, present law (sec. 4302) provides that the tax on issuance of capital stock shall be that portion of the tax computed with respect to all the shares or certificates issued in the recapitalization that the amount dedicated as capital for the first time bears to the total par value (or actual value if no par value stock) of the shares or certificates issued in the recapitalization. Section 141 (a) of the bill proposed to revise the method of computing tax on recapitalizations to tax the total increase in capital, excluding amounts transferred from earned surplus, resulting from the recapitalization. Under present law, the transfer from earned surplus to capital is included in the base used for the computation of tax on recapitalization. The intent of the revised tax base is to tax only amounts contributed by stockholders which have remained untaxed at the time of contribution and which are subsequently added to the capital account.

While the Treasury Department supports the intent of the proposed amendment, it believes that it would be desirable to reconsider the possible effects of the revision. As now worded, a transfer from surplus to capital would make it necessary to review and analyze previous corporate transactions. This may involve an analysis covering many years, in some cases going back to the initial organization of the corporation. It is believed that this might be an unusual burden for taxpayers and would impose a difficult auditing problem for the Internal Revenue Service. The Department, therefore, suggests that, under the circumstances, it would be desirable to retain present law.

(c) Transfers between revocable trusts

The taxes on the transfer of capital stock and certificates of indebtedness are applicable where securities in one trust are transferred to another trust. H. R. 7125 proposes an exemption for such transfers where the transfers are made from one revocable trust to another revocable trust if the grantor of both trusts is the same person and, at the time of such delivery or transfer, is the owner (under sec. 676 of the code) of both trusts. The proposed exemption is supported in the House report on the grounds that such transfers make no real economic change in the position of the grantor, and furthermore, that he could avoid the taxes by amending one trust rather than abolishing it and creating another.

The Treasury Department believes that the proposed exemption is not necessary or desirable. As long as the taxes on transfers of stock and certificates of indebtedness cover transfers as well as sales, transfers of the type covered by this proposed exemption clearly are reasonably sources of taxation. The creator of the revocable trusts must derive some economic benefits from the transfers

between them or else he would not engage in such transactions. Such transfers, therefore, seem just as fit objects of the transfer taxes as other nonsale transfers, such as gifts.

(d) Liability of transfer agents

Liability for payment of the documentary stamp taxes is imposed, under present law (sec. 4383), on any person who makes, signs, issues or sells any of the documents and instruments subject to the tax. The same wording is retained in H. R. 7125. The wording of the present law has been interpreted by the Treasury Department as charging transfer agents with the responsibility of determining that the proper amount of tax has been paid with respect to the transfers on which they officiated.

Under the proposed change to actual value as the basis for the tax on the transfer of stock, the transfer agents foresee difficulty in discharing this responsibility in cases where stocks are not handled through a clearing corporation affiliated with a stock exchange. In such cases the certificates received by the transfer agent without any date to indicate when title has passed would present a problem of determining the actual sales date in order to check on selling prices. Particularly difficult problems would be involved in the case of rarely traded over the counter securities and transfers by gift or distributions of an estate of stock of closely held companies. The transfer agents, therefore, have requested that the person presenting the shares or certificates for transfer be required to provide certification of the actual value of the shares or certificates in the types of cases where the transfer agent would find it difficult to meet his obligation to determine the proper amount of tax due. The Treasury Department favors this proposal.

10. SECTION 165

Section 165 of the bill proposes that where gasoline has been lost or rendered unmarketable by reason of a disaster determined by the President to be a "major disaster" under the authority of the act of September 30, 1950 (42 U. S. C., sec. 1855), the holders of such gasoline shall be reimbursed for the amount of the gasoline tax paid thereon.

Although some revenue cost is involved in this provision, the Treasury Department more particularly believes it should not be enacted because of the principle involved and the precedent that would be set. Section 165 as now written has very narrow application and encompasses a small part of what quite a number of proponents have been seeking for a long time, that is refunds of tax paid on gasoline lost from either catastrophies or from normal attrition. Enactment of the proposed refund would be a precendent for refunds for losses from other types of catastrophies and for products other than gasoline.

Losses from fire, flood, theft, breakage, etc., are normal types of business expenses. The fact that there is an excise tax involved in the cost of products lost under such conditions seems to be no more reason that tax readjustments should be made to the holders of the product so lost than that the manufacturers of the products should make reimbursement to dealers for the cost of their labor and materials embodied in the products so lost. Furthermore, a concept of giving tax refunds to dealers for losses of tax paid articles could create serious administrative difficulty if carried to its logical conclusion, because of the hundreds of thousands of wholesalers and retailers handling products subject to manufacturers excise taxes and the frequent loss of an article from some cause or other. Much of the administrative advantage of manufactureres excise taxes would be lost under such circumstances.

In taking this position, the Treasury Department realizes that the proposed revisions of the taxes on alcoholic beverages and tobacco products (secs. 201 and 202) contain provisions for refunds of taxes to holders of these products when lost in a major catastrophe. In spite of our general objection to this type of provision, we believe that the generally high rates of taxes on alcoholic beverages and tobacco products warrant an exception in this case.

There are a number of other provisions of the bill which could be improved by certain technical changes or corrections of a somewhat minor nature. The Treasury Department staff will be available to work with your staff on this aspect. At this time, we are attaching hereto technical suggestions concerning title II of the bill which relates to alcohol and tobacco taxes.

The Treasury Department believes that with the sort of changes indicated above, H. R. 7125 would make significant improvements in the technical and administrative provisions of the excise taxes.

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

Sincerely yours,

DAN THROOP SMITH,
Deputy to the Secretary.

INTERNAL REVENUE SERVICE, ALCOHOL AND TOBACCO TAX DIVISION, WASHINGTON, D. C.

Group I.—Proposed corrections on typographical errors, inadvertent ommissions, and cross references.

Group II.—Proposed technical amendments for purpose of clarification.

5005 (c) (2)... Transfers in bond.
5006 (a) (1)... Determination of tax on distilled spirits.
5008 (a) (4)... Losses on bonded premises.
5178 (a) (1) (A)..... Conditions of warehouseman's bond.
5178 (a) (1) (C)..... Continuance of existing operations.
5178 (a) (3) (C)..... Use of warehouse.
5202 (d)..... Storage of denatured spirits.
5205 (a) (2) (C)..... Application of stamping provisions.
5205 (a) (3)... Affixing of stamps.
5206 (d)..... Marking of cases.
5211..... Transfer for redistillation.
5312 (b)..... Experimental plants
5313 (b), (c), (d)..... Status of spirits on effective date.
5674..... Unlawful removal of beer.
5702..... Tobacco definitions
203 (g)..... Short title, firearms chapter.

Group III.—Proposed amendments to perfect the intent of the bill.

5006 (a) (2)... Alcohol exception from bonding period.
5008 (c) (2) (A)..... Rectifying and bottling losses.
5008 (c) (2) (B) and (C) Time of filing bottling loss claims.
5008 (c) (3) (D)..... Tentative allowances of bottling losses.
5062 (b)..... Bottling for export.
5201 (b)..... Synthetic production of alcohol.
5205 (g)..... Effacement of marks and brands.
5222 (c)..... Reprocessing heads and tails.
5223 (c)..... Use of recovered denatured spirits.
5271 (e) (5)... Grounds for permit revocation.
5301..... Refilling of liquor bottles.
5561..... National defense exemption.
5601 (a) (3)... False permit application.
201 and 204... Authority of enforcement officers.
206 (f)..... Clarification of interim bonding extension.
208 (b)..... Disaster loss refunds to wholesalers.
211 (a) (1)... Effective date provisions.

Group IV.—Effective date changes.

GROUP I.—*Proposed corrections of typographical errors, inadvertent omissions, and cross references*

Page	Line	Section	Correction
117	6	5008 (2)	In paragraph (2), after "by", insert "nonprofit educational organizations,".
161	4-5	5061 (a)	Insert a comma after "beer", a comma after "produced", and a comma after "sale".
177	1	5098 (1) and (2)	Change paragraph (1) to read "for exemption of brewer from special tax as wholesale and retail dealer, see section 5113 (a).", and change paragraph (2) to read "For provisions relating to liability for special tax for carrying on business in more than one location, see section 5148 (c)."
204	8	5173 (b) (1)	Insert "in" after "time".
206	10	5173 (c) (1)	Change "or" to "and".
213	20	5177 (b) (2) and (3)	Strike paragraphs (2) and (3) and insert a new paragraph (2) as follows: "(2) For penalty and forfeiture for failure or refusal to give bond, or for giving false, forged, or fraudulent bond, or for carrying on the business of a distiller without giving bond, see sections 5601 (a) (4), 5601 (a) (5), 5601 (b) (2), and 5615 (3)."
231	19	5206 (l) (2)	Insert "of" following "branding".
241	14	5215 (c)	Change "5208 (b)" to "5208 (d)".
244	21	5222 (b) (2)	Add "or" following "produced;".
245	1	5222 (c)	Strike out the text, and insert in lieu thereof "For penalty and forfeiture for unlawful production, removal, or use of materials for distillation or for the production of distilled spirits, and for penalty and forfeiture for unlawful production of distilled spirits, see sections 5601 (a) (7), 5601 (a) (5), 5601 (b) (3), 5601 (b) (4), and 5615 (4)."
359	12	Table of sections	In the title of section 5686, strike the comma after "liquor".
365	5	5686	Strike the comma.
368	1	5688 (b)	Strike "take" and insert "takes".
417	21-22	207	Strike "date on which this section is enacted" and insert "effective date of this section".

GROUP II—PROPOSED TECHNICAL AMENDMENTS FOR PURPOSE OF CLARIFICATION

[Black brackets indicate deletions; italic indicates new language]

SEC. 5005. PERSONS LIABLE FOR TAX.

* * *

(c) PROPRIETORS OF DISTILLED SPIRITS PLANTS.—

* * *

(2) TRANSFERS IN BOND.—When distilled spirits are transferred in bond in accordance with the provisions of section 5212, persons liable for the tax on such spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability, if proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so transferred. Such relief from liability shall be effective from the time of removal from the transferor's bonded premises, from the time of such divestment of interest, or on [the effective date of this section] *July 1, 1959,* whichever is later. The provisions of this paragraph shall be construed to apply to distilled spirits transferred in bond, whether such transfers occur prior to or on or after July 1, [1958.] *1959, but shall not apply in any case in which the tax was paid or determined prior to such date.*

DISCUSSION

The purpose of this change is to make it clear that the provisions of this paragraph shall not have retroactive effect where the tax has been paid or determined prior to July 1, 1959.

SEC. 5006. DETERMINATION OF TAX.

(a) REQUIREMENTS.—

(1) GENERAL.—Except as otherwise provided in this section, the internal revenue tax on distilled spirits shall be determined when the spirits are

withdrawn from bond. Such tax shall be determined by such means as the Secretary or his delegate shall by regulations prescribe, and with the use of such devices and apparatus (including but not limited to storage, gauging, and bottling tanks and pipelines) as the Secretary or his delegate may require. *The tax on distilled spirits withdrawn from the bonded premises of a distilled spirits plant shall be determined upon completion of the gauge for determination of tax and before withdrawal from bonded premises, under such regulations as the Secretary or his delegate shall prescribe.*

* * *

DISCUSSION

This change will remove an inadvertent inconsistency with the provisions of section 5008 (a) (5), and will clarify the application of the provisions of this paragraph to distilled spirits withdrawn from bonded premises of distilled spirits plants.

SEC. 5008. ABATEMENT, REMISSION, REFUND, AND ALLOWANCE FOR LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

(a) DISTILLED SPIRITS LOST OR DESTROYED IN BOND.—

* * *

(4) LIMITATIONS.—Except as provided in paragraph (5), no tax shall be abated, remitted, credited, or refunded under this subsection where the loss occurred after the tax was determined (as provided in section 5006 (a)) [and the distilled spirits physically removed from bonded premises,] or where the loss occurred after the time prescribed for the withdrawal of the distilled spirits from bonded premises under section 5006 (a) (2) [unless the loss occurred in the course of physical removal of the spirits immediately subsequent to such time]. The abatement, remission, credit, or refund of taxes provided for by paragraphs (1) and (3) in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

DISCUSSION

The purpose of this change is to remove an inadvertent inconsistency with the language in paragraph (5). It was intended that the language in paragraph (5) govern the extent of the applicability of this subsection to losses occurring after determination of tax or after the time prescribed for the withdrawal of the distilled spirits from bonded premises.

SEC. 5173. QUALIFICATION BONDS.

* * *

(c) BONDED WAREHOUSEMAN'S BONDS.—

(1) GENERAL REQUIREMENTS.— * * *

(A) on the withdrawal of the spirits from storage on bonded premises within 20 years from the date of original entry for deposit in storage in internal revenue bond, [except that in the case of distilled spirits entered for deposit in storage in tanks on different dates and lawfully mingled in tanks in internal revenue bond, the Secretary or his delegate shall, under such regulations as he may prescribe, follow a first-in-first-out principle in computing the 20-year period, so that no more distilled spirits will remain in bond than would have been the case had such mingling not occurred,] and

DISCUSSION

The provisions in this subparagraph relating to the computation of the 20-year period in the case of distilled spirits mingled in storage tanks in internal revenue bond have been deleted and, with certain revisions, have been incorporated in section 5006 (a) (2) for purposes of more orderly presentation.

SEC. 5178. PREMISES OF DISTILLED SPIRITS PLANTS.

(a) LOCATION, CONSTRUCTION, AND ARRANGEMENT.—

(1) GENERAL.—

* * *

(C) Notwithstanding any other provision of this chapter relating to distilled spirits plants the Secretary or his delegate may approve the location, construction, [and] arrangement, *and method of operation* of any establishment which was qualified to operate on the date preceding the effective date of this section if he deems that such location, construction, [and] arrangement, *and method of operation* will afford adequate security to the revenue.

DISCUSSION

The purpose of this change is to clarify the authority of the Secretary or his delegate to permit the continuation of duly authorized existing operations, in existing facilities (on bonded premises or on bottling premises, as the case may be), in any instance where he deems that such continuation will not jeopardize the revenue, even though the original establishment of similar operations could not be authorized under the provisions of this bill. This provision recognizes the practical necessity of allowing the continuance of existing operations in existing facilities.

SEC. 5178. PREMISES OF DISTILLED SPIRITS PLANTS.

(a) LOCATION, CONSTRUCTION, AND ARRANGEMENT.—

* * *

(3) BONDED WAREHOUSING FACILITIES.—

* * *

(C) Facilities for the storage on bonded premises of distilled spirits in casks, packages, cases, or similar portable approved containers shall be established in a room or building [used solely for the storage or packaging of distilled spirits] *used exclusively for the storage, bottling, or packaging of distilled spirits, and activities related thereto.*

DISCUSSION

The purpose of this change is to clarify the language of the bill in respect to the use of rooms or buildings established for the storage of distilled spirits in portable containers on bonded premises.

SEC. 5202. SUPERVISION OF OPERATIONS.

* * *

(d) STORAGE ROOMS OR BUILDINGS.—Distilled spirits *(other than denatured distilled spirits)* on bonded premises in casks, packages, cases, or similar portable approved containers must be stored in a room or building provided as required by section 5178 (a) (3) (C), which room or building shall be in the joint custody of the internal revenue officer assigned to such premises and the proprietor thereof, and shall be kept securely locked with Government locks and at no time be unlocked or opened, or remain open, except when such officer or person who may be designated to act for him is on the premises. Deposits of distilled spirits in, or removals of distilled spirits from, such room or building shall be under such supervision by internal revenue officers as the Secretary or his delegate shall by regulations prescribe.

DISCUSSION

This is a clarifying change to conform the provisions of subsection (d) with those of subsection (c) in respect to containers which are required to be stored in locked rooms or buildings.

SEC. 5205. STAMPS.

(a) STAMPS FOR CONTAINERS OF DISTILLED SPIRITS.—

* * *

(2) CONTAINERS OF OTHER DISTILLED SPIRITS.—

* * *

(C) distilled spirits, lawfully withdrawn from bond, in immediate containers [required to be stamped under paragraph (1), under section 5235, or under other provisions of internal revenue or customs law and regulations] *stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto;*

DISCUSSION

The purpose of this change is to clarify the application of this subparagraph, and to remove redundant language.

SEC. 5205. STAMPS.

(a) STAMPS FOR CONTAINERS OF DISTILLED SPIRITS.—

* * *

(3) STAMP REGULATIONS.—The Secretary or his delegate shall prescribe regulations with respect to the supplying or procuring of stamps required under this subsection or section 5235, the time and manner of applying for, issuing, affixing, and destroying such stamps, the form of such stamps and the information to be shown thereon, applications for the stamps, proof that applicants are entitled to such stamps, and the method of accounting for such stamps, and such other regulations as he may deem necessary for the enforcement of this subsection. [Unless the container is one that cannot again be used after opening] *In the case of a container of a capacity of 5 wine gallons or less,* the stamp shall be affixed in such a manner as to be broken when the container is opened, *unless the container is one that cannot again be used after opening.*

DISCUSSION

This is a clarifying change to eliminate an impractical requirement in respect to the affixment of stamps to bulk containers.

SEC. 5206. CONTAINERS.

* * *

(d) APPLICABILITY.—This section shall be applicable [solely] *exclusively* with respect to containers of distilled spirits for industrial use, [and] with respect to containers of distilled spirits of a capacity of more than one gallon for other than industrial use, *and with respect to cases containing bottles or other containers of distilled spirits.*

DISCUSSION

The purpose of this change is to clarify the intended application of the provisions of the section relating to marking, branding, and identification, to cases containing bottles or other containers of distilled spirits.

SEC. 5211. PRODUCTION AND ENTRY OF DISTILLED SPIRITS.

Distilled spirits in the process of production in a distilled spirits plant may be held prior to the production gauge only for so long as is reasonably necessary to complete the process of production. Under such regulations as the Secretary or his delegate shall prescribe, all distilled spirits produced in a distilled spirits plant shall be gauged and a record made of such gauge within a reasonable time after the production thereof has been completed. The proprietor shall, pursuant to such production gauge and in accordance with such regulations as the Secretary or his delegate shall prescribe, make appropriate entry for—

(1) deposit of such spirits in storage on bonded premises;

(2) withdrawal upon determination of tax as authorized by law;

(3) withdrawal under the provisions of section 5214; [or]

(4) *transfer for redistillation under section 5223; or* [(4)] (5) immediate denaturation.

DISCUSSION

The purpose of this change is to restore an inadvertent omission of existing law and to specifically provide for the transfer of distilled spirits from the bonded premises where produced for redistillation, without the technical requirement for entry of the spirits for deposit in storage.

SEC. 5312. PRODUCTION AND USE OF DISTILLED SPIRITS FOR EXPERIMENTAL RESEARCH.

* * *

(b) EXPERIMENTAL DISTILLED SPIRITS PLANTS.—Under such regulations as the Secretary or his delegate may prescribe and on the filing of such bonds and applications as he may require, experimental distilled spirits plants may, at the discretion of the Secretary or his delegate, be established *and operated* for specific and limited periods of time solely for experimentation in, or development of—

(1) sources of materials from which distilled spirits may be produced;

(2) processes by which distilled spirits may be produced or refined; or

(3) industrial uses of distilled spirits.

(c) AUTHORITY TO EXEMPT.—The Secretary or his delegate may by regulations [waive] *provided for the waiver of* any provision of this chapter (other than this section) to the extent he deems necessary to effectuate the purposes of this section, except that he may not waive the payment of any tax on distilled spirits removed from any such university, college, institution, or plant.

DISCUSSION

This change is intended to clarify the procedures in waiving regulatory provisions with respect to the establishment and operation of experimental facilities provided for in section 5312.

SEC. 5315. STATUS OF CERTAIN DISTILLED SPIRITS ON JULY 1, [1958] *1959*.

* * *

(b) PRODUCED AT REGISTERED DISTILLERIES, FRUIT DISTILLERIES, AND INDUSTRIAL ALCOHOL PLANTS.—All distilled spirits produced at registered distilleries, registered fruit distilleries, or industrial alcohol plants, which before July 1, [1958] *1959*, have been entered for deposit in storage in internal revenue bond (including distilled spirits withdrawn for denaturation), and which [on] *immediately prior to* such date are in registered distilleries, registered fruit distilleries, industrial alcohol plants, internal revenue bonded warehouses, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, and distillery denaturing bonded warehouses, or in transit thereto, shall be stored, transferred, withdrawn, and used under the same conditions as like distilled spirits or denatured distilled spirits produced in a distilled spirits plant.

DISCUSSION

The purpose of this change is to clarify the language in respect to the status of distilled spirits on the effective date of the act.

SEC. 5315. STATUS OF CERTAIN DISTILLED SPIRITS ON JULY 1, [1958] *1959*.

* * *

(c) WITHDRAWN FROM CUSTOMS CUSTODY.—All imported distilled spirits which before July 1, [1958] *1959*, have been withdrawn from customs custody without payment of the internal revenue tax for transfer to an industrial alcohol plant, industrial alcohol bonded warehouse, or industrial alcohol denaturing plant, and which [on] *immediately prior to* such date are in registered distilleries, registered fruit distilleries, industrial alcohol plants, internal revenue bonded warehouses, industrial alcohol bonded warehouses, and industrial alcohol denaturing plants, or in transit thereto, shall be stored, transferred, withdrawn, and used under the same conditions as like spirits withdrawn from customs custody without payment of tax and transferred to the bonded premises of a distilled spirits plant.

DISCUSSION

The purpose of this change is to clarify the language in respect to the status of distilled spirits on the effective date of the act.

SEC. 5315. STATUS OF CERTAIN DISTILLED SPIRITS ON JULY 1, [1958] *1959*.

* * *

(d) WITHDRAWN FREE OF TAX.—Distilled sirits which before July 1, [1958] *1959*, have been withdrawn free of tax for purposes similar to those authorized under section 5214 (a) (1), (a) (2), or (a) (3), as provided by law, by any person holding a permit for such withdrawal, and with [on] *immediately prior to* such date are lawfully in the possession of, or in transit to, any person holding a permit to procure or use distilled spirits (including specially denatured distilled spirits) free of tax or to deal in or recovery specially denatured distilled spirits, shall be treated as if withdrawn from the bonded premises of a distilled spirits plant under the applicable provisions of section 5214 (a) (1), (a) (2), or (a) (3).

DISCUSSION

The purpose of this change is to clarify the language in respect to the status of distilled spirits on the effective date of the act.

SEC. 5674. PENALTY FOR UNLAWFUL REMOVAL OF BEER.

Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of [section 5054 and] *this chapter or* regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

DISCUSSION

The purpose of this change is to clarify the application of the penalty provided by this section, which is intended to apply only in case of removals of beer from a brewery without compliance with the provisions of this chapter or regulations issued thereunder.

SEC. 5702. DEFINITIONS.

When used in this chapter—

(a) MANUFACTURED TOBACCO.—"Manufactured tobacco" means tobacco (other than cigars and cigarettes) prepared, processed, manipulated, or packaged, for removal, or merely removed, for consumption by smoking or for use in the mouth or nose, and any [other] tobacco (*other than cigars and cigarettes*), not exempt from tax under this chapter, sold or delivered to any person contrary to this chapter or regulations prescribed thereunder.

[(b) MANUFACTURER OF TOBACCO.—"Manufacturer of tobacco" means any person who prepares, processes, manipulates, or packages, for removal, or merely removes, tobacco (other than cigars and cigarettes) for consumption by smoking or for use in the mouth or nose, except for his own personal consumptin or use, and any person who sells or delivers any other tobacco, not exempt from tax under this chapter, contrary to this chapter or regulations prescribed thereunder. The term "manufacturer of tobacco" shall not include a farmer or grower of tobacco who sells leaf tobacco of his own growth or raising, or a bona fide association of farmers or growers of tobacco which sells only leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm. Provided, That such association maintains records of all leaf tobacco acquired or received and sold or otherwise disposed of by the association, in such manner as the Secretary or his delegate shall by regulation prescribe.]

[(c)] (*b*) CIGAR.—No change in text.

[(d)] (*c*) CIGARETTE.—No change in text.

[(e) MANUFACTURER OF CIGARS AND CIGARETTES.—"Manufacturer of cigars and cigarettes" means any person who produces cigars or cigarettes, except for his own personal consumption. The term "manufacturer of cigars and cigarettes" shall not include a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.]

[(f)] (*d*) TOBACCO PRODUCTS.—No change in text.

(*e*) *MANUFACTURER OF TOBACCO PRODUCTS.—"Manufacturer of tobacco products" means any person who manufactures cigars or cigarettes, or who prepares, processes, manipulates, or packages, for removal, or merely removes, tobacco*

(other than cigars and cigarettes) for consumption by smoking or for use in the mouth or nose, or who sells or delivers any tobacco (other than cigars and cigarettes) contrary to this chapter or regulations prescribed thereunder. The term "manufacturer of tobacco products" shall not include—

(1) a person who in any manner prepares tobacco, or produces cigars or cigarettes, solely for his own personal consumption or use; or

(2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse; or

(3) a farmer or grower of tobacco with respect to the sale of leaf tobacco of his own growth or raising, if it is in the condition as cured on the farm; or

(4) a bona fide association of farmers or growers of tobacco with respect to sales of leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm, and if the association maintains records of all leaf tobacco, acquired or received and sold or otherwise disposed of, in such manner as the Secretary or his delegate shall by regulations prescribe.

[(g)] (*f*) CIGARETTE PAPER.—No change in text.

[(h)] (*g*) CIGARETTE PAPERS.—No change in text.

[(i)] (*h*) CIGARETTE TUBE.—No change in text.

[(j)] (*i*) MANUFACTURER OF CIGARETTE PAPERS AND TUBES.—No change in text.

[(k)] (*j*) EXPORT WAREHOUSE.—No change in text.

[(l)] (*k*) EXPORT WAREHOUSE PROPRIETOR.—No change in text.

[(m)] (*l*) TOBACCO MATERIALS.—No change in text.

[(n)] (*m*) DEALER IN TOBACCO MATERIALS.—"Dealer in tobacco materials" means any person who receives and handles tobacco materials for sale, shipment, or delivery to another dealer in such materials, to a manufacturer of tobacco products, or to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or who receives tobacco materials, other than stems and waste, for use by him in the production of fertilizer, insecticide, or nicotine. The term "dealer in tobacco materials" shall not include—

(1) an operator of a warehouse who stores tobacco materials solely for a qualified dealer in tobacco materials, for a qualified manufacturer of tobacco products, for a farmer or grower of tobacco, or for a bona fide association of farmers or growers of tobacco; or

(2) a farmer or grower of tobacco [who sells] *with respect to the sale of* leaf tobacco of his own growth or raising, or a bona fide association of farmers or growers of tobacco [which sells only] *with respect to sales of* leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm: Provided, That such association maintains records of all leaf tobacco acquired or received and sold or otherwise disposed of by the association, in such manner as the Secretary or his delegate shall by regulation prescribe; or

(3) a person who buys leaf tobacco on the floor of an auction warehouse, or who buys leaf tobacco from a farmer or grower, and places the tobacco on the floor of such a warehouse, or who purchases and sells warehouse receipts without taking physical possession of the tobacco covered thereby; or

(4) a qualified manufacturer of tobacco products with respect to tobacco materials received by him under his bond as such a manufacturer.

[(o)] (*n*) REMOVAL OR REMOVE.—No change in text.

[(p)] (*o*) IMPORTER.—No change in text.

DISCUSSION

This is a clarifying change which consolidates the definitions, "manufacturer of tobacco" and "manufacturer of cigars and cigarettes," into a single definition, "manufacturer of tobacco products," in recognition of the fact that the term "manufacturer of tobacco products" is used throughout chapter 52 to denote both a manufacturer of tobacco and a manufacturer of cigars and cigarettes.

The language in the exemption as to a bona fide association of farmers or growers has been clarified in the consolidated definition.

The changes in the definition of "dealer in tobacco materials" have been made to conform to the language of the consolidated definition.

SEC. 203. TECHNICAL AMENDMENTS RELATING TO MACHINE GUNS AND CERTAIN OTHER FIREARMS.

* * *

(g) SHORT TITLE, ETC.—

(1) Subchapter B of chapter 53 is amended by adding at the end thereof the following new section:

"SEC. 5849. CITATION OF CHAPTER.

"This chapter may be cited as the 'National Firearms Act' and any reference in any other provision of law to the 'National Firearms Act' shall be held to refer to the provisions of this chapter."

(2) The table of sections for subchapter B of chapter 53 is amended by adding at the end thereof the following:

"Sec. 5849. Citation of chapter."

[(g)] *(h)* UNLAWFUL POSSESSION OF FIREARMS.—No change in text.

[(h)] *(i)* CERTAIN UNLAWFUL ACTS.—No change in text.

DISCUSSION

The purpose of this change is to restore the short title of the provisions contained in chapter 53, and thereby clarify the application of 49 U. S. C., chapter 11, to the provisions of chapter 53 of the Internal Revenue Code of 1954.

GROUP III—PROPOSED AMENDMENTS TO PERFECT THE INTENT OF THE BILL

SEC. 5006. DETERMINATION OF TAX.

(a) REQUIREMENTS.—

* * *

(2) DISTILLED SPIRITS ENTERED FOR STORAGE.—

(A) BONDING PERIOD LIMITATION.—*Except as provided in subparagraph (B)*, the tax on distilled spirits entered for deposit in storage in internal revenue bond shall be determined [at the time the same are withdrawn from bonded premises and] within 20 years from the date of original entry for deposit in such storage.

(B) EXCEPTIONS.—*Subparagraph (A) and sections 5173 (c) (1) (A) shall not apply in the case of—*

(i) distilled spirits of 190° or more of proof;

(ii) denatured distilled spirits; or [(except that]

(iii) distilled spirits which on July 26, 1936, were 8 years of age or older and which were in bonded warehouses on that date. [may remain in storage on bonded premises). Imported alcohol, or alcohol produced in an industrial alcohol plant, which is in internal revenue bond on July 1, 1958, shall be treated for the purposes of this paragraph as if entered for deposit in storage on bonded premises on that date. The provisions of section 5173 (e) (1) (A) relating to the computation of the 20-year period shall apply in the case of distilled spirits lawfully mingled in storage tanks on bonded premises.]

(C) DISTILLED SPIRITS MINGLED IN INTERNAL REVENUE BOND.—*In applying subparagraph (A) and section 5173 (c) (1) (A) to distilled spirits entered for deposit in storage on different dates and lawfully mingled in internal revenue bond, the Secretary or his delegate shall, by regulations, provide for the application of the 20-year period to such spirits in such manner that no more spirits will remain in bond than would have been the case had such mingling not occurred.*

DISCUSSION

This paragraph has been rearranged for purposes of clarification, and the provisions of the first sentence as contained in the bill, other than the provisions relating to the bonding period limitation, have been transferred to paragraph (1). Exception to the bonding period limitation has been provided for distilled spirits of 190° or more of proof and denatured distilled spirits, neither of which, for commercial reasons, is stored in bond for extended periods. The exemptions are consistent with exemptions in existing law for industrial alcohol, and are intended to simplify accounting for such spirits.

Also, the provisions in section 5173 (c) (1) (A) relating to mingling, as in the bill, have been incorporated in subparagraph (C) for purposes of more orderly presentation, and have been revised to provide for more flexibility in administration.

SEC. 5008. ABATEMENT, REMISSION, REFUND, AND ALLOWANCE FOR LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

* * *

(c) LOSS OF DISTILLED SPIRITS WITHDRAWN FROM BOND FOR RECTIFICATION OR BOTTLING.—

* * *

(2) LIMITATION.—No abatement, remission, credit, or refund of taxes shall be made under this subsection—

(A) in any case where the claimant is indemnified or recompensed for the tax, *in case of losses referred to in paragraph (1) (A);* or

DISCUSSION

This change will make the provision precluding credit or refund where the claimant is indemnified or recompensed for the tax inapplicable in the case of losses incident to rectifying and bottling. Such losses are not of a character ordinarily covered by insurance, and the application of the provision in respect to such losses would involve administrative difficulties, particularly in the case of custom bottling.

SEC. 5008. ABATEMENT, REMISSION, REFUND, AND ALLOWANCE FOR LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

* * *

(c) LOSS OF DISTILLED SPIRITS WITHDRAWN FROM BOND FOR RECTIFICATION OR BOTTLING.—

* * *

(2) LIMITATION.—No abatement, remission, credit, or refund of taxes shall be made under this subsection—

* * *

(B) in excess of the amount allowable under paragraph (3), in case of losses referred to in paragraph (1) (B) [.]; *or,*

(C) unless a claim is filed, under such regulations as the Secretary or his delegate may prescribe, by the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax, (i) within six months from the date of the loss in case of losses referred to in paragraph (1) (A), or (ii) within six months from the close of the fiscal year in which the loss occurred in case of losses referred to in paragraph (1) (B).

The quantity of distilled spirits lost within the meaning of subparagraph (B) of paragraph (1) shall be determined at such times and by such means or methods as the Secretary or his delegate shall by regulations prescribe.

DISCUSSION

This change will provide a specific statute of limitations, comparable to others provided in chapter 51 under similar conditions, with respect to losses provided for under subsection 5008 (c). In case of losses by accident or disaster covered by paragraph (1) (A), the period will be 6 months from the date of such loss. In case of losses occurring by reason of, and incident to, the operations described in paragraph (1) (B), the period will be 6 months from the close of the fiscal year in which the loss occurred.

SEC. 5008. ABATEMENT, REMISSION, REFUND, AND ALLOWANCE FOR LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

* * *

(c) LOSS OF DISTILLED SPIRITS WITHDRAWN FROM BOND FOR RECTIFICATION OR BOTTLING.—

* * *

(3) MAXIMUM LOSS ALLOWANCES.—

* * *

(D) The Secretary or his delegate may, under such regulations *and conditions* as he may prescribe, make tentative allowances for losses

provided for in paragraph (1) (B), for fractional parts of a year, which allowances shall be computed by the procedures prescribed in paragraphs (3) (A) and (3) (B), except that the numerical values for the completions and for the maximum allowable losses in proof gallons in the schedule in paragraph (3) (A) shall be divided by the number of such fractional parts within the fiscal year.

* * *

DISCUSSION

This change revises the language of this subparagraph to make it clear that the Secretary or his delegate may prescribe conditions with respect to the tentative allowances for losses, as provided therein; as, for example, the conditioning of withdrawal bonds given under section 5174 on the reimbursement of the United States in respect of any amount which may be tentatively allowed in excess of the amount allowable for the fiscal year.

SEC. 5062. REFUND AND DRAWBACK IN CASE OF EXPORTATION.

* * *

(b) DRAWBACK.—On the exportation of distilled spirits or wines manufactured or produced in the United States on which an internal revenue tax has been paid or determined, and which are contained in any cask or package, or in bottles packed in cases or other containers, there shall be allowed, under regulations prescribed by the Secretary or his delegate, a drawback equal in amount to the tax found to have been paid or determined on such distilled spirits or wines. The preceding sentence shall not apply unless such distilled spirits have been packaged or bottle especially for export, *or, in the case of distilled spirits originally bottled for domestic use, have been restamped and marked especially for export at the distilled spirits plant where originally bottled and before removal therefrom*, under regulations prescribed by the Secretary or his delegate. The Secretary or his delegate is authorized to prescribe regulations governing the determination and payment or crediting of drawback of internal revenue tax on domestic distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence indicating payment or determination of tax and exportation as shall be deemed necessary.

DISCUSSION

Existing law provides that distilled spirits, to be eligible for export drawback under provisions of section 5062 (b), must be bottled or packaged especially for export. This provision has resulted in situations where the distilled spirits have had to be rebottled or repackaged under conditions where such rebottling or repackaging serves no useful purpose. This change is intended to make it possible for the proprietor of a distilled spirits plant to restamp for export spirits bottled by him for domestic use, and to mark the bottles and cases in the manner required for spirits to be exported with benefit of drawback, if the spirits have not left the distilled spirits plant where bottled.

SEC. 5201. REGULATION OF OPERATIONS:

* * *

(b) DISTILLED SPIRITS FOR INDUSTRIAL USES.—The regulations of the Secretary or his delegate under this chapter respecting the production, warehousing, denaturing, distribution, sale, export, and use of distilled spirits for industrial purposes shall be such as he deems necessary, advisable, or proper to secure the revenue, to prevent diversion to illegal uses, and to place the distilled spirits industry and other industries using such distilled spirits as a chemical raw material or for other lawful industrial purposes on the highest possible plane of scientific and commercial efficiency and development consistent with the provisions of this chapter. *Where nonpotable chemical mixtures containing distilled spirits are produced for transfer to the bonded premises of a distilled spirits plant for completion of processing, the Secretary or his delegate may waive any provision of this chapter with respect to the production of such mixtures, and the processing of such mixtures on the bonded premises shall be deemed to be production of distilled spirits for the purposes of this chapter.*

DISCUSSION

This change is intended to clarify the operations with respect to the production of nonpotable chemical mixtures containing distilled spirits, where such mixtures are to be transferred to the bonded premises of a distilled spirits plant for completion of processing, and to make it clear that the subsequent processing of such mixtures on the bonded premises constitutes production of distilled spirits for the purposes of chapter 51. In many cases it is impracticable, in the synthetic production of distilled spirits (for example, from petroleum derivatives) to include the earlier stages of the process on bonded premises. No jeopardy to the revenue would be involved by this change, since such mixtures require expensive and complex equipment for completion of processing, and are not suitable for diversion to illicit channels.

SEC. 5205. STAMPS.

* * *

(g) EFFACEMENT OF STAMPS, MARKS, AND BRANDS ON EMPTIED CONTAINERS.—Every person who empties, or causes to be emptied, any immediate container of distilled spirits bearing any stamp, mark, or brand required by law or regulations prescribed pursuant thereto (other than containers stamped under subsection (a) or section 5235) shall at the time of emptying such container efface and obliterate such stamp, mark, or brand[.], *except that the Secretary or his delegate may, by regulations, waive any requirement of this subsection as to the effacement or obliteration of marks or brands (or portions thereof) where he determines that no jeopardy to the revenue will be involved.*

DISCUSSION

This change will permit the Secretary or his delegate to waive requirements for obliteration and effacement of marks or brands on empty packages or distilled spirits where he determines that no jeopardy to the revenue will be involved. This will permit the elimination of unnecessary work and expense incurred in obliterating meaningless remnants of marks on emptied packages.

SEC. 5222. PRODUCTION, RECEIPT, REMOVAL, AND USE OF DISTILLING MATERIALS.

* * *

(c) PROCESSING OF DISTILLED SPIRITS CONTAINING EXTRANEOUS SUBSTANCES.—The Secretary or his delegate may by regulations provide for the removal from the distilling system, and the addition to the fermented or unfermented distilling material, in the production facilities of a distilled spirits plant, of distilled spirits containing substantial quantities of fusel oil or aldehydes, or other extraneous substances.

[(c)](*d*) PENALTY.—No change in text.

DISCUSSION

This change is intended to facilitate the reclamation of distillates containing aldehydes, fusel oil, or other extraneous substances, which in some instances under existing law are required to be denatured or destroyed. A related provision, in respect of such distillates recovered from fruit spirits, is found in section 5373 (c).

SEC. 5223. REDISTILLATION OF SPIRITS.

* * *

(c) DENATURED DISTILLED SPIRITS.—Distilled spirits recovered by the redistillation of denatured distilled spirits may not be withdrawn from bonded premises except *for industrial use or* after denaturation thereof in the manner prescribed by law.

DISCUSSION

This change will facilitate the recovery of denatured distilled spirits, and the disposition of the recovered spirits by permitting the utilization of the redistilled spirits for any industrial use.

SEC. 5871. PERMITS.

* * *

(e) SUSPENSION OR REVOCATION.—If, after notice and hearing, the Secretary or his delegate finds that any person holding a permit issued under this section—

* * *

(5) has violated *or conspired to violate* any law of the United States relating to intoxicating liquor, or has been convicted of [fraudulent noncompliance with any provision of this title] *any offense under this title punishable as a felony or of any conspiracy to commit such offense*; or

DISCUSSION

The purpose of this change is to clarify the provisions of this paragraph relating to the offenses or conspiracies to commit offenses which may form the basis for suspension or revocation of a permit issued under this section.

SEC. 5301. GENERAL.

* * *

(c) [REUSE OR] REFILLING OF [CONTAINERS] LIQUOR BOTTLES.—[Except as authorized under regulations prescribed by the Secretary or his delegate, no dealer (as defined in section 5112 (a))] *No person who sells, or offers for sale, distilled spirits*, or agent or employee of such [dealer] *person*, shall—

(1) [reuse for the packaging of] *place in any liquor bottle* any distilled spirits whatsoever [any liquor bottle or other container which has been used for the packaging of distilled spirits under regulations issued pursuant to subsection (a)] *other than those contained in such bottle at the time of stamping under the provisions of this chapter*; or

(2) possess any such liquor bottle [or other container so reused] *in which any distilled spirits have been placed in violation of the provisions of paragraph (1)*; or

(3) *by the addition of any substance whatsoever to any liquor bottle*, in any manner alter or increase[, by the addition thereto of any substance whatsoever,] any portion of the original contents [remaining] *contained* in such bottle [or other container] *at the time of stamping under the provisions of this chapter*; or ____

(4) possess any [such] *liquor* bottle[, or other container in which] any portion of the [original] contents *of which* has been [so] altered or increased[.] *in violation of the provisions of paragraph (3); except that the Secretary or his delegate may by regulations authorize the resuse of liquor bottles, under such conditions as he may by regulations prescribe, if the liquor bottles are to be again stamped under the provisions of this chapter. When used in this subsection the term "liquor bottle" shall mean a liquor bottle or other container which has been used for the bottling or packaging of distilled spirits under regulations issued pursuant to subsection (a).*

DISCUSSION

This change restates the provisions of the bill relating to liquor bottles for purposes of clarification and more orderly arrangement. The change makes it clear that the basic purposes of the provisions of the subsection are to preserve the integrity of containers of distilled spirits stamped under the provisions of this chapter, and to prevent the use of such containers as instruments in the aid of fraud. The revised language emphasizes the revenue-protecting aspects of the provisions, and is intended to specifically overcome the adverse decisions in the Eighth Circuit Court of Appeals which held that the existing regulations are not applicable to the alteration of the contents of a liquor bottle by the addition of water, or to the refilling of a liquor bottle with taxpaid distilled spirits.

SEC. 5561. EXEMPTIONS TO MEET THE REQUIREMENTS OF THE NATIONAL DEFENSE.

The Secretary or his delegate may temporarily exempt proprietors of distilled spirits plants from any provision of the internal revenue laws relating to distilled spirits, except those requiring payment of the tax thereon, whenever in his judgment it may seem expedient to do so to meet the requirements of the na-

tional defense. Whenever the Secretary or his delegate shall exercise the authority conferred by this section he may prescribe such regulations as may be necessary to accomplish the purpose which caused him to grant the exemption. The authority conferred upon the Secretary or his delegate by this section shall expire at the close of June 30, [1959] *1961*.

DISCUSSION

This change provides a new date for termination of authority under this section, by striking "1959" and inserting in lieu thereof "1961". Without such change this section would cease to have any effect with the advance in effective date of the revision of chapter 51 to July 1, 1959.

SEC. 5601. CRIMINAL PENALTIES.

(a) OFFENSES.—Any person who—

* * *

(3) FALSE OR FRAUDULENT APPLICATION.—engages, or intends to engage, in the business of distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, and files a false or fraudulent application under section 5171 [(a)]; or

* * *

DISCUSSION

This change will extend the penalty provided in section 5601 (a) (3) to the filing of a false or fraudulent application for a permit under section 5171 (b). The penalty is now applicable to the filing of a false or fraudulent application for registration under section 5171 (a).

AUTHORITY OF INTERNAL REVENUE ENFORCEMENT OFFICERS

This change would be accomplished by amending sections 201 and 204 of the bill. The change involves (1) striking section 5558, "Powers and duties of persons enforcing this subtitle," and inserting in lieu thereof a new section 5558, as a cross reference section, (2) renumbering existing section 7608 as 7609, and inserting a new section 7608, "Authority of Internal Revenue Enforcement Officers," containing the substantive provisions of existing section 5558, with revisions of language, and (3) conforming revision of the newly designated section 7609.

New section 7608, as compared to section 5558 in the bill:

[SEC. 5558. POWERS AND DUTIES OF PERSONS ENFORCING THIS SUBTITLE.]

SEC. 7608. AUTHORITY OF INTERNAL REVENUE ENFORCEMENT OFFICERS.

[The Secretary and any of his delegates whose duty it is to enforce] *Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary or his delegate charges with the duty of enforcing any of* the criminal, seizure, or forfeiture provisions of this [subtitle shall have all the rights, privileges, powers, and protection in the enforcement of any of the provisions of law with which they are charged, which are conferred by law for the enforcement of any laws in respect of the taxation, importation, exportation, transportation, manufacture, possession, or use of, or traffic in intoxicating liquors including but not limited to] *title or of any other law for the enforcement of which the Secretary or his delegate is responsible, may*—

(1) [the right to] carry firearms;

(2) [authority to] *execute and* serve search warrants[,] *and* arrest warrants, [of arrest, or] *and serve* subpenas *and summonses* issued under authority of the United States;

(3) [authority to] *in respect to the performance of such duty,* make arrests without warrant for any offense against the United States committed in [their] *his* presence, or for any felony cognizable under the laws of the United States if [they have] *he has* reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4) [authority to] *in respect to the performance of such duty,* make seizures of property subject to forfeiture to the United States.

New section 5558:

SEC. 5558. AUTHORITY OF ENFORCEMENT OFFICERS.—

For provisions relating to the authority of internal revenue enforcement officers, see section 7608.

New section 7609, as compared to existing section 7608, as amended by the bill:

SEC. 7609. CROSS REFERENCES.

* * *

(b) SEARCH WARRANTS.—

* * *

(2) *Issuance of* search warrants in connection with subtitle E, see section 5557 [and 5558].

* * *

DISCUSSION

This change restates the provisions relating to the authority of alcohol and tobacco tax enforcement officers and extends such provisions so that they will be applicable to all internal revenue enforcement officers. The language formerly contained in section 5558 has been restated to delete certain obsolete phraseology carried over from existing law (section 5313 (a)) and to provide greater uniformity with comparable provisions contained in section 7607 of the Internal Revenue Code of 1954 (as amended) relating to the authority of the Bureau of Narcotics and Bureau of Customs.

This section is intended to clarify the outhority of internal revenue enforcement officers who are charged by the Secretary or his delegate with the duty of enforcing any of the criminal or forfeiture provisions provision of this title or any other law for the enforcement of which the Secretary or his delegate is responsible.

Internal revenue enforcement officers are presently charged with the duty of enforcing criminal and forfeiture provisions of certain laws not contained in this title, such as the Federal Firearms Act, and it is intended that the authority provided in this section shall extend to internal revenue officers enforcing any such provisions.

SEC. 206. EXTENSION OF BONDING PERIOD.

* * *

(f) (1) The amendments made by this section shall apply with respect to—

(A) distilled spirits which on the date of the enactment of this Act are in internal revenue bonded warehouses or are in transit to or between such warehouses, and *in respect of which the 8-year bonding period has not expired before the date of enactment of this Act; and*

* * *

DISCUSSION

This change will clarify the intent of this section by removing an inadvertent inconsistency between the language of this subparagraph and paragraph (2). It is clear from paragraph (2) that the provisions of this section are intended to apply only with regard to distilled spirits in respect of which the 8-year bonding period will not expire before the enactment of this act, since a grace period is provided in such paragraph for conditioning bonds in respect of distilled spirits for which the bonding period expires within the 10-day period starting with the date of enactment.

SEC. 208. LOSSES OF ALCOHOLIC LIQUORS CAUSED BY DISASTER.

* * *

(b) TO WHOM MADE.—Any payment by this section may be made—

(1) to the possessor, or

(2) to any distiller, winemaker, brewer, rectifier, importer, wholesale liquor dealer, or wholesale beer dealer who replaced (or to any distiller, winemaker, brewer, rectifier, [or] importer, *or wholesale dealer* who has given credit or made replacement to a wholesale dealer who replaced) for the possessor the full equivalent of distilled spirits, wines, rectified products, or beer so lost or rendered unmarketable or condemned, without compensation, remuneration, or credit of any kind in respect of the tax, or tax and duty, on such spirits, wines, rectified products, or beer.

DISCUSSION

In certain instances wholesalers, such as those operating as sales agencies for manufacturers, made replacements of liquors to other wholesalers. This change will include such wholesalers within the provisions of section 208. (Losses of alcoholic liquors caused by disaster.)

SEC. 211. THE EFFECTIVE DATE AND RELATED PROVISIONS.

(a) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by sections 201 and 205 [and by paragraphs (5), (15), (16), (17), and (18) of section 204] shall take effect in July 1 [1958.] *1959, except that any provision having the effect of a provision contained in such amendments may be made effective at an earlier date by the promulgation of regulations by the Secretary or his delegate to effectuate such provision, in which case the effective date shall be that prescribed in such regulations. The amendments made by paragraphs (17) and (18) of section 204 shall take effect on July 1, 1959. Except as* provided in section 206 (f), all other provisions of this title shall take effect on the day following the date of the enactment of this Act.

DISCUSSION

This change extends the effective date of the general revision of chapter 51 from July 1, 1958, to July 1, 1959, but provides that any provision may be made effective at an earlier date if regulations to effectuate the provision are promulgated. In such case, the earlier effective date would be as prescribed by such regulations. The proposed provisions relating to the authority of enforcement officers (sec. 204 (14), (15), and (16)) would be made effective as of the date of enactment.

GROUP IV—EFFECTIVE DATE CHANGES

Change July 1, 1958, to July 1, 1959:
Page 124, line 8; page 127, lines 22–23; page 130, line 13; page 143, line 23; page 240, line 7; page 268, line 17; page 273, line 11; page 273, line 14; page 274, line 2; page 274, line 13; page 275, line 2, page 275, line 14.
Change January 1, 1958, to January 1, 1959:
Page 429, lines 15–16.
Change June 30, 1958, to June 30, 1959:
Page 172, line 1; page 202, line 11; page 427, lines 1–2; page 427, line 12; page 429, line 5; page 429, line 14; page 429, line 22; page 430, line 1.
Change April 30, 1958, to April 30, 1959:
Page 429, line 1.
Change May 1, 1958, to May 1, 1959:
Page 429, line 2; page 429, line 5.
Change January 1, 1958, to January 1, 1959:
Page 429, line 22.

In addition to the listed effective date changes, the committee should direct its attention to dates in the bill, as follows: (a) Excise tax extension dates and related floor stocks tax refund dates, as, for example, in sections 5001 and 5063; (b) bottling loss effective date, in section 5008 (c) (5). (If these loss provisions are to be made effective concurrently with the effective date of the general revision of chap. 51, as proposed, the date would be changed to July 1, 1959); and (c) tobacco return effective date, section 5703 (b).

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., July 16, 1958.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request of July 8, 1957, for the views of this agency with respect to H. R. 7125, the Excise Tax Technical Changes Act of 1957.

This agency concurs with the views contained in the report which the Secretary of the Treasury is making to your committe on this measure.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

Senator CARLSON. Mr. Chairman, I have another committee meeting at 10:30. I wish to be excused at that time.

Senator JENNER. I am in the same situation.

The CHAIRMAN. Very well. The first witness today is Mr. Don White of the National Audio-Visual Association. Will you come forward and present your statement?

STATEMENT OF DON WHITE, EXECUTIVE VICE PRESIDENT, NATIONAL AUDIO-VISUAL ASSOCIATION, FAIRFAX, VA.

Mr. WHITE. Mr. Chairman, I will speak very shortly, sir. If it suits you I will insert the statement in the record and speak very briefly in view of your limited time.

The CHAIRMAN. Without objection that may be done.

(The statement referred to is as follows:)

STATEMENT OF DON WHITE, EXECUTIVE VICE PRESIDENT, NATIONAL AUDIO-VISUAL ASSOCIATION, FAIRFAX, VA., CONCERNING SECTION 114 OF H. R. 7125

The National Audio-Visual Association is the national organization of companies specializing in the sale of mechanical and electronic equipment for instructional purposes in schools, churches, and businesses. We are a nonprofit corporation organized under the laws of Illinois and our membership comprises some 520 companies, including about 380 dealers who specialize in the sale of audiovisual equipment, plus 140 manufacturers, film producers, and other suppliers of audiovisual products. Our headquarters are in Fairfax County, Va., and our mailing address is Post Office Box 337, Fairfax, Va.

Our association is concerned about the omission from part 1 of section 114 of the act of the exemption for equipment other than "of the entertainment type" which presently is a part of chapter 32 of the Internal Revenue Code, having been enacted into law under Public Law 367 of the 84th Congress. We are specifically concerned because H. R. 7125 as now proposed would impose an excise tax on certain specialized types of phonographs, manufactured by our members, which are sold almost exclusively to educational institutions.

These phonographs are different from ordinary home-type phonographs in several ways. First, they are much more heavily built, in order to withstand the rugged usage which is encountered in educational institutions. Second, they generally will play 16-inch transcriptions; most home-type record players will only accommodate 12-inch records. Third, these units are invariably supplied without record changers, and are generally supplied as complete phonographs, including amplifiers and speakers, although there are some exceptions to this. The attached sheet will give you some idea of the type of equipment involved, prices, etc.

The Bureau of Internal Revenue already has made rulings concerning most of this equipment, holding it to be free of tax under the present law.

We would like to propose the insertion of a simple amendment, to be a new paragraph under section 4143, as follows:

"Phonographs: The tax imposed by section 4141 on phonographs shall not apply to complete transcription-playing phonographs without record changers, of the type primarily designed for the reproduction of audio-teaching materials in schools, churches, and industry."

We believe that the extension of the tax to cover this type of equipment will serve no useful purpose since we estimate that more than 90 percent of this type of equipment is sold to schools and other subdivisions of the State governments which are not required to pay Federal taxes.

We most respectfully request the inclusion of the above amendment. We are certain that the result will be a saving in time and money for the Government and for all persons concerned with the manufacture, sale, and purchase of this type of specialized instructional equipment.

Mr. Chairman and members of the committee, I wish to thank you on behalf of the audiovisual industry for the privilege of appearing before your committee. If you have any questions I shall be glad to do my best to answer them.

Mr. WHITE. I represent the National Audi-Visual Association. We are an association of people who manufacture and sell electronic and mechanical equipment for teaching purposes.

After this bill was passed by the House, we discovered that it would remove an exemption which is presently a part of chapter 32 of the Internal Revenue Code having been passed into law by Public Law 367 of the 84th Congress.

This is an exemption which says that the existing tax on phonographs shall apply only to equipment of the entertainment type.

And I think by error in drawing up this bill nobody realized that it would remove this exemption.

The phonographs that we are concerned about are of a distinct nature and I have some pictures here, sir, that show what I am talking about. They are much more heavily built than ordinary home-type phonographs because they have to withstand very heavy usage in educational institutions. They generally will play 16-inch transcriptions, very large records, whereas home phonographs will only play 12-inch or smaller.

They are invariably supplied without record changers and are generally supplied as complete phonographs.

I mention these points in order to establish that there are particular technical specifications that can be used to define this type of equipment. And the Bureau has made a rule already which holds this type of equipment to be exempted under the present law, so there is no problem about the ruling.

I would like to propose, if it is possible, the insertion of a new amendment to be a new paragraph under section 4143 which would read as follows:

Phonographs: The tax imposed by section 4141 on phonographs shall not apply to the complete transcription-playing phonographs without record changers, of the type primarily designed for the reproduction of audio-teaching materials in schools, churches, and industry.

And I might add, sir, that I have discussed this with the staff of the joint committee and they see no objection to it.

I have also discussed with the Internal Revenue Service and they felt there would be no interpretation problems.

The CHAIRMAN. Thank you very much.

Your statement will receive the consideration of the committee.

Mr. WHITE. I appreciate the opportunity of appearing.

The CHAIRMAN. Our next witness is the distinguished junior Senator from Nevada, the Honorable Alan Bible. We are glad to have you, sir.

STATEMENT OF HON. ALAN BIBLE, OF NEVADA

Mr. BIBLE. Mr. Chairman, I appreciate the opportunity to appear before your committee today and I am here, of course, to urge that the committee adopt my amendment numbered 7-8-57 (B) to H. R. 7125.

The amendment, stated in its simplest form, would permit conveyance of real property without payment of the documentary stamp tax, now required by section 4361 of the Internal Revenue Code of 1954, whenever a State or political subdivision thereof is a party to the transaction.

This amendment, as its identifying marks indicate, was introduced during the 1st session of the 85th Congress and was prompted by considerable correspondence on the matter and only after I had given careful consideration to the situation it is designed to remedy.

As the committee is well aware, section 4361 of the Internal Revenue Code of 1954, now imposes a tax at the rate of $1.10 per each thousand dollars of evaluated property to be paid by the grantor whenever a State or political subdivision through eminent domain or condemnation proceedings acquires private property for public use. This creates a situation in which a private citizen primarily liable for the tax, who in many cases, is an unwilling grantor, is saddled with a tax burden arising from circumstances over which he had little or no control. This factor, in itself, is wrong in principle and one to which I am strongly opposed as I know the members of the committee are.

With enactment of the recent highway legislation and as the need for acquisition of additional private property in the public interest increases in the coming years, the need for this legislation will become more apparent.

I am not unmindful of the fact that my amendment would result in some slight loss of revenue to the Federal Government. It is, of course, impossible to accurately determine how much revenue would be lost over a given period because of the flexibility of the factors of area and value of land that will be taken through the exercise of State sovereign prerogatives.

The stated tax rate, however, is less than one-tenth of 1 percent and I cannot subscribe to any reasoning in support of the tax which is based on a premise that the tax is an indispensable source of revenue.

If for no other reason, fairness alone would dictate that this inequitable tax burden be removed and I am hopeful that the committee, in its judicious consideration of the matter, will agree that the merits of the amendment with respect to the individual taxpayer, far outweigh any possible loss of revenue which might be occasioned by its adoption.

The CHAIRMAN. Thank you, Senator Bible.

We are honored to have Representative George M. Rhodes of Pennsylvania as our next witness.

Congressman, won't you have a seat.

STATEMENT OF REPRESENTATIVE GEORGE M. RHODES, OF PENNSYLVANIA

Mr. RHODES. Mr. Chairman, distinguished members of the committee, I appreciate this opportunity to explain in detail one important provision of H. R. 7125 with which I am particularly concerned.

I refer to section 132 (b) entitled "Nonprofit Swimming Facilities" which appears on pages 38–39 of the bill. The purpose of this section is to exempt under certain specified conditions from the 20 percent excise tax dues and fees paid to any nonprofit swimming pool organization now imposed under section 4241 of the Internal Revenue Code of 1954.

Those so-called nonprofit neighborhood or community swimming pool groups are a rather recent innovation and have become increas-

ingly popular in many sections of the country, particularly in suburban areas. They are not to be confused with community-owned and operated swimming pools, which are built at the expense of local taxpayers and maintained through admissions and concessions.

In my own district there are now a dozen nonprofit, cooperatively owned swimming pools serving some 6,000 families. They are also extremely popular in the suburban Washington areas of Maryland and Virginia and in other metropolitan suburbs throughout the country.

They fill a distinct community need in these suburban areas, where local recreational facilities are usually inadequate. Community tax-financed swimming pools very often receive little or no consideration because of primary budgetary emphasis on new schools, streets, sewers, and other necessities required in these mushrooming suburban developments.

There would be virtually no recreational facilities in many areas were it not for the initiative of private citizens who organize a swimming pool group, solicit the necessary initiation fees from families in the neighborhood, obtain a site, arrange with a pool contractor for the construction of a modern and conveniently located swimming pool, and handle the management of the pool during the year. These recreational facilities are privately financed and operated without creating additional tax burdens on the local government.

They have many other values. We hear much these days about the problem of juvenile delinquency, young people who roam the streets in gangs, destroying public and private property, and costing local taxpayers untold millions of dollars for added police and fire protection. I am convinced that these neighborhood swimming pool associations can play an important role in furnishing the type of supervised recreational outlets which are so badly needed to halt the sinister advances of teen-age crime, vandalism, and delinquency.

Mr. Chairman, these swimming pool groups also make possible wholesome and healthful family-type recreational activities for our children, young people, and their parents. They provide exercise and relaxation and an opportunity to relieve some of the tensions of our modern day living. From what I have seen of these organizations in my own community, I strongly feel that they are worthwhile and deserve encouragement.

In many cases the imposition of the 20-percent excise tax on amounts paid as dues and fees to these nonprofit swimming pool organizations has proved to be an insurmountable obstacle in the organization of such a project. Some families who might afford the $100 or $200 initiation fee or stock purchase price must turn down membership because of the additional $20 or $40 needed for the tax as a result of the Internal Revenue Service interpretation of section 4241. This heavy tax burden has often caused the collapse of such swimming pool projects. It is interesting to note that this tax is another example of a wartime levy which has been retained. The tax was originally an 11-percent levy, and was raised to 20 percent as a "war tax rate" in the Revenue Act of 1943.

A careful study of the tax status of these organizations convinced me their many unique characteristics actually places them outside the scope of section 4241 which levies the 20-percent tax on amounts

paid as dues or fees to "social, athletic, or sporting clubs." It seems abundantly clear that Congress never intended to impose the tax on nonprofit community swimming pool groups. The language of this section is virtually the same as when first enacted in 1917, except for the percentage amount of the tax. At that time nonprofit community swimming pool groups were nonexistent, having just come into vogue during the past several years.

Mr. Chairman, the Internal Revenue Service has nevertheless imposed the 20-percent tax on these organizations under what I feel is an erroneous interpretation of section 4241, contrary to public policy. The Service contends that nonprofit community swimming pool groups fall within the definition of "social, athletic, or sporting clubs" despite the weight of evidence which reveals the purposes of these organizations are not predominantly social, nor are they predominantly athletic in nature. They are unique as to organization, purpose, and membership in furnishing private recreational services not otherwise available in a particular part of a community. In no way do they resemble country clubs, yacht clubs, golf clubs, athletic clubs, tennis clubs, or other similar organizations meant to be covered by the definitions in section 4241 which date back more than 40 years.

In March 1956, I introduced H. R. 10113 (84th Cong.) to make it clear that these nonprofit community swimming pool organizations were exempt from the 20-percent excise tax. The bill was referred to the Forand excise tax subcommittee. It was subsequently amended and included in H. R. 12298, the omnibus excise tax technical changes bill introduced in the closing days of the 84th Congress. Hearings on this measure were held in November 1956. A number of witnesses representing these swimming pool organizations testified before the subcommittee and explained the unique organization and purposes of their groups. The subcommittee and full committee were unanimous in their decision to provide statutory exemption for these worthwhile community organizations. The exemption was written into H. R. 7125 as section 132 (b) and was passed by the House on June 20, 1957.

Unfortunately, the effective date of this exemption, if enacted by Congress this year, will deny statutory relief to many of these organizations who paid the tax under protest. This will create a "double standard" in the tax treatment of swimming pool groups within individual communities or metropolitan areas. The ideal solution would be to make the exemption retroactive to cover the period during which such taxes were imposed, thus affording equity to all nonprofit swimming pool groups meeting the conditions specified in this section. No retroactive provision was included in the House bill, although I personally feel that it is warranted in view of the erroneous interpretation of the statute by the Internal Revenue Service.

If this committee does not feel that a retroactive clause can be written into the bill, I trust that the legislative history of H. R. 7125 will make it clear that Congress never intended that section 4241 apply to nonprofit community swimming pool organizations; that they are neither "social, athletic, or sporting clubs or organizations" within the definition of the original 1917 terminology as carried forth in the 1951 and 1954 Intrenal Revenue Codes; and that continued efforts of the Internal Revenue Service to apply this tax to these groups are contrary to the intent of Congress.

Mr. Chairman, I respectfully urge that this section of H. R. 7125 be retained by the committee because of its many long-range benefits to our individual citizens, the communities in which they live, our young people, and the health and welfare of our Nation as a whole.

The CHAIRMAN. Thank you very much.

The next witness is Mr. Murray B. Nelson of the Maytag Co.

STATEMENT OF MURRAY B. NELSON, GENERAL ATTORNEY, MAYTAG CO., NEWTON, IOWA

Mr. NELSON. Mr. Chairman and members of the committee, I am general attorney for the Maytag Co., of Newton, Iowa, manufacturer and merchandiser of home laundry equipment and other household appliances.

I am appearing for the company in support of an amendment offered by Senators Martin and Hickenlooper of Iowa to H. R. 7125, section 115, the section that provides for constructive pricing on certain sales made to retailers and at retail.

Our company endorses the objectives of section 115 as stated in the House report. The report recognizes the desirability of imposing manufacturers' excise taxes on a uniform base price even though the same article may be sold at different levels of distribution. It states that administrative difficulties prevent full achievement of that goal in this bill but that as a step toward its acomplishment the bill in general provides for a downward adjustment in the excise tax base to the price level charged by manufacturers to wholesalers.

We endorse this stated objective. But our company finds that section 115 would accomplish that objective for our competitors, but not for us. Instead it would establish our constructive tax base at the level charged retailers, rather than the price level charged wholesalers.

If section 115 were enacted as now worded, we would be at an even worse competitive tax disadvantage under it than we are under the present law. We are now at a disadvantage to some of our competitors. Under section 115 we would be at a disadvantage to all.

Here is how this comes about.

Section 115 establishes as the constructive price base the highest price charged by a manufacturer to his wholesale distributors. For almost all manufacturers of household appliances this formula presents no problem. This is because they sell to wholesale distributors who perform a complete wholesaler function.

These wholesalers buy the product from the manufacturer and then, through their own sales organization, assume the full responsibility for its resale to retailers. This is true in our home laundry equipment industry, and the price charged by manufacturers to such wholesalers is a true wholesale price.

But Maytag not only sells to such true wholesalers, but in addition sells to a unique class of wholesaler who employs no sales force and whose principal service is merely to take title to and to warehouse the product.

In the proposed amendment to section 115 this special class of wholesaler is referred to as a "special dealer." We do their selling through our own sales force. This takes care of such a substantial part of their resale expense that they consequently pay us a substantially higher

price than the price we or our competitors charge true wholesalers. Our price to these "special dealers" is the same as our carload price to retailers.

Under section 115, in the House bill, our constructive price base would be the price at which we sell to such "special dealers," not the price at which we sell to true wholesalers. Sixty-five percent of our taxable sales would be taxed at the price charged these "special dealers." On this volume we have estimated that our tax disadvantage to our competitors would be about $1 per unit. In a highly competitive field, this would be a heavy burden on our company.

I believe I should say at this point that in such a highly competitive industry as home laundry equipment, our distribution system has been an important factor in keeping our company successful though faced with the full line competition of much larger competitors. Consequently, we consider it necessary to continue to sell through the "special dealers" that I have described.

Under the Martin-Hickenlooper proposed amendment to section 115, our company would experience the intended benefits stated in the House report. We would then enjoy equality of tax treatment with our competitors. In simplest form their amendment treats our "special dealers" as retailers rather than as wholesale distributors when setting our constructive price base. Our constructive price base would then become the highest price at which we sell regular wholesalers—those who do their own selling.

Senator KERR. I would like you to explain that.

Mr. NELSON. We sell to regular distributors just as the rest of the industry does—that is, distributors with their own sales force and who assume the responsibility for selling the product after they purchased it to retailers.

Sentaor KERR. That third sentence, "in simplest form their amendments"——

Mr. NELSON. The Martin-Hickenlooper amendments.

Senator KERR. "Treats our 'special dealers' as retailers"—I thought what you wanted to do was to have them treated as wholesalers in that they paid tax only on what you would charge if you had sold it to a wholesaler.

Mr. NELSON. No; our situation at the present time is that under section 115, as worded, they would be treated as wholesalers and they would be the wholesaler to whom we sell at the highest price. Consequently, not only our sales to them but also our sales to retailers would have the constructive price base under section 115 pegged at the price that we sell these special dealers and that as I noted earlier is the carload price that we sell to retailers. In effect, we would be left up on a peak. Instead of this bill pulling our price down to the true wholesale price level, we would be left with 65 percent of our sales taxed at the price at which we sell this special dealer.

Senator KERR. All right; go ahead.

Mr. NELSON. Do I make that clear, Senator Kerr.

Senator KERR. Yes.

Mr. NELSON. I mentioned that we had discussed this with Mr. Smith, of the Treasury Department, and Mr. Stam, of the Joint Committee.

Both of them, we believe, are thoroughly familiar with our problem and the proposed solution. We have also undertaken an extensive private survey of manufacturers of household appliances of the type taxed under section 4121, Internal Revenue Code. We surveyed 595 manufacturers by telegram and as a result of that survey it would appear that our problem is unique and that there would consequently be no significant loss of revenue from the amendment proposed.

A report on this survey is attached to this statement and a copy of that report has previously been made available to Mr. Stam. There is a copy of that report survey attached to my statement which I would like to make a part of the record.

The CHAIRMAN. That may be done without objection.

(The report survey referred to is as follows:)

REPORT ON TELEGRAPHIC SURVEY OF MANUFACTURERS OF ARTICLES SUBJECT TO EXCISE TAX UNDER SECTION 4121, INTERNAL REVENUE CODE

Text of telegraph sent January 24, 1958, to 595 manufacturers:

"We are making a survey of articles subject to manufacturers' excise tax under section 4121, Internal Revenue Code. Would very much appreciate your answering following questions by collect telegram regarding _____[1] where manufactured by you.

"(1) Do all wholesalers who buy the same model directly from you perform the ordinary and usual functions of a conventional wholesaler of such an article in the industry?

"(2) If not, do you directly sell both conventional wholesalers and also at a substantially higher price other wholesalers for whom in the resale of the article you provide special services not provided conventional wholesalers?

"If you do not manufacture any articles taxed under section 4121 please so advise."

Source of lists or information as to manufacturers of articles subject to tax under section 4121, Internal Revenue Code:

The Classified Directory of Appliance, Radio, and Television Manufacturers, 1957 edition published by Electrical Merchandising magazine, a McGraw-Hill publication, 330 West 42d Street, New York 36, N. Y.

The Membership Directory of the Gas Appliance Manufacturers Association, Inc., 60 East 42d Street, New York 17, N. Y.

The National Electrical Manufacturers Association, 155 East 44th Street, New York 17, N. Y.

The Institute of Appliance Manufacturers, the Shoreham Hotel, Washington, D. C.

American Home Laundry Manufacturers Association, 20 North Wacker Drive, Chicago, Ill.

Oil Heat Institute, New York, N. Y.

The Lawn Mower Institute, Inc., Washington, D. C.

From the above sources lists were compiled of manufacturers of all articles, other than electric pants pressers, subject to tax under section 4121 Internal Revenue Code. The lists compiled are believed to include all major manufacturers of such items and to be substantially complete.

RESPONSE TO TELEGRAM

To the 595 telegrams sent, 391 replies, a 66-percent response, were received. This is considered a high percentage of replies inasmuch as the addressee was merely accommodating the Maytag Co. and may also have been uncertain as to the intended use or publicity to be given an answer.

[1] In the blank space was inserted the name of the products manufactured by the particular manufacturer to whom the telegram was sent that might be subject to sec. 4121, Internal Revenue Code.

A breakdown of the replies is as follows:

	Number
(1) In selling to wholesalers, manufacturer sells to conventional wholesalers only	212
(1) In selling to wholesalers, manufacturer sells to conventional wholesalers and also to special wholesalers at a substantially higher price	5
(3) Manufacturer does not sell to conventional wholesalers	9
(4) Manufacturer does not sell to any wholesalers	18
Total	244
(5) Other:	
(a) Addressee does not sell any article subject to tax under sec. 4121	112
(b) Addressee out of business	14
(c) Telegram undelivered	13
(d) Answers not responsive or unclear	8
Subtotal	147
Total	391

A substantial number, 112, of those answering stated that they were not subject to the tax. Some of these purchase a taxable article for resale as private-label merchandise so that they are not classed as the manufacturer and do not themselves pay the tax to the Government. Others apparently manufacture articles in sizes or classifications or for uses that are considered commercial rather than household in type.

THE MAYTAG CO.

Senator JENNER. Is this the only organization of this kind that has this sort of sales force in the United States?

Mr. NELSON. Correct. We are the only one we have been able to find as the result of that survey.

Senator JENNER. You must be awfully good or the other 595 must be awfully dumb. What is the difference?

Mr. NELSON. I think I might explain it this way. I don't think it is either.

Senator KERR. But if that is true, you prefer the former?

Mr. NELSON. If we were a full-line manufacturer so that we could have distributors devote their full attention to a full line of products, this would not have the same advantage as it does to us.

Senator JENNER. Aren't you a full line? I thought you made home-laundry equipment, and you made deep freezers and stoves and so forth?

Mr. NELSON. We did make stoves. We do not any more. The only thing we sell now is home-laundry equipment. And we also merchandize freezers and combination refrigerator-freezers. We do not sell the complete line of that. We do not sell the ordinary household refrigerator. That is the extent of our business.

This device permits us to have our own sales force doing the selling. And, consequently, the people who depend upon our line for their bread and butter devote their full attention to it. Otherwise, if we sold through the normal distributory channels, we would likely have their attention diverted from our line, whereas if we had a full line that would not be the case.

We are sure that this committee would not wish either to exact a heavy tax penalty on the Maytag Co., or alternatively to force the company to change a successful sales technique. Therefore, we are certain

you will give the Martin-Hickenlooper amendment your earnest consideration.

The CHAIRMAN. Thank you very much.

The next witness is Mr. Herman Berg, of the Fountain Pen & Mechanical Pencil Manufacturers Association.

STATEMENT OF HERMAN BERG, FOUNTAIN PEN & MECHANICAL PENCIL MANUFACTURERS ASSOCIATION, INC., ATLANTA, GA.

Mr. BERG. Mr. Chairman and members of the committee, my name is Herman Berg. I am vice president for the international sales for Scripto, Inc., Atlanta, Ga., and appear here as acting chairman of the foreign trade committee of the Fountain Pen & Mechanical Pencil Manufacturer's Association. We are concerned specifically with section 119 of H. R. 7125 which would substantially rewrite sections 4221 through 4226 of the 1954 Code relating to procedures for tax-free sales for export and to State or local governments.

The background of this problem is as follows:

As is required under the Constitution, the present Internal Revenue Code exempts from excise taxes sales of goods for export. A similar rule is applied as to the sales of goods, including pens and pencils, to State or local governmental units. While there are regulations treating the problems of tax-free sales, most of the procedures which govern them have been developed internally within the industry through our 5 years of experience since 1951.

In general, these rules are now working satisfactorily. Most fountain pen and mechanical pencil manufacturers have developed their own rules. These usually require a showing by the purchasing party of a bona fide intention to sell the goods for export purposes. Some manufacturers request information as to the country to which the goods will be consigned. Others vary this practice, depending upon the specific identity of the purchasing party.

As set forth in section 316.26 of the current regulations relating to excise taxes, the manufacturer is liable for the excise tax unless the following proofs of exportation are supplied—

(1) a copy of the export bill of lading issued by the delivery carrier;

(2) a certificate by the agent or representative of the export carrier showing actual exportation;

(3) a certificate of lading signed by a customs officer of a foreign country; or

(4) a sworn statement of the foreign consignee showing receipt of the article; or the manufacturer has in his possession an affidavit from the actual exporter stating the name of the exporter, the foreign destination, a description of the merchandise, and the name and identification of the actual proof of exportation as required in section 316.26 as above noted.

These proofs of export are often difficult to obtain. As a result, some manufacturers require payment of the tax in advance at the time of the initial purchase and then, upon receipt of the proof of export, make a refund of the tax previously collected in escrow.

In actual practice this advance collection of tax is a very delicate matter. Competition in this industry being what it is, and the general need for working capital by purchasers being so great, manufac-

turers are hard pressed by purchasers to make the sale on a tax-free basis in the first instance and to rely upon receiving the proof of export at a later date in order to avoid payment of the tax.

Since there is now no specific statutory or regulatory means governing the furnishing of notice of intention to export, the industry-wide practice of knowing the exporter, requiring him to advise the manufacturer of the country of destination and other procedures help protect the manufacturer from selling to parties who, in fact, never intend or fail for good reasons to export the goods.

The proposed legislation would alter very considerably the foregoing practice. In the interest of uniformity as regards all tax-free sales, one single system of number registration would be required.

In general, the overall effect of the proposed legislation will be to materially ease the procedures on the part of the purchaser for making tax-free sales, but will fail utterly to provide corresponding safeguards to protect the manufacturer. Whereas in the past under industry practices, documented notice of intention to export and other requirements have to be met, manufacturers under the proposed legislation would be confronted with a group of purchase orders having a registration certificate number merely noted upon them.

The Fountain Pen & Mechanical Pencil Association is firmly of the belief that the suggested method—simply obtaining a registration number and stamping it on a purchase order—will stimulate dangerously frauduluent sales—that is, those purportedly for export but which actually find their way into the domestic market.

The same danger would exist equally on sales purportedly for governmental use. The knowledge that a registration number is all that is required will upset the delicate industry balance and practice now in effect of requiring more positive notice either of intention to export or of sale to governmental units.

The nature of the fountain pen and pencil industry is such that it is extremely easy for any fly-by-night businessman to become "an exporter." Since these items are small in size and since they are in great demand in all foreign countries, the incentive to make export sales is very great.

When this fact is coupled with the possibilities of even greater profit if purportedly export sales can be made and the tax-free items then sold in the domestic market, we believe that this committee can readily understand the opportunities for tax evasion in this entire area. The industry is now coping with this problem in the best practical manner possible under the present law.

As matters are now at the moment the responsibility for the proper records and payment of excise tax is in the hands of the fewest possible manufacturers. To remove the brakes will increase these opportunities for tax evasion and complicate, rather than simplify, the paperwork at all points of the distribution picture.

The committee report, written under section 119, states that the section is designed to provide "a more nearly uniform system * * * to improve the operation of the manufacturers' excise tax * * *."

The Fountain Pen & Mechanical Pencil Manufacturers' Association urges that the proposed section 119 will do needless and irreparable harm. We respectfully suggest that the present law be retained.

The CHAIRMAN. Thank you very much, Mr. Berg.

Mr. BERG. Thank you.

The CHAIRMAN. The next witness is Mr. Stanley Lowell, Protestants and Other Americans United.

STATEMENT OF REV. C. STANLEY LOWELL, PROTESTANTS AND OTHER AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

Reverend LOWELL. Mr. Chairman, my name is C. Stanley Lowell. I am managing editor of Church and State Review, with a circulation of 60,000, and associate director of Protestants and Other Americans United for Separation of Church and State, a national organization with members in all the States and cooperating committees and chapters in most, which is devoted to the preservation of the constitutional principle of church-state separation.

We are a predominantly Protestant organization whose officers include some of the most distinguished names known to the American churches—a bishop of the Methodist Church and former president of the National Council of Churches and the World Council of Churches, a former moderator of the Presbyterian Church in the U. S. A., a former president of the Southern Baptist Convention, and a prominent leader of the Seventh Day Adventist Church.

We are concerned that certain revisions of the Internal Revenue Code, as proposed in H. R. 7125, may create undesirable precedents so far as our cherished doctrine of the separation of church and state is concerned. The sections to which we allude all come under title I. They are section 4221 (a) (5), which exempts from tax articles sold to a nonprofit educational organization; section 4224 (a) (1), which exempts such organizations from tax on telephone calls, travel tickets, and amounts paid for transportation of property to or from such an organization; and section 163 (b) (2) D, exempting such organizations from the tax on gasoline.

We are predominantly an organization of church leaders and members. Yet we strongly oppose all these proposed exemptions on the ground that they confer a new and special favor upon sectarian institutions. These exemptions are primarily for Roman Catholic parochial schools, a fact acknowledged by Representative Aime J. Forand when he originally discussed them.

There would also be some reduction in excise taxes to non-Catholic and nonsectarian private schools. Indeed, it seems to us the definition of "nonprofit educational organization" is so loosely drawn as to include wealthy private institutions.

Originally, the report of the House subcommittee estimated the cost of these exemptions of private schools from excise taxes would be about $3 million a year. We received a personal estimate that about half of this amount would go to Roman Catholic parochial schools. These exemptions would obviously involve a new flow of paper records back to tax headquarters.

We oppose these exemptions, first, because any exemption granted to a sectarian school under the control and operation of a church is actually a financial concession to a religious institution. As such it violates the spirit of the first amendment which prohibits any establishment of religion. This is conspicuously true in the case of the Roman Catholic parochial school.

Canon law 1374 instructs the members of this denomination not to send their children to public schools unless the bishop of the area is willing to make an exception, and to send their children rather in all instances to the church's own private schools.

Obedience to this canon law is basic to the practices of highest church dignitaries, the key mission of the church. It is evident, then, that a tax concession to the schools of this church is indistinguishable from a tax concession to the church of which it is an integral part. It is just such practice which we believe is prohibited by the first amendment.

It is argued that sectarian schools are placed at a disadvantage tax-wise when compared with public schools. In a sense this is true. This inequality is a part of the price which religionists pay to insure the private nature and control of their enterprise.

The sectarian schools are the expression of the religious conviction of the particular church which sponsors them. The church cannot expect to enjoy continued freedom in this enterprise if it accepts financial concessions from the State and thereby enters into a tie with the State. To put such institutions into business, or to aid and abet their operations is not, we believe, a proper sphere of Government activity.

Our second objection is that such exemptions as these is that they are only part of a chain reaction of financial concessions to separate sectarian schools. The Jesuit educators of the United States, meeting at Georgetown University on January 4 of this year, issued a demand for Federal aid to education "made available on an across-the-board basis, for all sudents and for all institutions."

It is a fact, Mr. Chairman, that most of the Federal aid bills, including H. R. 13247 recently reported by the House Committee on Education and Labor, provide certain benefits for these educational missions of the church. Generally speaking, we feel that this particular bill is sound legislation but in some of its minor provisions it does have these precedents in which we see danger.

We contend that these exemptions in the excise tax undertake to do indirectly what the aid-to-education bills—some of them, at least—do directly. They are merely different forms of benefit or subsidy to churches.

The eventual objective of this effort on behalf of sectarian schools is clear: the objective is full tax support for these institutions. When Bishop John P. Cody of Kansas City dedicated St. Pius X High Schools there in April 1957, he said:

> When we hear about Federal aid to education we wonder if we, too, are not deserving. The law of this land prohibits Federal contributions to sectarian schools, but laws have been changed. With the help of right-minded men we may look forward to help for our schools. This is a hope, not a threat.

Now the church benefit involved in these exemptions is not large. Yet it is our feeling that it points in an unfortunate direction. It lends further stimulus to a kind of subsidy mentality on the part of church leaders which ought to be discouraged. On the part of some church leaders, that is.

The tax exemption for places of worship has become established in our tradition; we do not advocate change at this point. It is our position, however, that tax exemption should apply closely to the property and buildings actually used for worship purposes and not to educational or commercial enterprises connected therewith. To

widen the scope of such exemption, on the one hand, or to grant direct State subsidies, on the other, is, we believe, to endanger the welfare of the churches whose good is sought.

Historically, the church has suffered more from the State's overindulgence than from its persecution. The phenomenon of anticlericalism which has been such an unpleasant reality in the history of many nations has been occasioned in large part by the State's overindulgence of the church.

We believe that church enterprises should be supported by the voluntary gifts of adherents, not by tax benefits. In that belief we ask elimination of these sectarian exemptions.

The CHAIRMAN. Thank you very much, Dr. Lowell.

Reverend LOWELL. Thank you.

The CHAIRMAN. Our next witness is Col. Orval Matteson, Lincolnia Park Recreational Club, Inc.

STATEMENT OF COL. ORVAL MATTESON, LINCOLNIA PARK RECREATIONAL CLUB, INC.

Colonel MATTESON. Mr. Chairman and members of the committee, I am a member of the board of directors of the Lincolnia Park Recreational Club, Inc.

Senator BENNETT. Where is it located?

Colonel MATTESON. In Fairfax County, Va.

This is a nonprofit organization created principally for the purpose of providing a community swimming pool.

First of all, I wish to express the deep appreciation of all members of our organization for your courtesy in inviting us to appear before you concerning H. R. 7125. Although specifically representing only a single community, we feel we are a typical example of hundreds of community swimming pools throughout the country in the same tax position and that our views are shared by them.

We are concerned with that portion of the bill being considered having to do with nonprofit swimming facilities. Specifically, we refer to section 132 (c) which exempts the current excise tax on dues and fees paid to nonprofit swimming pools; and section 1 (c) as it applies to the effective date of such exemptions.

Trusting that you are in full agreement with the position of the House of Representatives that nonprofit community swimming pools shoud be exempt from excise taxes, we wish to pass quickly the fact that it is obviously wrong to apply an excise tax on such community recreational facilities. In fact the providing of swimming pools by groups such as ours is only an attempt by members of communities to provide wholesome recreation facilities for their families where the local governments have been unable to provide them.

The application of this tax on top of the high cost of construction results in a prorated cost which in many cases either results in inadequate facilities or prevents some members of the community from being financially able to take advantage of the facilities.

In nonprofit organizations of this type the membership dues are applied to the costs of the facility, hence the application of the tax is in effect, a tax on the construction of the facility. Further, as the fees are applied to operating expenses such as personnel, utilities, taxes, et cetera, the application of a tax on the fees is equally unjust.

Surely, if these facilities were provided by local governments no excise taxes would be applied against construction and operating costs.

We are confident that you agree that the excise tax should not be applied to nonprofit swimming pools, and therefore we would like to address ourselves particularly to the time these proposed exemptions would become effective.

It should be noted that as presently proposed, the effective date of the exemption of these obviously unjust taxes could be no earlier than 60 days following the effective date of the enactment of the act. We fail to understand why it is necessary to continue to tax for an additional 60 days members of communities who are providing these facilities.

Please note further that unless the act is enacted prior to the end of July 1958, the exemptions would not apply until the 1st day of January 1959. The point has been made that delay of the effective date is necessary so that the Tresaury Department may have additional time after enactment for preparation and publication of regulations and explanatory material and to coincide the changes with the quarterly reporting of most excise taxes.

This delay may be necessary as it affects other tax exemptions in the bill, but it most certainly is not necessary for nonprofit swimming pool exemptions. In the case of nonprofit swimming pools, tax moneys are now required to be deposited monthly in local banks to the credit of the Government and funds are transferred to the United States Treasury at the end of the quarter; it would take only a simple announcement to terminate the depositing of such funds and as funds on deposit are not transferred to the United States Treasury until the end of the quarter, it would be relatively simple to effect a procedure to return these deposits to the credit of the organization which deposited them.

We believe that sections 131 and 132, as they apply to nonprofit swimming pools should be adopted and that in these cases, the amendments and repeals made by title I of the act should take effect on the first day of the quarter of enactment of the act.

With jeopardy to the preceding remarks we submit that the past collection of excise taxes from these nonprofit swimming pools has been unjust, and therefore moneys collected should be refunded. We refer again to the preceding comments that it has been unfair to apply an excise tax to community projects of this nature.

We do not feel qualified to discuss the legality of the application of excise taxes on nonprofit community swimming pools. However, we would like to refer to the recent litigation known as the Twin Brooks case in which the United States district court ruled against these taxes on the grounds that they should never have been applied to community swimming facilities such as ours which are not social clubs.

This decision was appealed by the Government to the Fourth Circuit Court of Appeals which overruled the lower court. It is our understanding that the basis of the overruling was not specifically as it related to the application of the tax against nonprofit community swimming pools, but rather because the decision of the lower court, as worded, would have applied to other than nonprofit community swimming pools, for example country clubs.

Since this tax is applied to an individual, the cost of further appeal would have to be borne by that individual. Therefore, it is unlikely that this tax will ever again be challenged in the courts by an individual. Only through your legislative section in this instance can these justified tax refunds be obtained.

Therefore, we request that appropriate changes be made to H. R. 7125 to provide for refunds of taxes which have been collected against dues and fees paid to nonprofit swimming facilities (sec. 132 (c)). This in itself would not be an exceptional case since the act provides for credits and refunds in other instances.

Again, gentlemen, we wish to thank you for your consideration in permitting us to appear to present our views. We believe our viewpoint is the same as that of many other thousands of individuals throughout the country in a similar position who have undertaken to provide wholesome worthwhile community swimming and recreational facilities.

We urge all possible actions to promote and encourage programs which are aimed at increasing the opportunities for sports and recreation. Such programs are, in accord with the National Outdoor Recreation Resources Review Commission now being established by Congress and the President to facilitate recreation programs in our country. We believe the actions we have recommended in this case will result in a major contribution to the effectiveness of such recreation programs.

Thank you.

The CHAIRMAN. Thank you very much, Colonel Matteson.

Senator KERR. As I understand it, you favor section 131 and section 132 with amendments?

Colonel MATTESON. This is right, sir. However, we do not favor the time at which the exemptions would take place.

Senator KERR. I gathered that the changing of that time is one of the amendments?

Colonel MATTESON. Yes, sir, this is the amendment which we propose; yes, sir.

Senator BENNETT. Do I understand the latter part of your statement to indicate that you want all taxes refunded from the beginning of the time taxes have been collected against community swimming pools?

Colonel MATTESON. That is correct, sir.

Senator BENNETT. Over how long a period would we go back, if we acceded to that request?

Colonel MATTESON. I am not able to answer the question.

Senator BENNETT. One year or five years?

Colonel MATTESON. It would be at least, I am sure, 5 years, because I know of pools in this area that were built 5 years ago.

Senator BENNETT. That is all.

The CHAIRMAN. Thank you very much.

Colonel MATTESON. Thank you.

The CHAIRMAN. The next witness scheduled was Mr. John S. Bernheimer, of Philadelphia, Pa. In lieu of appearing in person, Mr. Bernheimer has submitted a written statement for the record.

(The statement of Mr. Bernheimer follows:)

STATEMENT OF THE DELAWARE VALLEY SWIM CLUB ASSOCIATION SUBMITTED BY JOHN S. BERNHEIMER, PHILADELPHIA, PENNA.

Statement on behalf of 6,800 families in 17 nonprofit swim clubs in Philadelphia, Bucks, Montgomery, and Delaware Counties, Pa., in support of Passage of Excise Tax Technical Changes Act of 1957 (H. R. 7125) particularly Sections 131 and 132 exempting nonprofit swimming facilities from the excise tax on dues, admissions, and assessments or capital contributions for construction or improvement of such facilities

We respectfully urge the passage of H. R. 7125, particularly sections 131 and 132. These sections exempt nonprofit swimming facilities from the 20 percent excise tax on assessments or amounts paid for constructions of such facilities; the 20 percent tax on dues over $10 per annum; and the 10 percent tax on admissions of guests of members.

In the past several years a new and necessary community facility has been created in the form of nonprofit swimming clubs. These are private clubs formed by a group in the community who are unable to afford to belong to established country clubs, or who have no desire to play golf and want a place for the family to swim and enjoy outdoor recreation.

These clubs in the Delaware Valley area are formed by a local group and consist of 6 to 10 acres on which is built small dressing rooms for men and women; sanitary facilities; a wading pool for the small fry, and a swimming and diving pool for the more mature swimmers. Some clubs have volley ball, badminton and shuffle board, in addition to tot lots or playgrounds for the children. The clubs usually have a small snack bar; none in our area serve liquor or permit its consumption, as the clubs are family clubs geared mainly for the enjoyment of our children.

Each club has 400 families (some may limit membership to 350 and one club has 500 families). Families each advance from $200 to $300 as a loan to the club in order to buy the land and build the facility. Often this is not enough and clubs must borrow to complete the facility. The present 20-percent excise tax on this initial or any subsequent assessment for further improvement is a heavy burden on the middle or low income suburbanite who contributes $250 or $300 to "join" such a facility. For it increases his initial payment by $50 or $60 and this, together with his dues of $10 per member of the family, puts a big bite into his reserve.

Additionally, families forming such clubs are actually doing what the township or county authorities perhaps should be doing and in some communities there are such township swimming facilities for the residents. Where there are no such municipal swimming facilities, then it seems a burden to further tax the good citizens who band together and form a nonprofit corporation to build such a facility and supply a very real community need.

The history of these clubs in this area is that they are oversubscribed almost as soon as the shovel starts digging the pool. Once the land is found and the zoning problem is hurdled, each club quickly fills its maximum and then builds its waiting list. All clubs have waiting lists of families very anxious to be admitted. Most clubs give back the original contribution to the withdrawing member (who may be moving away to take another job) and the new member pays the same contribution to the club. This is again taxable at 20 percent and again appears to be a burden on the individual family.

As to dues. Dues under $10 per annum per member are now exempt under present excise statutes. However, clubs can barely meet their necessary overhead for township and county taxes, for pool maintenance and proper sanitary conditions and adequate lifeguards, club managers, and gate attendants on the income of $10 per member of each family. To raise dues now, with 20 percent going for taxes, again places an inordinate burden on the middle and low income member of these clubs. A $5 increase in dues for the two adults in the family would enable clubs to provide better care for the kids. This is only possible if the 20-percent tax is eliminated on dues.

A word about the 10-percent tax on admissions to such facilities. Guest privileges are limited in clubs such as ours. But we all like to and do bring our less fortunate neighbors and their children, once in a while, as our guests. Each time we bring a guest, we must pay 10-percent tax on all guest fees over 90 cents. Admittedly, most clubs charge less than 90 cents on weekdays for

children guests. But on weekends, guest fees for children and all adult guest fees are over 90 cents and therefore the tax is payable. Here again we find a tax burden on a privilege being supplied by private enterprise to others in the community who just couldn't get into the club because it was oversubscribed.

No one makes a profit on our club. In fact in some of our constitutions, upon liquidation of the club (if this should ever happen) each family is reimbursed the exact amount lent to the club, and then any balance left over after the payment of debts is given to charities selected by the board of directors. And, in most cases, our clubs have enhanced in value, for the land we purchased 2, 3, or 4 years ago is now worth many times what we paid for it, and in many instances we have improved our land with our own efforts, so that our facilities are worth many times the money actually paid out.

These clubs do not serve or permit liquor; these clubs have no dancing facilities; no dining room or kitchen (only a light refreshment or small snack bar); these clubs consider first and foremost the needs of children; and each club is privately owned by all the members who purchase certificates, and such certificate holders control the election of directors and the management of the clubs. These are private clubs. Many of these clubs give free swimming lessons to their membership; and there is friendly competition in swimming and diving contests between the clubs; water shows are not uncommon. This is all a very important and healthy part of American democratic life. It should be encouraged and given its blessing by the Congress of the United States by being exempt from the excise taxes enumerated here.

On behalf of our 6,800 families (and 2 new clubs are organizing now in our area) who are members of the clubs in the Delaware Valley area of Pennsylvania, we respectfully urge this committee to favorably report out for passage by the Senate sections 131 and 132 of the Excise Technical Changes Act of 1957 (H. R. 1725) as passed by the House of Representatives.

We urge your speedy approval. Permit me on behalf of the Association, to thank you for the time given us here, and for this opportunity to express our wishes and comments on legislation.

Respectfully submitted.

JOHN S. BERNHEIMER,
FRANK W. JENKINS,
For the Delaware Valley Swim Club Association.

The CHAIRMAN. The next witness is Mr. James S. Moore, of El Paso, Tex.

Is Mr. Moore present? No doubt, Mr. Moore intends to submit a statement in lieu of appearing.

The CHAIRMAN. The next witness is Mr. William T. Barnes, of Washington, D. C.

STATEMENT OF WILLIAM T. BARNES, OF LYBRAND, ROSS BROS. & MONTGOMERY, CERTIFIED PUBLIC ACCOUNTANTS, REPRESENTING DOW JONES & CO., INC., NEW YORK, N. Y.

Mr. BARNES. Mr. Chairman and members of the committee, my name is William T. Barnes, of Lybrand, Ross Bros., & Montgomery, certified public accountants. I am employed in the Washington office of this firm, and I appear on behalf of our client, Dow Jones & Co., Inc., of New York, N. Y., to discuss the necessity for a clarifying amendment to section 4252 of the Internal Revenue Code, defining the types of communications services which are subject to the excise tax imposed by section 4251. The problem which I shall discuss affects all general news services, although to a lesser degree than Dow Jones.

Pursuant to the request of this committee, I am pleased to cooperate with the committee's desire to expedite these hearings by limiting my oral presentation to a fine summary of the problem and of the proposed solution. I respectfully invite the committee's atten-

tion to the memorandum which I have submitted and I request that it be made a part of the printed record of these proceedings.

The CHAIRMAN. Without objection that will be done.

(The amendment and appendix referred to are as follows:)

THE EXCISE TAX ON COMMUNICATION SERVICES (INTERNAL REVENUE CODE SECS. 4251–4254) SHOULD BE AMENDED TO MAKE IT CLEAR THAT THIS TAX DOES NOT APPLY TO ANY PAYMENTS FOR PUBLIC PRESS NEWS

I. PROPOSED AMENDMENT

Subsection (e) of section 4252 should be amended to read as follows:

"(e) WIRE AND EQUIPMENT SERVICE.—As used in section 4251 the term 'wire and equipment service' shall include stock quotation and information services, burglar alarm or fire alarm service, and all other similar services, but (not including) *shall not include news ticker services furnishing a general news service similar to that of the public press*, or service described in subsection (d) of this section. The tax imposed by section 4251 with respect to wire and equipment service shall apply whether or not the wires or services are within a local exchange area."

Effective date: January 1, 1955, being the effective date of subtitle D of 1954 code.

Section 4251 is the section which imposes tax on various specified types of communication service, including "wire and equipment service."

II. REASONS FOR THE PROPOSED AMENDMENT

The proposed amendment is necessary to make it clear that the Congress never intended to impose a communication service tax on any payments to a press association for subscriptions to its general news service. (See appendix A).

The reason why such a clarification is necessary is because the Internal Revenue Service, after having recognized the exemption for general news for approximately 18 years, has ruled in September of 1957 that all payments by the general public to a press association for subscriptions to its general news service are subject to tax as being payments for taxable "wire and equipment service," as now defined in section 4252 (e), this despite the express language to the contrary of subsection (b) of section 4253 relating to "exemptions." (See Appendix B—History of Treasury Interpretation of Existing Law.) The September 1957 ruling in effect restated a ruling which had been issued by the Internal Revenue Service in March of 1955 which had been revoked in August of that year after further study of the matter.

III. IMPORT OF 1957 RULING

This 1957 ruling restricts the exemption section, 4253 (b) with respect to news "dissemination" through a general news ticker service, to exempting only payments made by a press association to a telegraph company, and as not exempting payments to a press association by its subscribers among the general public. The only exemption now recognized by the Internal Revenue Service with respect to payments to a press association is an exemption for payments made by the public press, by a radio broadcaster, or by some other general news ticker service. Such payments by this limited group are already exempted by the provisions in 4253 (b) relating to the "collection" of news. In other words the 1957 ruling ignores the express exemption for news "dissemination" in section 4253 (b). It is respectfully submitted that the last previous position of the Treasury Department, overruled by its 1957 ruling, correctly interpreted the congressional intent that no payments for a general news service should be taxed.

The public press news itself is what the Internal Revenue Service is now really taxing under its 1957 ruling. (See appendix C.)

Behind the entire "public press" exemption (section 4253 (b)) lies a paramount public policy—that the swift circulation of news in this Nation is a matter of such general importance as not to warrant increasing the cost of news to the public by the imposition of any excise tax on those communications services required in any of the processes of rapid news collection and dissemination. That public policy has been undercut by the 1957 ruling, and this would be rectified by the proposed clarifying amendment.

IV. PERTINENT PROVISIONS OF THE 1954 CODE ARE SIMILAR TO THOSE OF THE 1939 CODE AS AMENDED BY THE REVENUE ACT OF 1941

The content of sections 4251 and 4252 of the 1954 code had been combined in section 3465 of the 1939 code as amended by the Revenue Act of 1941.

The content of section 4253 of the 1954 code had been in section 3466 of the 1939 code as amended by the Revenue Act of 1941.

The amendment now being proposed is solely to section 4252 of the 1954 code, the definition section. It would simply restore the definition of "wire and equipment" service to the very form in which it was originally stated in the Senate Finance Committee version of the 1941 revenue bill. (See appendix A.)

V. CLARIFYING AMENDMENT IN PUBLIC INTEREST

The manifest uncertainty of the Treasury as to the meaning of the present law, and its resulting inconsistencies in administrative rulings, has not been in the public interest and the time has come for the Congress to clarify the situation by reaffirming that the public press news of this Nation shall not be subject to any communications tax, either in its collection or in its dissemination, at any point from the original sources to the ultimate public.

APPENDIX A. INTENTION OF CONGRESS

The House revenue bill of 1941 sought for the first and only time explicitly to tax news ticker services. This bill (H. R. 5147) proposed to tax "wire and equipment services" and its definition of "wire and equipment services" expressly included "teletypewriter service, burglar alarm service, *news ticker services*, stock quotation and information services, and all other similar services."

The Senate Finance Committee, however, deleted the words italicized above from the House version of the 1941 revenue bill and substituted the words "*but not including news ticker services furnishing a general news service similar to that contained in the public press.*"

After the Senate Finance Committee version of the bill had been reported out, Senator George, the chairman of the Finance Committee, obtained on the floor adoption of what he described as "a technical amendment" whereby the reference to news ticker services was removed from the definition of "wire and equipment services" and incorporated into the exemption section (sec. 3466 (b)). (See Congressional Record, pp. 7270 and 7363.) The obvious purpose of this amendment was to make it quite clear that the nontaxability of payments with respect to a general news ticker service was intended to apply to all payments by a press association for its ticker circuits as well as to all payments to a press association by subscribers for its news service itself.

The ultimate congressional intention in the final enactment of the Revenue Act of 1941 is clearly portrayed in the conference report. The conference report accepted the Senate floor amendments and contained the following explanation to the House on the part of the House conferees:

"Section 548 of the House bill also imposed a tax equivalent to 5 percent of the amount paid for (A) leased wire or talking circuit special service or (B) wire and equipment service (including teletypewriter service, burglar alarm service, news ticker service, and stock quotation and information services and all other similar services). The amendment imposes a 10-percent tax with respect to leased wire, teletypewriter, or talking circuit special service and a 5-percent tax with respect to amounts paid for wire and equipment service, but not including burglar or fire alarm service.

"The House recedes with an amendment subjecting burglar and fire alarm service to the 5-percent tax.

"Amendments Nos. 98 and 99: The House bill in certain cases, exempts from the taxes under section 3465 of the Internal Revenue Code, as amended by section 548 of the House bill, any payment received from any person for services or facilities utilized in the collection of news for the public press, or radio broadcasting, or in the dissemination of news through the public press. The amendments also exempt news ticker services furnishing a general news service similar to that of the public press; and the House recedes" (1941-2 Cum. Bull., at p. 515).

Although the first statutory mention of a general news ticker service, as such, was in the Revenue Act of 1941 and was there included solely by way of an *exemption*, the 1957 ruling now takes the position *at this late date* that the Congress by enacting the 1941 act intended, not to continue to *exempt*, but instead

to *law*, payments by the public for a general news ticker service. Such a conclusion ignores the realities of contemporaneous legislative history. Moreover, it is directly contrary to the present understanding of the House Committee on Ways and Means, which in its report on the present technical changes bill (H. R. 7125) explicitly states that "news services (sec. 4253 (b)) are exempted from *all* tax except general telephone services * * *" (H. Rept. No. 481, 85th Cong. 1st sess., at p. 44). [Italic supplied.]

Appendix B. History of Treasury Interpretation of Existing Law

Tax on communications services has been in effect since 1932. While the 1954 code is set up differently from the 1939 code, the only significant change in language from 1932 to date was in the Revenue Act of 1941. That act contained the first definition of "wire and equipment service" and first added to the general "news services" or "public press" exemption section the express exemption of payments for wire and equipment service if "utilized * * * in the dissemination of news through * * * a news ticker service furnishing a general news service similar to that of the public press."

Between 1932 and 1957 the Treasury Department has issued five different rulings on this precise point:

In 1932 it ruled that such payments were partially subject to tax.

In 1940 it ruled retroactively that they were wholly exempt from tax.

In March 1955 such payments were ruled to be prospectively subject to tax in toto as of a future effective date to be fixed by the Service.

In August 1955 this ruling was reversed and all such payments were again specifically ruled to be wholly exempt from tax.

Finally in September of 1957, the Service has ruled that, effective November 1, 1957, such payments are deemed taxable in toto.

None of these rulings was related in time to the only significant change in the law—i. e., the Revenue Act of 1941.

Appendix C. Public Press News Is What the Internal Revenue Service Is Really Taxing Under Its 1957 Ruling

A typical press association has, first, a worldwide organization of reporters and correspondents and communication facilities for the collection of news; second, a central editorial staff; and third, a wire circuit or circuits over which its edited news is disseminated to its subscribers.

There is just one service or facility of a communications nature involved in the dissemination of news from a press association to its subscribers, that is, the wire complex running to all the teletypewriters in all the subscribers premises. The press association pays a telegraph company for this wire complex as an exempt "leased wire service." The subscriber pays the press association for the same facility plus the news disseminated over it, and this payment is now regarded by the Internal Revenue Service as being a taxable "wire and equipment service."

There is just one volume of news going to the subscriber. That is provided by the press association. There is just one communication facility That is provided by the telegraph company. The fact that the press association pays the telegraph company and the subscriber pays the press association (2 payments) does not turn 1 communication facility into 2. Any payment for that facility the Congress intended should be exempt if used in the dissemination of news.

The fact that what the Internal Revenue Service by its 1957 ruling is really taxing is the news itself is illustrated by one typical press association—the press association which has been the direct subject of all of the Treausry Department's many and inconsistent rulings.

Dow Jones is a typical press association. It has a worldwide news collection organization. It has a central editorial staff. It has a single nationwide wire circuit to all its subscribers. In one respect alone Dow Jones is not "typical." It has always sought and had a far larger proportion than other press associations of subscribers who are the ultimate consumers of the news, i. e., the general public. This, as opposed to subscribers who are other press associations, newspapers, and radio broadcasters. Actually, every other press association in the country subcribes to the Dow Jones news service, as well as many news-

papers and other periodicals. But the backbone of the Dow Jones subscription list is the general public, the ultimate consumer.

It is this single difference that renders Dow Jones the particular target area for the 1957 ruling.

The direct result of that ruling is that the ultimate consumer is directed to pay an 8 percent excise tax on every dollar he pays for the Dow, Jones public press news.

A month's single subscription to the Dow, Jones news service now costs $140. This is the uniform single service price, whether the subscriber lives in Newark, N. J., or Bismarck, N. Dak. The cost of the communications facility from the central transmission point in New York to the subscriber in Bismarck greatly exceeds the cost of transmission to the subscriber in Newark. However, the overall average transmission cost to all Dow, Jones subscribers is approximately 15 percent of the subscription revenues or approximately $20 for each single subscriber. The balance is the price of the news itself, including any net profit to Dow, Jones. Taxation of any such net profit is, needless to say, adequately taken care of under the income tax provisions of the Code. The significant point is that, under the 1957 ruling, the subscriber is required to pay an 8 percent communications tax on every dollar he pays for the news itself. And a single subscriber pays $120 per month for the news and only $20 for its transmission.

Under the 1957 ruling every Dow, Jones subscriber is required to pay a tax of $11.20 per month, although a true 8 percent communications tax on the actual cost of the transmission facility itself would have amounted only to $1.60. In result, therefore, the subscriber is paying an additional tax of $9.60 per month, attributable to nothing in the world but an excise on the news itself. It is in fact an excise on what the subscriber pays to cover the cost of the vast organization involved purely in the collection and editing of suitable public press news—reporters, correspondents, incoming news collection wire services, editorial staff, etc. Public press news does not fall on the public like manna from heaven. In its edited and disseminated form it is a very expensive and finished product. None of this is the proper or intended subject matter of a tax on communication services.

APPENDIX D

MOST RECENT RULING DENYING EXEMPTION

UNITED STATES TREASURY DEPARTMENT,
Washington, September 20, 1957.

Mr. WILLIAM F. KERBY,
Dow, Jones & Co., Inc., New York, N. Y.

DEAR MR. KERBY: At a conference in the office of the Director, Tax Rulings Division, of the Service, on July 18, 1957, you were advised that we have reconsidered the telegraphic ruling of August 12, 1955. In that ruling it was found that you were not liable for the collection of the tax on wire and equipment service, now imposed under section 4251 of the Internal Revenue Code of 1954. Specifically, we had concluded that the exemption afforded under section 4253, (b) of the Code applied in respect of payments received from all subscribers to your Dow, Jones News Service a news ticker service, regardless of the use made of such service by such subscribers.

Pertinent to the question in issue, section 4253 of the 1954 Code provides that the tax on wire and equipment service does not apply in respect of any payment received from any person for services or facilities utilized in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such services or facilities is billed in writing to such person. Section 130.38 (b) (3) (iii) of regulations 42, in definition of wire and equipment services within the purview of section 4252 (d) of the Code, specifies channels furnished between a point of origin and the subscriber's premises over which are given stock and bond market quotations and reports, racing results, baseball scores and other sporting results, news items, musical programs, weather reports, the time, etc. Section 130.45 of the regulations specifies that the person to whom the charges are billed must certify in writing that the services or facilities are utilized as prescribed under the statutory provisions.

Upon reconsideration of the matter, we have concluded that the exemption afforded by section 4253 (b) of the code applies, in respect to your service, only in the case of such of your subscribers which are 1 of the 3 media named in the statute, that is newspapers or other publications representative of the public press, news ticker services furnishing a general news service similar to that of the public press, or radio broadcasting stations or networks. Accordingly, the August 12, 1955, ruling is modified to conform thereto.

During a telephone conversation on July 22, 1957, you advised that barring unforeseen delays it will be feasible to include the tax in statements rendered to your subscribers for the period October 1–31, which will be forwarded on or about October 1. Pursuant to the authority contained in section 7805 (b) of the code, the modification of the previous ruling will not be applied retroactively for the period prior to October 1, 1957.

Very truly yours,

RUSSEL C. HARRINGTON, *Commissioner.*

REVOCATION LETTER RESTORING EXEMPTION DENIED IN PROPOSED RULING OF MARCH 15, 1955

UNITED STATES TREASURY DEPARTMENT,
Washington, October 12, 1955.

Mr. WILLIAM F. KERBY,
Vice President, Dow Jones & Co.
New York, N. Y.

DEAR MR. KERBY: In your letter of September 22, 1955, you requested a letter ruling in confirmation of our telegraphic ruling of August 12, 1955.

The telegraphic ruling related to the application of the exemption afforded by section 4253 (b) of the Internal Revenue Code of 1954. You were advised that after reconsideration of the question we have reached the conclusion that the exemption applies to payments made by all subscribers for your "Dow Jones News Service."

Section 4253 (b) of the code provides that the taxes on leased wire, teletypewriter, or talking circuit special service, and wire and equipment service, within the scope of section 4252 (d) and (e), do not apply in respect of any payment received from any person for such services utilized in the collection of news for or the dissemination of news through the public press, a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting. After comprehensive study of the matter in several offices of the Internal Revenue Service, it has now been concluded that the term "any payment received from any person" encompasses payments by subscribers for a "news ticker service furnishing a general news service similar to that of the public press." This conclusion was decisive in the August 12 ruling.

We have previously held on March 15, 1955, that the exemption applied only to payments by subscribers for "Dow Jones News Service," who themselves qualified as 1 of the 3 news disseminating mediums designated by the statute. This ruling, as well as a secondary ruling of April 22, 1955, was revoked by the telegraphic ruling.

Very truly yours,

B. H. FISCHORUND,
Acting Chief, Excise Tax Branch.

PROPOSED RULING DENYING EXEMPTION PREVIOUSLY GRANTED IN 1941

UNITED STATES TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, March 15, 1955.

In re Dow Jones & Co., Inc.

Mr. JOHN L. MERRILL, Jr.
Emmet, Marvin & Martin,
New York, N. Y.

DEAR MR. MERRILL: This is in further reference to the question of the liability of Dow Jones & Co., Inc., for the collection of the tax on wire and equipment service imposed by section 4251 of the Internal Revenue Code of 1954, effective January 1, 1955, from subscribers to its "Dow Jones News Service." Section 3465 (a) (2) (B) of the 1939 code was applicable prior to that date.

We have carefully considered your brief, left with us at the conclusion of the conference on November 9, 1954, together with other items of evidence in file, supporting your contention that the exemption afforded by section 4253 (b) of the 1954 code (sec. 3466 (b) of the 1939 code, applicable prior to January 1, 1955) applies in respect of the service. In support of your contention you have asserted that the Dow Jones service is "a news ticker service furnishing a general news service similar to that of the public press." However, we remain of the opinion that this point is not material to the issue now under consideration, that is, whether Dow Jones is liable for the collection of the tax from its subscribers in connection with payments for the service.

Section 4253 (b) of the 1954 code designates three news disseminating mediums as beneficiaries of the exemption afforded thereunder. They are the public press, news ticker services furnishing a general news service similar to that of the public press, and radio broadcasting. No other persons or entities are designated; nor is it implied that the exemption is to operate to the direct benefit of any other persons or entities. It is concluded, therefore, that in the case of Dow Jones "ticker" service the exemption will apply only to amounts paid by subscribers who themselves can be identified as 1 of the 3 mediums designated by the statute.

Pursuant to the foregoing, Dow Jones & Co., Inc., is liable for the collection and return of the tax imposed by section 4251 of the 1954 code at the rate of 8 percent of all charges incidental to its "Dow Jones News Service" made to such of its subscribers who cannot qualify for exemption. Dow Jones should notify its subscribers of such liability and the tax should be included on statements rendered for the current billing period.

The district director of internal revenue for Lower Manhattan is being appropriately notified. Should you wish to communicate with him regarding the filing of returns or other procedural matters, it is suggested that you address your initial inquiry for the attention of Chief, Audit Division, 90 Church Street, New York, N. Y. (LM:A:FA:WE ExT:egk), unless otherwise advised by the Director.

I wish to take this opportunity to express our appreciation for the cooperation your firm and your client have given in this matter, and your prompt response to requests for additional information.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner.

APPENDIX E. PERTINENT PROVISION OF PRESENT INTERNAL REVENUE CODE

SEC. 4251. IMPOSITION OF TAX.

There is hereby imposed on amounts paid for the communication services or facilities enumerated in the following table a tax equal to the percent of the amount so paid as is specified in such table:

Taxable service	Rate of tax
	Percent
Local telephone service	10
Long distance telephone service	10
Telegraph service	10
Leased wire, teletypewriter or talking circuit special service	10
Wire and equipment service	8

The taxes imposed by this section shall be paid by the person paying for the services or facilities.

SEC. 4252. DEFINITIONS.

(e) WIRE AND EQUIPMENT SERVICE.—As used in section 4251 the term "wire and equipment service" shall include stock quotation and information services, burglar alarm or fire alarm service, and all other similar services, but not including service described in subsection (d) of this section. The tax imposed by section 4251 with respect to wire and equipment service shall apply whether or not the wires or services are within a local exchange area.

SEC. 4253. EXEMPTIONS.

(b) NEWS SERVICES.—No tax shall be imposed under section 4251, except with respect to local telephone service, upon any payment received from any person for services or facilities utilized in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such services or facilities is billed in writing to such person.

Mr. BARNES. For convenience that substantiating memorandum is attached to my prepared statement.

I might interpolate here that the problem which I shall discuss did not exist at the time H. R. 7125 was passed by the House. This was our first opportunity to bring it to your attention.

Senator KERR. What created it?

Mr. BARNES. I will explain that, sir.

Since 1952 the public press has been exempt from the tax on communication services, reflecting the belief of the Congress that swift circulation of news is a matter of such general importance as not to warrant increasing the cost of news to the public by the imposition of any excise tax on those communication services required in any of the processes of rapid news collection and dissemination. It seems clear to us that the Congress has never intended to impose a communication service tax on the payments received by a press association for subscription to its general news service.

This view was shared by the Internal Revenue Service until late 1957, at which time the Service issued a ruling holding that the statutory exemption applies to payments made by a press association to a telegraph company and to payments made to a press association by those of its subscribers who are themselves members of the public press, but not to payments made to a press association by its subscribers among the general public.

The effect of this ruling is to tax the public press news itself rather than the communicationss facilities and services which collect and disseminate the news. This fact is demonstrated in appendix C of our written presentation which points out that the overall average transmission cost to all Dow Jones News Service subscribers is approximately 15 percent of subscription revenues.

The remainder is the price of the news iself, including any profit to Dow Jones, and covers the cost of the vast organiaztion involved purely in the collection and editing of suitable public press news—reporters, correspondents, incoming news collection, wire services, editorial staff, etc.

In appendix A to our written memorandum we have reviewed the legislative history of this matter, pointing out that the House revenue bill of 1941 represents the first and only time when news ticker services specifically were sought to be taxed.

This effort was rejected by the Senate Finance Committee. However, the Finance Committee's first inclination in disposing of this question—to provide a specific exclusion of news ticker services from the definition of "wire and equipment services"—was changed by amendment from the floor of the Senate to a revision of the public press exemption section which was intended to achieve the same result. The Senate version was accepted by the House conferees and enacted into law.

Inasmuch as the Internal Revenue Service now believes, after holding a different opinion for at least 16 years, that the language of said exemption section (sec. 4253 (b)) does not achieve the intended result, we respectfully suggest that the approach first taken by the Senate Finance Committee in 1941 be readopted and that section 133 of H. R. 7125 be amended as follows:

SEC. 4252. DEFINITIONS.

(f) WIRE AND EQUIPMENT SERVICE. For the purposes of this subchapter, the term "wire and equipment service" includes stock quotation and information services, burglar alarm or fire alarm services, and all other similar services (whether or not oral transmission is involved). Such terms does not include *a news ticker service furnishing a general news service similar to that of the public press, and does not include* teletypewriter exchange service.

The italicized portion is the portion which we recommend to be changed, that is the added language to the section.

I am grateful for the opportunity to appear before this committee and I earnestly solicit your consideration of this proposal.

I have discussed this problem with Mr. Stam and Mr. Woodworth, and they are familiar with this.

The CHAIRMAN. Thank you very much.

Mr. BARNES. Thank you.

The CHAIRMAN. The next witness is Mr. Lincoln Lauterstein, of the Metropolitan Opera Association.

STATEMENT OF LINCOLN LAUTERSTEIN, SECRETARY, METROPOLITAN OPERA ASSOCIATION

Mr. LAUTERSTEIN. Mr. Chairman and members of the committee, I wish to thank this committee for the opportunity to present the position of the Metropolitan Opera Association on section 137 of H. R. 7125, which would provide for exemption of certain nonprofit educational organizations from the excise taxes imposed under sections 4251, 4261 and 4271 of the Internal Revenue Code.

Since the tax imposed by section 4271 has been repealed, I shall confine my remarks to the main concern of the Metropolitan Opera Association: the 10 percent tax imposed upon transportation of persons under the provisions of section 4261.

The proposed beneficiaries of the exemption conferred under section 137 are "nonprofit educational organizations." The proposed law provides that:

> For purposes of subsection (a), the term "a nonprofit organization or educational" means an educational organization described in section 503 (b) (2) which is exempt from income tax under section 501 (a).

Thus, by definition the exemption is limited to:

> An educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

This restrictive definition is taken not from section 501 (c) which exempts from tax, among others, "corporation * * *organized and operated exclusively for * * * educational purposes." It is derived rather from Section 503 by an organization which engages in prohibited transactions.

It is clear that section 137 will for the most part serve to exempt from tax the transportation of collegiate and secondary private school athletic teams.

In the Revenue Act of 1951, Congress exempted from admission tax certain organizations, which exemptions are contained in section 4233 of the present Internal Revenue Code. The exemptions were specific and restrictive.

One such exemption runs to educational institutions defined precisely in the manner now proposed in section 137. However, even in the case of such organizations, section 4233 sets forth specific limits on the exemption of athletic events.

Congress, in considering exemptions from the admissions tax, recognized the desirability of assisting certain nonprofit organizations which, although educational in character, do not maintain a regular faculty and curriculum and have a regularly organized body of pupils or students in attendance. Thus a specific exemption was made under Section 4233 (a) (1) (A) (iv) for

> A society or organization conducted for the sole purpose of maintaining symphony orchestras or operas and receiving substantial support from voluntary contributions.

The Metropolitan Opera Association is an organization exempt from income tax under the provisions of section 501 (a) and 501 (c) (3). Most of the Nation's major symphony societies are, to the best of this witness' knowledge, likewise exempt from income tax.

Congress, in exempting organizations of this character from income tax and admissions tax, has indicated a recognition of the cultural and educational service to the country performed by such institutions and a policy of assisting them not by direct subsidy, as is the practice in many other countries, but by relief from taxation.

The excise tax on transportation represents a not inconsiderable burden to the Metropolitan Opera Association. The Metropolitan has an annual operating deficit of some $600,000 a year and must look for contributions from public-spirited citizens and from members of the general public to maintain its operations.

Since the beginning of this century, the Metropolitan has constantly increased its efforts to bring to all of the people of the United States a knowledge and appreciation of the finest music in the field of the lyric theater.

More than any other such organization it has devoted itself to the development and promotion of American operatic talent. Such world-renowned singers as Peerce, Tucker, and Warren; Peters, Steber, and Thebom, to mention but a few, are major contributions of the United States to the world of musical culture, a contribution made possible by the existence and activities of the Metropolitan Opera.

Since the earliest days of radio the Metropolitan has reached out to every family in the land through its weekly nationwide broadcasts. Through its member affiliate, the Metropolitan Opera Guild, it has reached and informed the schoolchildren of America and countless lovers of music by publication of the internationally famous Opera News magazine. Through its Metropolitan Auditions program, operated on a nationwide basis, it has sought out musical talent from Oregon to Texas, from Maine to Florida.

The Metropolitan Opera Association, however, believes that it is the immediacy of live opera presentation which most compellingly

awakens interest in this form of musical experience. In dedication to this principle it not only maintains a lengthy operatic season in New York with special matinee performances for the children of New York's schools, but conducts a nationwide tour of 7 to 9 weeks throughout the United States, producing in addition, during its regular season, performances in Philadelphia and Baltimore. In 1958 and 1959, the association will have presented performances in the following cities of the United States and Canada:

Boston, Mass.	Dallas, Tex.	Lafayette, Ind.
Cleveland, Ohio	Houston, Tex.	Chicago, Ill.
Washington, D. C.	Oklahoma City, Okla.	Detroit, Mich.
Atlanta, Ga.	St. Louis, Mo.	Toronto, Canada
Birmingham, Ala.	Minneapolis, Minn.	Montreal, Canada
Memphis, Tenn.	Bloomington, Ind.	

The expense of operating out of town performances of this character is staggering. Well in excess of $1 million is expended on the tour alone for soloists, a full chorus and orchestra, corps de ballet, stagehands, and technical staff. Transportation costs without taxes are close to $150,000. This year's so-called tour net income of approximately $80,000 is based upon the dubious device of writing off all regular administrative expenses, rehearsal costs, and wear and tear on scenery (much of it attributable to the tour), against the regular New York season.

With constantly rising costs the Metropolitan has been compelled to raise its rates in tour cities, threatening its audience potential and limiting the accessibility of its performances.

The transportation tax on persons in connection with the Metropolitan Opera's Philadelphia, Baltimore, and tour performances is somewhere in the neighborhood of $14,500. This may seem a small amount compared with the astronomical expenses to which I have previously referred.

It does, however, represent an amount well in excess of 15 percent of the so-called net tour income. The elimination of this tax by the Congress would be a valued gesture toward the preservation of the Metropolitan's tours and of its position as "the Nation's opera."

I am not authorized and I do not speak for our symphony societies or other American operatic organizations. Their problems, although on a smaller scale, are similar to those of the Metropolitan. Many of our major orchestras attempt to maintain their responsibility as national cultural institutions through tours throughout the United States.

Typical of these are the efforts of the Philharmonic Society of New York, the Philadelphia Symphony Society, the Boston Symphony Society, and the Chicago Symphony. The recent elimination of the tax on transportation of property will benefit the Metropolitan Opera to the extent of only about one-fourth of its total transportation tax bill of $20,000. The elimination of that tax will benefit symphony societies not one bit.

It would indeed be an anomaly if by adoption of section 137 of H. R. 7125 Congress should, in effect, give a negative subsidy to collegiate and private school athletic events without doing as much for the nonprofit educational opera and symphony societies of America.

If section 137 is adopted in its present form, this general anomaly will indeed produce some particularly interesting situations. Under

section 4233 of the Internal Revenue Code, as I have noted, athletic games involving educational institutions are exempt from admissions tax only under stated circumstances.

For example, a postseason intercollegiate football game is not exempt. Yet under section 137 the transportation of the football teams to such a game will be exempt. Again under section 4233, no specific exemption is granted to ballet companies. Yet since most such companies have ballet schools with a regular faculty and a regularly organized body of students, their performances have been held exempt from admission tax.

By the same token, transportation of their companies, under the provisions of section 137 of the proposed act, is likewise to be exempt from transportation tax. It will indeed be a strange inconsistency if touring ballet groups are exempt from transportation tax whilst touring opera companies and symphony orchestras, the specific beneficiaries of congressional consideration so far as the admissions tax is concerned, are still compelled to pay transportation tax in connection with their tours.

Accordingly, the Metropolitan Opera Association recommends that section 137 of H. R. 7125 be amended by rewriting subsection (b) thereof to read as follows:

(b) DEFINITION.—For purposes of subsection (a) the term "nonprofit educational organization" means an educational organization described in Section 503 (b) (2) *or an organization described in* Section 4233 (a) (1) (A) (iv), which is exempt from income tax under Section 501 (a).

(The italic indicates the proposed amendment.)

Thus, section 137, as amended, would exempt from transportation tax as from admissions tax "a society or organization conducted for the sole purpose of maintaining symphony orchestras or operas and receiving substantial support from voluntary contributions."

In conclusion, Mr. Chairman, I should like to thank you for permitting me to testify on behalf of the Metropolitan Opera Association. And to say that the recommendation with respect to the Forand bill was originally made to me in conferences that I had with Mr. Stam a year ago when we were attempting to work out that matter. It was too late at that time to do anything with the bill in the House. I received a leter on February 21 from Congressman Forand and the last paragraph reads:

I would suggest, therefore, if you have not already done so that you get in touch with the Senate Committee on Finance and make known your desires in the hope that favorable action may be taken with regard to your amendment.

The CHAIRMAN. Thank you very much.

Mr. LAUTERSTEIN. Thank you.

The CHAIRMAN. The committee will give consideration to your statement.

The next witness is Mr. Joseph Welch, the National Association Investment Cos.

STATEMENT OF JOSEPH WELCH, NATIONAL ASSOCIATION OF INVESTMENT COMPANIES

Mr. WELCH. I am appearing on behalf of the National Association of Investment Companies, of which I am president. I am, also, executive vice president of Wellington Fund in Philadelphia.

I would like to present Francis Williams, chairman of our association tax committee, and Vincent Broderick, general counsel of our association.

We are submitting a prepared statement which I ask your permission, Mr. Chairman, to have incorporated in the record at this time.

The CHAIRMAN. Without objection that will be done.

(The statement referred to is as follows:)

STATEMENT SUBMITTED WITH RESPECT TO SECTION 141 OF H. R. 7125 ON BEHALF OF NATIONAL ASSOCIATION OF INVESTMENT COMPANIES, NEW YORK, N. Y.

1. THE DISCRIMINATION AGAINST SMALL INVESTORS INCORPORATED INTO H. R. 7125

H. R. 7125 is a bill designed to make technical and administrative changes in the excise-tax law. According to the report on the bill from the Committee on Ways and Means these "technical and administrative changes" are "designed to correct excise-tax inequities and competitive disparities" (H. Rept. 481, 85th Cong., 1st sess., p. 1).

Yet this bill would triple the issue taxes payable in connection with the issuance of investment-company shares. H. R. 7125 would increase the excise tax payable on the issuance of member open-end company shares from approximately $520,000 to $1,500,000 (estimated on the basis of 1957 statistics). This startling increase to approximately three times the present tax is due in large measure to the fact that H. R. 7125 does not take into account the fact that unlike companies with fixed capital structures, open-end investment companies are constantly issuing new shares to members of the public. The failure of H. R. 7125 to recognize the particular nature of open-end investment companies constitutes manifest discrimination against the small investors who invest in our national economy through the medium of open-end regulated investment companies. The additional estimated tax burden of $1 million per year may deter these persons of moderate means from investing in the economy through the medium of investment companies.

2. INVESTMENT COMPANIES—THEIR ROLE IN THE NATIONAL ECONOMY

The National Association of Investment Companies represents, assetwise, substantially all the publicly held open-end and closed-end investment companies in this Nation which are registered with the Securities and Exchange Commission. Approximately 3,700,000 shareholder accounts now hold investments in almost $12 billion of corporate securities through the medium of investment companies.

Through the investment company persons of limited means may pool their funds with those of other persons. This pool of funds is then invested in a diversified portfolio of corporate securities, selected and supervised by the investment-company management. Thus the investment company provides a medium through which persons of moderate means may invest small sums, and still receive the benefits of diversification and professional management which, outside of the investment-company medium, would only be available to persons of substantial wealth.

Investment companies encourage thrift, savings, and investment in the Nation's economy by persons of moderate means and thereby afford a new source of funds for the capital markets. The distinctive role in our economy served by investment companies has been made possible in the past by farsighted congressional policies, such as the Investment Company Act of 1940 and subchapter M of the Internal Revenue Code. The policy of subchapter M is to provide substantially the same income-tax treatment for those who invest through the medium of regulated investment companies as is provided for persons who invest directly in corporate securities. If the investment company distributes substantially all its net income to its shareholders, and to the extent it distributes its net long-term capital gains, the income and gains are taxed to the shareholders rather than to the investment company. The small investor, whose interest in the Nation's economy is owned through the medium of the investment company rather than directly, is treated as if he were in fact a direct investor in the securities held by the investment company.

The sound legislative philosophy underlying this so-called conduit principle is that there should be no discrimination against the small investor simply be-

cause he does not have available to him the means for direct investment in a diversified and managed selection of corporate securities.

In enacting the Investment Company Act of 1940, Congress found that investment companies were "affected with a national public interest" in that, among other things, "such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets" (Sec. 1 (a) (4), Investment Company Act of 1940).

The wisdom of the congressional action in enacting the Investment Company Act of 1940, and in providing for particularized tax treatment of investment companies and their shareholders in subchapter M of the Internal Revenue Code, is evident in the growth of investment companies since 1940. In 1940 members of the national association had approximately $1 billion in assets, with their shares held in some 702,000 shareholder accounts. As of June 30, 1958, member companies had some $11.0 billions of assets, held in approximately 3.7 million shareholder accounts. This growth is in part attributable to the general growth of our economy. In great measure, however, it stems from the sound congressional policies set forth in the tax law and in the Investment Company Act. The result has been the development of new and valuable sources for capital funds, and the encouragement of wider and more democratic ownership of our Nation's capital resources.

3. THE IMPACT OF THE EXCISE TAX UPON OPEN-END INVESTMENT COMPANY SHAREHOLDERS

The proposed revision of the stock transfer and issue taxes, spelled out in H. R. 7125, by its terms merely effects a change from a par-value basis to an actual-value basis in the taxation of stock issues and transfers. With respect to the transfer of corporate securities by individual shareholders or by institutions we understand that no question is now raised as to the fairness of the revised tax, nor is any question raised as to the basic logic of the shift from par value to actual value as a means of documentary stamp taxation.

(a) Open-end investment companies

Open-end investment companies are unique in their capital structures. These companies constantly issue new shares to members of the public who desire to invest, at a price which is determined by the net-asset value of the portfolio assets underlying those shares. When shareholders desire to sell their open-end company shares, they normally present them to the investment company for redemption, at a price determined by the net value of the investment company's assets. Thus the pattern of open-end investment company operation is also unique. In normal corporate enterprises stock once issued remains outstanding and purchases and sales of that stock take place in markets independent of the issuing company. In the open-end investment company, on the other hand, the company itself provides a complete market for its own shares, at a price which at all times reflects the net value of the assets underlying those shares. If a member of the public wishes to buy open-end investment company shares, the shares are issued by the company. If a shareholder wishes to sell open-end investment company shares, he submits them to the company for redemption, and receives from the company an amount measured by the net value of the assets underlying the shares he surrendered.

Thus the open-end investment company, in issuing and redeeming its shares, is providing, in essence, a market in which ownership of the underlying portfolio assets of the company can be transferred.

(b) The double tax borne by open-end investment shareholders

The open-end investment company shareholders bears two excise taxes in connection with his investment activities where the direct investor, and the indirect investor through other mediums, bears only one. This is discriminatory on its face, particularly in light of the consistent congressional policy to encourage public use of the investment company medium.

The proposed bill accentuates the discrimination by tripling the amount of the additional excise tax. In the case of some investment companies H. R. 7125 increases the issue tax by 4, 5, and even 6 times the present tax.

The open-end investment company is like other investors in that it pays an excise tax upon sale of its portfolio securities. This tax is borne directly by those who invest through investment companies, since the tax reduces the

proceeds from the sale of portfolio securities, and hence the amount available for distribution to shareholders.

The logic of the conduit principle which underlies all regulated investment company taxation requires the conclusion that this tax upon investment company portfolio transactions, which is precisely the same tax which would be paid by a direct investor or by a common trust fund, should be the only excise tax which is paid with respect to an investment company. Otherwise the person of moderate means who invests indirectly through the medium of the investment company is discriminated against as compared to the person of more substantial means who invests directly in securities, or as compared to an individual who creates a revocable trust which participates in a common trust fund.

The amount of the transfer taxes paid by regulated investment companies in connection with portfolio transactions will be substantial under the proposed H. R. 7125. In 1956 and 1957 portfolio sales by members of the National Association of Investment Companies totaled $1.8 billion in each year. These sales were subject to transfer tax under present law, and would be taxable under H. R. 7125 at 4 cents per $100 of actual value, with a limit of 6 cents per share. If similar sales are made by individual investors the taxes paid on such transfers will be levied at the same rates, and common trust funds effecting such portfolio sales will also pay taxes at these rates. However, as to individual investors and those investing through common trust funds the transfer tax on portfolio sales is the only excise tax levied.

On the other hand, in the case of the persons of moderate means investing through open-end investment companies, in addition to the transfer tax on sales of portfolio securities an additional excise tax on the issuance of shares is imposed. This issuance tax, designed for corporations with fixed capital structures (and considered a cost of organising or reorganizing the corporation), is discriminatory when applied to investment companies constantly issuing shares.[1]

The issuance of shares by an open-end investment company is not related to corporate organization. It is a technique evolved, among other things, for the protection of investors. It is a corollary to the redemption by the company of the shares of withdrawing shareholders with a guaranty that those withdrawing will receive full per share net asset value. It is a different method for transferring ownership of securities, and has been formulated to protect the investing public. The issue tax, designed to apply to the normal industrial corporation which issues its shares only once, is not adapted to investment company operation and hence markedly penalizes that mode of operation. This penalty has existed in the past, but H. R. 7125 would greatly increase the impact of the tax. The burden of this increase would fall directly upon those millions who use the investment company as a medium of investment, since the tax is an expense of operation and reduce the income which is available for distribution to shareholders. No comparable tax is paid by the individual investor or by the common trust fund, although the individual investor may constantly invest new money in securities, and the common trust constantly issues new shares (called certificates of participating interest). The issue tax as applied to the shareholders of open-end investment companies constitutes a penalty on investing through the medium of such companies.

In addition to the issue tax attaching to the issuance of open-end investment company shares, normally one or two transfer taxes are also incurred as an incident to the issuance of the shares, as they pass from the investment company through its distributor to a dealer and ultimately to the investor. These transfer taxes underline the inequities involved in the excse tax as it affects investment company operation, since they are merely mechanical incidents to the issuance of shares. We believe these transfers should also be exempt from tax.

4. INVESTMENT COMPANIES SHOULD BE EXEMPTED FROM ORIGINAL ISSUE TAX

We strongly urge that the Senate Finance Committee make appropriate modification of H. R. 7125 to protect investment company shareholders against unfair and discriminatory excise taxation by relieving from tax the issuance of investment company shares and transfers incident thereto.

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[1] The open-end investment company industry has in the past issued securities equal to about 10 percent of its capitalisation each year. Thus the issue tax, which is a nonrecurring incident to the formation or reorganisation of the ordinary corporation, becomes a daily tax on the open-end company.

Logic and equity, as well as sound national policy, dictate that investment company shareholders should be subject to the same tax, and no greater tax, than persons who invest directly in corporate securities. The investor who invests directly is subject to no excise tax other than that incident to the disposal of securities by him or for his account. Such transfer taxes are already paid on behalf of the investment company shareholder with respect to the disposal of portfolio securities. They would continue to be paid if the excise tax law were amended to exempt the issuance of investment company shares from the excise tax. To eliminate discrimination against the person who invests indirectly in corporate securities, provision should be made for equating his tax burden with that of the direct investor by exempting from issue tax the issuance of shares by open-end investment companies.

Logic and equity, as well as sound national policy, also dictate that investment company shareholders should be subject to the same tax, and no greater tax, than those who are beneficiaries of trusts which participate in common trust funds. Certificates issued by common trust funds are exempt from issue tax, on the sound theory that transfer taxes are paid upon portfolio transactions of the common trust fund. The issuance of investment company shares should be similarly exempt from tax, in order to enable investment company shareholders to receive the same treatment taxwise as the larger investor who establishes a revocable trust which participates in a common trust fund.

Directly exempting investment companies and through them their shareholders from the impact of issue tax would not exempt them from the excise tax: transfer taxes will be paid upon all portfolio sales by investment companies, just as presently and under the proposed bill such transfer taxes are and will be paid upon portfolio sales by direct investors and by common trust funds.

5. IF THE ISSUANCE OF SHARES BY OPEN-END INVESTMENT COMPANIES ARE NOT EXEMPTED FROM ISSUE TAX, THE ISSUE TAX APPLICABLE TO SUCH COMPANIES SHOULD NOT BE INCREASED

The proposed bill is discriminatory for two reasons: (1) It perpetuates an inequity whereby open-end investment company shareholders are subject to 2 excise taxes where other investors are only subject to 1; (2) under the guise of making "technical and administrative changes," and in spite of a stated intention of correcting "excise-tax inequities and competitive disparities," it greatly increases the impact of an already discriminatory tax, thus creating new inequities and increasing competitive disparities.

When the holder of securities of any ordinary corporation sells his shares, he sells them to some other investor and pays a transfer tax on the transaction. When an investment company shareholder sells his shares, they are normally redeemed by the investment company which then issues new shares to new investors.

If, since H. R. 7125 is intended to be a technical, rather than a substantive bill, it is felt that an exemption for investment companies should not presently be included, we urge that this committee prevent the enlargement of the discriminatory aspects of the present law. This can be done by fixing the tax upon the issuance of investment company shares at 4 cents, the transfer tax rate, rather than 10 cents per $100 value of shares issued by a regulated investment company each day. While this change would not remove the discrimination against the investment company shareholder, it would prevent the enlargement of that discrimination to alarming proportions.

This modified rate structure (in connection with the issuance of open-end investment company shares) would have yielded more than $620,000 in issue taxes from open-end investment companies in 1957. This amount is substantially more than the approximate $520,000 of issue taxes actually paid in 1957 from the funds of open-end investment company shareholders, but is distinctly more equitable than the estimated taxes of $1,560,000 per year which open-end investment company shareholders would pay under the present provisions of H. R. 7125.

In the alternative, we suggest that the provisions of present law, measuring the issue tax by par value rather than market value, be temporarily retained with respect to investment companies. This would avoid an enlargement of the inequities implicit in the double tax and at the same time would permit the enactment of the proposed bill with respect to those areas where inequities do not exist.

The addition of the following after the first full sentence of section 4301 (as proposed in sec. 141 of H. R. 7125) would accomplish this result: "*Provided,*

however, that the rate of tax on the issuance of shares of regulated investment companies having par value shall be based upon the par value thereof."

C. CONCLUSION

Investment companies are essential to our economy. They bring new investment resources to our capital markets which are essential to the continued growth of this Nation. Many of the millions of persons who invest through investment companies could not otherwise invest, because they could not afford the diversification and the professional management which is readily available to the wealthy individual who invests directly. The burden of excise taxes on investment companies falls immediately and directly on the shareholders. The tax burden should not fall with more force upon those with limited means. Wittingly or unwittingly, H. R. 7125 as it presently stands would penalize the man who invests through the medium of the investment company. Such penalty is unwarranted, and it is inconsistent with the long-established philosophy of investment company taxation, which has constantly attempted to equate the tax burden of the investment company shareholder with that of a direct investor in securities.

To apply consistently the principles of investment company taxation the issuance of investment company shares should be exempt from excise tax and the investment company shareholder should, as he presently does, bear his prorated burden of the excise tax on portfolio sales.

Accordingly, we urge the modification of H. R. 7125 by exempting from the provisions of section 141 the issuance of shares by open-end investment companies and transfers incidental thereto.

If the committee feels that such an exemption is substantive in nature and should not presently be included, we respectfully urge that the committee either equate the tax on issuance of investment company shares to the transfer tax by reducing the rate thereof from 10 cents to 4 cents per $100 of market value; or that it provide for the continuation of the provisions of present law with respect to the tax on the issuance of investment company shares, measuring the tax by par value.

Mr. WELCH. In much less than the allotted 10 minutes I would like to summarize that statement.

I am here to draw your attention to an inequity in section 141 which I believe is an unfortunate discrimination against small investors, and to urge that this committee take steps to eliminate this inequity.

Our association is composed of the great majority of the investment companies which are registered with the SEC under the Investment Company Act of 1946. In that act, and in subchapter M of the Internal Revenue Code, Congress has recognized the importance of regulated investment companies in the national economy. These companies provide a medium through which men and women of modest resources may invest in corporate securities with the benefit of diversification of risk and professional investment management. This diversification and professional investment management, are generally available only to people of substantial means. But investment companies bring these advantages within the reach of every one.

This is one of the prime reasons why Congress in enacting the Investment Company Act found that investment companies were affected with a national public interest and, also, enacted special income tax laws to insure that the income tax burden on a regulated investment company shareholder, would be no greater than that imposed on persons who invest directly. It is also the principal reason why members of the public have opened over 3½ million shareholder accounts, averaging $3,200 each, and representing a total of $12 billion invested in our national economy.

This bill is intended, I believe, to be a technical measure, to eliminate inequities, and competitive disparities.

So far as investment companies' shareholders are concerned, gentlemen, it perpetuates an inequity and enlarges upon a competitive disparity. It triples the present tax burden on the issuance of investment company shares, and for some companies it increases this by 600 percent or more over the present tax.

Senator MARTIN. I am very interested in this because of my employees; they use this opportunity. I would like an explanation as to just how the bill increases the tax to that amount.

Mr. WELCH. Senator, historically, the issue of shares of investment companies, like other securities, has been taxed on the basis of par value. As we believed that we were simply a medium through which people may invest, and not the typical type of corporate entity, we customarily just have low par values on our shares. The tax burden, therefore, has been a burden but it has not been a very great one in past years.

Now the proposal is to change the method of taxing from par values to actual values, and of course, we have no quarrel with that basic philosophy. But in the case of an investment company we believe that the conduit type of taxation as applied in the Internal Revenue Code for income taxes should apply, and we are taking that position here because with this new rate base the tax impact is quite substantial. It is for that reason we felt compelled to bring this problem directly to the attention of your committee.

Mr. WELCH. This bill does more than make technical changes. If enacted, it will place a substantially increased tax burden on the shareholders of investment companies. To triple any tax is to make more than a technical change.

Moreover, in addition to increasing the issue tax threefold, the bill perpetuates a discrimination against the person who invests through an investment company. The man who invests directly in corporate securities pays no tax for the privilege of investing. The man who invests through the medium of a common trust fund maintained by many banks throughout the country pays no tax for the privilege of investing. But the person who uses the investment company as a medium through which to invest is penalized by the burden of an additional excise tax.

An investment company pays an excise tax on the sales of securities that it makes from its portfolio, and the burden of this tax is borne by its shareholders. This particular excise tax on sales of securities is the same tax as that paid by a direct investor and the same tax paid on portfolio sales made by a common trust fund of a bank.

However, the person who invests through an investment company bears the burden of a second excise tax, the tax on the issuance of investment company shares, the impact of which is at least tripled by the pending bill.

To require the payment of this additional tax is discriminatory against the smaller investor. No corresponding tax is levied upon the person who invests directly in corporate securities, and Congress has specifically exempted common trust funds from the issue tax.

Yet the proposed bill would not only perpetuate this discrimination but would compound it by tripling the tax burden. Such a result would mark a reversal of long-established congressional policy with respect to encouraging investment by persons of moderate means in the economy of the Nation through the regulated investment companies.

Gentlemen, we urge that this double layer of excise tax be eliminated by placing investment company shareholders in the same position as direct investors and participants in the common trust funds. This can be done most simply by exempting from the excise tax the issue of shares of regulated investment companies.

We believe this is the logical and the most equitable approach. However, if you gentlemen feel that substantive changes cannot presently be made, we urge that at the very least you modify the provisions of the House bill so as to prevent a great burden of tax upon investment company shareholders.

This can be accomplished either, (1), by continuing the present method of taxing the issuance of shares of regulated investment companies, or (2), in the alternative, if the new basis of taxation is to apply, by reducing the new rate of tax proposed by the House bill from 10 cents to 4 cents in the case of the issue of shares of regulated investment companies.

We realize there are many persons who are interested in immediate enactment of the noncontroversial sections of this bill; however, that portion of the bill which will triple the tax burden upon the issuance of investment company shares is not a noncontroversial section so far as the shareholders of those companies are concerned.

We sincerely trust that this committee will amend the bill to remove this inequity.

Mr. Chairman and gentlemen, I appreciate the chance to be here and talk with you. Our association and its staff will be happy to cooperate with you in any way we can.

Thank you.

The CHAIRMAN. Thank you.

The next witness is Mr. George J. Gansel, of the New York Stock Transfer Association.

Proceed, sir.

STATEMENT OF GEORGE J. GANSEL, NEW YORK STOCK TRANSFER ASSOCIATION

Mr. GANSEL. Thank you.

My name is George J. Gansel. My business address is 40 Wall Street, New York City, and I am appearing on behalf of the New York Stock Transfer Association.

This association consists of approximately 250 representatives comprising corporations who act as their own transfer agents, various banks and trust companies in the United States and Canada which are engaged in the business of acting as transfer agent of the stock of corporations, including those securities listed on the various stock exchanges of the United States and Canada.

Our interest in H. R. 7125 is solely with respect to part IV of the bill relating to documentary stamp taxes, particularly the sections relating to the tax imposed on transfers of stock certificates.

At the present time, the stock transfer tax and the tax on the issuance of stock certificates is computed on the basis of the par value of the stock.

H. R. 7125 would, among other things, amend sections 4301 and 4321 to provide that henceforth the tax shall be computed on the "actual value of the certificates" in all cases and their par value would no

longer have any significance. We have no objection to this change in the Internal Revenue Code and, in fact, feel that it may be more equitable.

Our concern relates to the responsibility which the law imposes on us as transfer agents to see that the proper amount of tax is collected.

For many years the Internal Revenue Service has ruled that the transfer agent has the duty of requiring evidence that the proper amount of transfer tax is paid on each transfer which it makes.

This has been a relatively simple matter in the past, since we needed to refer only to the par value of the certificate. Under the provisions of H. R. 7125, however, we will need to know the actual value at which the stock changed hands.

This figure may not be ascertainable where the stock is not regularly dealt in on a stock exchange and even in the case of stock exchange securities, the certificates may be presented to us for transfer many months after the transaction was actually effected and the price may have changed drastically in the meanwhile.

We feel that our chore of checking the transfer to see that the required amount of tax has been paid should be eased by requiring that the person presenting the stock certificate to us for issuance of a new certificate certify the actual value involved in the transaction and that our liability be limited by giving us the right to rely on such a certification.

Without such a provision, a transfer agent may at some future date be held liable for failure to collect the proper amount of transfer taxes and, to avoid such a possibility, transfer agents will, of necessity, have to delay the prompt effecting of stock transfers till they are furnished with adequate proof of the value or the price of the stock at the time it was transferred from one party to another. Such delays would have an adverse effect on our economy.

We feel that the inclusion in H. R. 7125 of the provision somewhat as follows would alleviate these problems and would furnish assurance to the Treasury Department that the proper amount of tax was being collected:

Where shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, are presented for transfer and the tax thereon is paid by the use of adhesive stamps, such shares or certificates shall be accompanied by a certification signed by the transferor, the transferee or his agent as to the actual value of the shares of certificates so transferred and any corporation or transfer agent to whom such shares or certificates are presented shall be entitled to rely on such certification without further inquiry.

I believe that the Treasury Department will have no objection to this addition to the bill. I have with me a memorandum dealing with this subject in somewhat more detail and which I would like to leave with you.

(The memorandum referred to is as follows:)

Re H. R. 7125 (Excise Tax Technical Changes Act of 1957) Subchapter B, Part I—Sales or Transfers of Capital Stock and Similar Interests

The above bill has been given careful study by stock transfer agents in New York and throughout the country. In the case of sales or transfers of stock H. R. 7125 would impose a tax on the basis of the "actual value of the certificates." In the past the Internal Revenue Service has charged transfer agents with the responsibility of determining that a proper amount of tax has been paid with respect to the transfers on which they officiate. Transfer agents foresee a serious situation insofar as their responsibility to see to the payment of the proper

amount of tax on certificates presented for transfer is concerned under the bill as it passed the House. In this memorandum we seek merely to point out some of the primary difficulties in the provisions of the bill and suggest a solution.

At the present time approximately 80 percent of all transfers made by the large transfer agents are of the kind on which the tax is paid through a stock clearing corporation affiliated with a stock exchange without the use of stamps. Consequently, there would be no need of ascertaining and checking the selling price by the transfer agent since the agent does not know the amount of tax paid. However, the remaining 20 percent where the certificates are presented for transfer with stamps affixed will create a real problem if the corporation and its transfer agent are to continue to be charged with a responsibility for determining the correctness of the amount of tax paid. The main difficulties created by the bill as it now stands may be summarized as follows:

1. Most of the certificates are received by mail and may be presented for transfer weeks or months after the actual sale or other transfer has taken place.

2. If a transfer agent must investigate each transfer by reference to the published quotations of the stock on the day on which title appears to have been transferred from transferor to transferee it will be extremely burdensome and costly to transfer agents who must handle a large volume of transfers quickly.

3. Some stocks are not quoted daily and reference to various outside sources would be necessary in order to check the value.

4. In many instances items are mailed to a transfer agent unaccompanied by funds or tax stamps. In such cases it is necessary to compute the tax and advise the presentor of the amount which he should remit. Should the market value of the stock change between the time of the transfer agent's request for funds and his receipt thereof, the transfer agent would be short or over funds, dependent upon the intervening fluctuation of the market.

5. In the case of transfers presented without any date to indicate when title to the security has passed additional questions are presented. If the transfer agent must check each certificate presented in order to determine the rate of tax, must the transfer agent inquire as to the date of sale or date of assignment or must he require the payment of tax on the basis of the value on the date of transfer on the corporation's books? If the date of assignment is to be used then the transfer agent would have to insist that all assignments be dated and this would be a departure from present practice.

6. In the case of transfers by gift or distributions of an estate where no sale is involved, there may be a considerable length of time elapsing between the time the donor or executor turns over the stock to the donee or legatee and the time the latter actually presents the stock for transfer with a consequent variation in values between these dates.

The foregoing will be sufficient to indicate a few of the problems which the bill in its present form will create for transfer agents and corporations. We believe that the inclusion in H. R. 7125 of a provision substantially as follows would alleviate these problems and would not result in any loss of revenue:

"Where shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, are presented for transfer and the tax thereon is paid by the use of adhesive stamps, such shares or certificates shall be accompanied by a certification signed by the transferor, the transferee, or his agent as to the actual value of the shares or certificates so transferred and any corporation or transfer agent to whom such shares or certificates are presented shall be entitled to rely on such certification without further inquiry."

Mr. GANSEL. Thank you.

The CHAIRMAN. We are very much obliged to you, sir.

The next witness scheduled was Mr. Carl Willingham of the National Association of Chain Drug Stores. (In lieu of appearing personally Mr. Willingham has submitted the following telegram for the record:)

NEW YORK, N. Y., *July 15, 1958.*

Mrs. ELIZABETH B. SPRINGER,
Chief Clerk, Senate Finance Committee,
Senate Office Building, Washington, D. C.:

George Frates of National Association of Retail Druggists will present a statement in connection with section 161 of H. R. 7125, which represents our views.

CARL WILLINGHAM,
Secretary-Treasurer, National Association Chain Drug Stores.

(See p. 64.)

The CHAIRMAN. The next witness scheduled was Mr. George H. Frates of the National Association of Retail Druggists. In lieu of appearing personally Mr. Frates has submitted his written statement for the record.

(The statement follows:)

STATEMENT OF GEORGE H. FRATES, WASHINGTON REPRESENTATIVE OF THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS, WASHINGTON, D. C.

My name is George H. Frates. I am the Washington representative of the National Association of Retail Druggists, an organization composed of 36,000 small, independent, retail owners of pharmacies practicing their profession in every State of the Union and the District of Columbia. Our local office is at 1163 National Press Building. Our headquarters office is located at 205 West Wacker Drive, Chicago, Ill. Dr. John W. Dargavel is general manager and executive secretary of the NARD. Each of the 48 State pharmaceutical associations and the District of Columbia Pharmaceutical Association is a member of the NARD.

In 1939 Congress imposed a 10 percent tax on manufacturers' prices for toilet preparations.

In 1940 the tax was increased to 11 percent of the manufacturers' price.

In 1941 a sudden switch occurred and the retail trade was saddled with collecting 10 percent of the retail price of toiletries—gratuitously—while the manufacturers were relieved of this burden.

In 1943 the sales tax was upped to 20 percent of the retail price.

When the Congress imposed a 10 percent sales tax on toiletries it did so with three objectives in mind: (1) to create emergency revenue, (2) to conserve manpower, and (3) to restrict the use of critical materials. The latter two objectives are no longer necessary. Their mission has been accomplished.

Regulation 51 which relate to the retailers' excise taxes was approved September 29, 1941. The Regulations deal with excise taxes imposed by chapter 10 and 9A of the Internal Revenue Code on sales by the retailer of four categories: (1) jewelry, (2) furs, (3) toilet preparations, and (4) luggage. Particularly are the retail pharmacists of the Nation concerned with the sales tax on toilet preparations. We use the term "sales tax" advisedly because in reality that is exactly what it is. No State imposes such a high sales tax percentagewise (10 percent) as does the Federal Government. These taxes are payable by the retailer who is "allowed" to collect a similar amount from the customer to reimburse himself at no cost to the Government.

On April 1, 1954, the 20 percent sales tax on the 4 categories previously mentioned was reduced to 10 percent.

During the 1956 convention of the National Association of Retail Druggists, held in Cincinnati, Ohio, September 16–21, the following resolution was adopted:

"*Be it resolved*, That the NARD urge that the present laws pertaining to the levy and assessment of the retail excise tax, so far as the operators of pharmacies are concerned, be amended to provide for a levy and assessment of such tax upon the manufacturer rather than the retailer."

Originally, Congress indicated in its deliberations that the excise taxes would be repealed as conditions warranted. Nine years have elapsed since the President, by Executive order, declared that hostilities were officially ended (June 1, 1947). We believe that Congress should repeal the tax on toiletries. It is virtually impossible for any small retailer to handle the collection of such taxes in a satisfactory manner. A constant state of confusion exists. Inequities and discriminations are bound to prevail. In this respect, here is what President Eisenhower said in his message to the Congress of the United States, May 20, 1953:

"* * * The wide variety of existing excise rates makes little economic sense and leads to improper discrimination between industries and among consumers * * *."

The huge cost of processing by Government, of many thousands of small retailers' returns are so limited in revenue that they do not equal the cost of printing, addressing, mailing, and auditing. An elimination of the 10-percent sales tax on toiletries, would, in our opinion, immediately increase the sales volume of these products industrywide. At present the toiletries tax is not hidden therefore, it creates a buyers resistance. Government would recoup most of the revenue lost by recapturing it through income tax.

Aside from the imposition placed upon the small, independent retailer, Government's arbitrary assessments levied on hundreds of small, independent retail pharmacists nationwide for alleged nonpayment of excise taxes on toiletries has reached an alarming position, so much so that it has caused the concern of many prominent Members in the Congress. "The power to tax contains the power to destroy." Small retail pharmacists sell the bulk of taxable cosmetics.

The Internal Revenue Service does not issue a master list of taxable items. Consequently, the retail sales collector is in constant confusion. Reference to the law itself and many of the rulings appertaining thereto are not clear enough for the average layman to understand. The code is inconsistent in many respects and ambiguous in others. For example: Sen Sen is taxable, while chewing gum and Life Savers are not. Foot powders can be declared taxable or not, according to a recommendation as to how they are to be used. For instance: A foot lotion, powder or cream is not taxable if it is used as a medicament but it is taxable if it is recommended as an antiperspirant; common hydrogen of peroxide is taxable if the sales person should say, in answer to an inquiry, that it could be used for bleaching the hair; shaving lotions and creams for use in softening the beard preparatory to shaving are not taxable. However, shaving lotions and creams which are recommended for use after shaving as skin conditioner or other toilet purposes are held to be toilet preparations within the meaning of section 2402 of the code and are, therefore, subject to the tax.

The manufacturer is not required to inform the retailer whether his merchandise is taxable or not. This being the case, how in the world is the average retailer to know what is and what is not taxable? IRS contends that each commodity must be judged as a separate entity and each article must be decided specifically, with the exception of a group classification set forth in the law.

We offer as an exhibit our own excise tax list on toiletries, leather goods, luggage, etc. It was prepared in cooperation with the Internal Revenue Service here in Washington and is issued yearly for the guidance of our membership.

Small retailers have been arbitrarily assessed by IRS because they could not prove to the satisfaction of revenue agents that percentages of their toiletries merchandise were lost: (1) by reason of theft, shopworn or damaged; (2) sold for a price lower than regular sales prices; (3) returned to retailers supplier; or (4) presented as gifts.

There are in the neighborhood of 52,000 drug stores in the Nation. The National Association of Retail Druggists represents the small, independent retailer as contrasted to the chain drugstores. Our segment of industry is concerned about the exact record keeping, statistical data required, inspections involved and the amount of time consumed which should be used in the professional aspects of pharmacy. The responsibility of the collecting of the tax in our field rests squarely upon the retail druggist. In the absence of an official list of taxable items, he must depend upon trade journal releases, wholesalers, opinions, or word-of-mouth information from traveling drug salesmen. Small retailers do not possess the advantage of large concerns; they do not have certified public accountants to do the extra work imposed by Government. Federal auditing and inspection of small accounts goes something like this. Government field agents enter a retail drugstore. They call for the druggist's records and review them—including the amount of sales tax collected, purchases made and present inventory. If the agents are not satisfied that a full and complete accounting has been rendered, they arbitrarily assess a deficiency penalty. In some instances, invoices dating back as far as 4 years are requested for inspection. Here is just one example showing how revenue agents operate. It was received from one of our members who owns a small neighborhood pharmacy. It is typical of many others.

"* * * I wish to inform you that the Federal Government has just finished their report on excise tax which they say we owe for the years 1953, 1954, 1955, and the first 6 months of 1956, in the amount of $1,897.26. When they asked for records to make a check, they asked for data only on 1955 dealings, but they have made an estimate for the years 1953, 1954 and the first 6 months of 1956 on the 1955 basis.

"For several reasons I feel this is an unfair estimate, especially for the years 1953 and 1954 when I certainly did not do the business I did in 1955."

We are told that when a druggist feels he has been unjustly dealt with, Federal agents tell him he has recourse to the courts. But there are few independent druggists in the Nation who have the finances or time for these costly court procedures.

It would serve no useful purpose to point out that taxes are distressingly high. We are all cognizant of that. It is in the distribution of the tax burden that the retail druggists find a fertile field for complaint. If we are merely asked to assume our fair share of the tax burden, which is perhaps unavoidably high, we cannot in good conscience complain. If, however, we are subjected to discriminatory taxes which place a definite burden upon our business operations, we do not only have the right but the duty to demand an elimination of that discrimination. That's exactly our position today and has been since the inception of the Federal sales taxes.

We submit for the record a copy of Form 720, issued by the Treasury Department for the quarterly reporting of Federal excise taxes. It will be noted that a return must be filed for each quarter whether or not liability is incurred. All Federal sales taxes on toiletries are due and payable without assessment or notice. If a retailer is liable in any month (except the third month of a quarter) for more than $100 of the taxes listed in Form 720, he is required to deposit such taxes in an authorized local bank or a Federal Reserve bank on or before the last day of the next month. Deposits for the third month of any quarter and deposits of $100 or less for the first and second month of any quarter are permissible. The bank then gives the retailer a validated receipt, so he can attach it to and file it with his quarterly return.

If the Congress in its wisdom will not eliminate the tax on toiletries, then we ask that the tax be transferred to the manufacturer.

The luxury argument in support of the high taxes on toilet articles is obviously untenable. Electric food choppers, ice-cream freezers, fishing equipment, door chimes, motion-picture projectors for the home, electric dishwashers and dryers are just a few items taxed at the manufacturer's level at the rate of 10 percent. Convert these prices into retail and the tax on these items would approximate 5 percent at retail.

We are convinced from experience that a collection of the tax at the manufacturer's level would bring in more income for Government than by operating under the present system. It just isn't fair to ask the retailers of this country to act as tax collectors because of the expense to them. Right now the Government is losing revenue by not being able to collect all the toiletries tax from rack jobbers, grocery stores, oil stations, beauty parlors, barbershops, farmer market operations and house-to-house canvassers.

The National Association of Retail Druggists anticipates opposition to our plea to transfer the tax to the manufacturer from the Treasury Department, the Toilet Goods Association, and the National Beauty and Barber Manufacturers Association. The Treasury Department, however, does admit that there are problems in the collection of the retailers' excises. Treasury will no doubt inform this committee that various technicalities involving the definition of a manufacturer make it difficult to determine who is or who is not the manufacturer at given levels. Every product that comes on the market has a definite, certain trade name. Regardless of who does the actual mechanical manufacturing, the manufacturer to all intents and purposes is the one who affixes the label to the product bearing his trade name. The intrinsic value of the paper used in printing a blank check is of little or no value but when it is made out for a specific amount and your signature is affixed, it immediately becomes negotiable and valuable.

To the credit of the Treasury Department, that agency has an open mind—having informed the N. A. R. D. that "Testimony at these hearings might provide information leading to a different conclusion at this point than we now hold."

The Treasury Department's opposition to transfer of the tax to the manufacturer's level because of difficulties in collecting the tax in former years should not constitute a valid argument because "we have never heard it argued successfully that a man shouldn't object to being unfairly treated until he can supply a substitute victim whose sufferings will be more justified."

Arguments advanced by the Toilet Goods Association in which they state that "the burden of collecting and reporting a retail tax is less onerous to retailers than an excise tax imposed on the manufacturer's level" would mount the heights of levity were it not so serious. Since when did the toiletry manufacturers become the mouthpiece for retailers? Again, the spokesman for the toiletries industry said before this committee: "Where the tax is included in the retailer's cost, such retailer must apply a markup in sales on the tax-enlarged cost, resulting in pyramiding of the final price to the consumer." That statement represents unadulterated nonsense. The retailer does not determine his markup on the cost

of the merchandise plus sales tax. If he did, he would price himself out of the market in a hurry.

Collecting taxes for government is certainly a most thankless job. We are interested only in transferring to the manufacturer's level the category listing toiletries because we feel that our problem is separate and distinct and should be so considered.

If, in the judgment of Congress, the toiletries tax is to remain, then the retail druggist should be relieved of the burden of collecting the tax. Placing the tax at the manufacturer's level would not be nearly so costly to the Government to administer; to wit, policing approximately 400,000 retail accounts against about 400 manufacturing computations. It would have the effect of releasing Government field agents whose attention could be directed to other Federal revenue matters. The retail druggists are not asking the manufacturer to absorb the tax. Rather, they are recommending that he pay it directly to the Government and then bill it through distributive channels where ultimately it will appear on the druggist's invoice as a hidden Federal tax to be passed on to the customer.

The Government collects taxes on liquor, tobacco, matches, and approximately 110 other items. Why not collect the tax on cosmetics at the source? The Treasury Department has worked out a prescription for collecting the tax at the manufacturer's level in the above categories. It would seem most certain that with their know-how the Department would not experience much difficulty in blueprinting an equitable method of tax collection at the source for toiletries.

We are opposed to the sales tax on toiletries in its entirety because it is regressive. It falls hardest on the lower income brackets and it blocks the economy.

We strenuously object to section 161 of H. R. 7125, "Return of Excise Taxes by Suppliers."

Here we have a provision permitting the large door-to-door peddlers of cosmetics being privileged to make an agreement with the Treasury Department whereby excise (sales) taxes collected by their peddlers may be directly paid to the Treasury Department by the supplier. To equalize the rules, why is it that all of the other manufacturers or suppliers of toiletries to retail pharmacists are not permitted to pay the cosmetic excise (sales) tax at the source? It is class legislation to permit one section of the economy a convenience denied to another. House-to-house peddlers pay very few taxes to the communities in which they travel, while established retailers nationwide carry the brunt gratuitously.

The CHAIRMAN. The committee will adjourn until 10 o'clock tomorrow morning.

(By direction of the chairman, the following is made a part of the record:)

ROCHESTER, N. Y., *July 15 1958.*

Re Excise Tax Technical Changes Act of 1957; Section 132: Club Dues. Proposed amendment to preclude the taxation as "dues" of charges for maintenance, storage, or custodial care of property personally owned by members of clubs.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Senate Office Building, Washington, D. C.

Dear Mr. CHAIRMAN: The undersigned, Thomas G. Carney, is an attorney with offices at 1700 K Street NW., Washington, D. C. This letter is written on behalf of Rochester Yacht Club, Rochester, N. Y., to secure legislative clarification of sections 4241, 4242, and 4243 of the Internal Revenue Code of 1954 relating to the tax imposed on amounts paid as dues or membership fees to social, athletic or sporting clubs or organizations.

Section 132 of H. R. 7125, entitled "Excise Tax Technical Changes Act of 1957," now being considered by your committee, proposes to amend the aforementioned section 4241 and section 4243 and, I respectfully submit, further amendment by your committee in this area is germane.

The imposition of a tax on amounts paid as dues or membership fees to clubs has long been a feature of the internal revenue laws. However, there has been no significant amendment to the statute since the enactment of the Revenue Act of 1941 (sec. 543 (b)). Notwithstanding this static condition of the statutory provisions of the dues tax law, the Internal Revenue Service in the past few years, through the medium of interpretative rulings alone, has defined and ex-

panded the term "dues" to include charges for various services paid for by club members which heretofore have never been considered within the ambit of the statute.

The Internal Revenue Service has not published many rulings in this area nor has it published rulings covering specifically all or some of the various types of "sporting or athletic facilities," the charges for which it considers as taxable "dues". Notwithstanding this failure to give public notice of the precise charges subject to tax, the local directors of internal revenue are demanding and collecting "dues" taxes on charges which have never before been considered as amounts constituting dues.

We do not dispute the propriety of rulings holding as taxable charges for the use of club-owned property when such charges are prerequisites for membership (Revenue ruling 177, C. B. 1953-2, p. 341), nor do we question any rulings which represent a reasonable interpretation of the decision of the Supreme Court in *White* v. *Winchester Country Club* (315 U. S. 32). We do believe, however, that it is clear that the Internal Revenue Service is interpreting the dues tax law in other areas in such a farfetched and arbitrary manner that immediate correction by legislative action is the only method under which taxpayers can obtain effective and justified relief.

Proof of the novelty of the legal interpretations now made by the Internal Revenue Service as well as the legislative character of these administrative pronouncements is supplied by the fact that the Service usually does not apply its rulings retroactively but only prospectively.

Although a ruling precisely on the point has not yet been issued, other rulings of the Internal Revenue Service in this area (Revenue ruling 55-318, C. B. 1955-1, p. 509; Revenue ruling 56-620, C. B. 1956-2, p. 834) have been interpreted to hold that the term "dues" includes amounts that a yacht club may receive in payment of charges to an individual member for lockers in which sails, boating equipment, or personal effects may be kept, dock or mooring space at the wharf, and for space in the yard to which boats are hauled out of the water for storage during the winter. The Rochester Yacht Club has been required to collect a dues tax of 20 percent from its members based on these charges and has paid such taxes.

These charges have no relationship whatever to amounts paid by such members as and for dues or membership fees in the yacht club. These latter mentioned amounts are: $100 annually to boatowners and $60 annually to "associate" members. The latter do not own boats and are allowed only the social privileges of the club. The dues tax of 20 percent is, of course, paid with respect to these amounts.

The marina consists of a sheltered basin with docks and mooring space for the boats of the members. The mooring wharf consists mainly of a narrow dock between slips and guard pilings to which the larger boats can be tied. The boats will range in size from 20 feet overall in length to 70 feet. The charge for dock space is based on the square footage of the boat of the particular member involved, that is, overall length times the beam. The rate charge also depends upon the location in the basin, which in the case of the Rochester Yacht Club is divided into three classifications and the charges per classification are 40, 35, and 30 cents per square foot. The longer boats, of course, require prime dock sites while the smaller boats can be maneuvered around them.

The winter storage of boats is handled as follows: Each boatowner owns and furnishes a cradle in which the boat rests, its size depends on the size of his boat. The cradle is floated on to a wheeled dolly and hauled out by means of a cable and electric motor to a point in the yard where the cable is detached and the dolly and cradle with the boat is moved by hand into the storage position for the winter. A fee is charged to the owner which covers the hauling out, winter storage, and launching in the spring. The charge is at the rate of 45 cents per square footage of the boat involved and, of course, each member's charge varies as the size of the boats of the members vary.

Each boatowner may also rent a locker in which to store sails and other boating gear. The annual rental is $40.

The foregoing charges are made to members on an individual basis and represent amounts paid for maintenance, storage, or custodial care of property personally owned by the individual member concerned. By no reasonable interpretation of the Dues Tax Act can such charges be construed as dues within the definition of that term as contained in section 4242 of the Internal Revenue Code of 1954, or prior revenue acts.

The rulings of the Internal Revenue Service appear to rest on a strained construction of the term "facilities" as used in section 4242, supra. Section 4242

reads as follows and is still identical in its definition of dues with the definition contained in section 543 (b) of the Revenue Act of 1941:

"SEC. 4242. DEFINITIONS

"(a) DUES.—As used in this part the term "dues" includes any assessment, irrespective of the purpose for which made, and any charges for social privileges or facilities, or for golf, tennis, polo, swimming, or other athletic or sporting privileges or facilities, for any period of more than six days; * * *."

Prior to the new definition adopted by the Revenue Act of 1941, the definition was as follows: "The term 'dues' includes any assessment irrespective of the purpose for which made; * * *" (sec. 1712 (a) Internal Revenue Code of 1939, as enacted.) Irrespective of how the term "dues" has been defined in the tax acts, the *rate* provisions of the dues tax laws *since* the Revenue Act of October 3, 1917, section 701, to the present day have contained identical language, viz.: "A tax equivalent to —— per centum [or percent] of any amount paid as dues or membership fees * * * to any social, athletic or sporting club or organization." [Matter in brackets and italic supplied.] (See sec. 4241 (a) (1), I. R. C., 1954.)

As shown above, the term "facilities" first came into the language of the definition of "dues" by enactment in the Revenue Act of 1941. Prior to that time there was litigation with respect to whether certain amounts paid by members of clubs were paid *as* dues or membership fees. The Supreme Court in the case of *White* v. *Winchester Country Club* (315 U. S. 32) decided January 12, 1942, approved the position of the Internal Revenue Service with respect to its contention that amounts paid by members of a club for "additional privileges" and the use of additional athletic or sporting facilities constituted amounts paid as dues or membership fees. (Congress in the meantime enacted sec. 543 (b) of the Revenue Act of 1941 to clarify the matter. See S. Rept. 673, pt. 1, p. 47, 77th Cong., 1st sess.)

The case cited, however, did not involve any charges for facilities of the character that Internal Revenue Service at this late date is seeking to tax as dues. Briefly, the issue at that time involved a situation of this character: A was a member of a country club paying $50 annual dues. Such dues gave him a social membership, i. e., the privileges of the dining room and clubhouse, the right to attend dances, etc. If he wanted to use the golf facilities, "the privilege of using the *golf links*" as the Supreme Court [my italic] phrased it, he could pay another $50 annually. The Court correctly decided that the additional $50 was paid as dues for a membership giving him the privilege of using the golf course (an athletic facility).

It is clear from the Supreme Court decision and other court decisions at that time that an athletic or sporting facility is a golf course, a swimming pool, a tennis court, a skating rink. Amounts paid for the privilege of using such facilities in common with other members having the same privilege and paying the same amount constitute dues. A privately occupied locker, whether for golf or swimming wearing apparel or boat equipment, a storage rack for your golf clubs in the "pro" shop, and space for docking or winter storage of a boat certainly cannot be equated with the heretofore unquestioned concept of an athletic or sporting facility. (See Treasury Regulations 43 (pt. 2) as approved March 28, 1919, and as revised December 3, 1920, January 11, 1922, and April 18, 1922.)

The Rochester Yacht Club imposes dues of $60 per year for a social membership. Dues of $100 are imposed if you have a boatowners membership. The additional $40 is, of course, taxable as dues under the Winchester Country Club case and the tax statute. The sport of yachting consists of sailing a boat on water. The boat and the water are the facilities. The member owns the boat and the water is presumably under the public domain. The Yacht Club consists of a group of boat-sailing enthusiasts who form an exclusive organization for mutual participation in the sport. For the privilege of membership in the organization dues are paid in the amount of $100 annually. The amount is properly subject to tax. The club owns property available for docking and storing the boats when not being used in the sport. It has available for rent lockers for the storage of boat equipment when not being used. The charges are separate and measured by the special and personal needs of the individual boatowner and must vary as the needs of the boatowners vary. In no sense are such charges paid as dues.

In the case of the *Winchester Country Club, supra,* the Supreme Court cited with approval a ruling of the Revenue Service (G. C. M. 7505 Cum. Bull. IX–2 p. 414) which correctly sets forth the legal concept of dues. That ruling indicates that two requisites must be met before payments made by club members

may properly be regarded as "dues or membership fees." First, the payment must be made in satisfaction of a fixed and definite charge and, second, the charge must be applicable to all members of each particular class of membership. It would appear that fixed and definite charges of this character are those which members must pay periodically for the continuance of any particular class of membership. If the periodical payments so required are applicable to all members of each particular class, the two conditions required for taxability are complete.

It is clear that the amounts paid for lockers, and for mooring and storage of their personally owned boats by members of a yacht club would not be considered as dues under the standards of the above-mentioned General Counsel's memorandum.

The necessity for the length of this letter is regretted, but the rulings of the Internal Revenue Service have adversely affected every private sporting and athletic club in the country. These rulings have not been widely published and many clubs do not even know of their existence. Nevertheless, substantial amounts of tax are accruing and are being collected and will continue to be exacted if the rulings stand. Litigation to establish the invalidity of the rulings is possible only after payment of the exactions and the filing of claims for refund.

It is requested that the law be clarified to invalidate rulings of the character described. Section 132 (b) of H. R. 7125 now proposes to clarify the term "dues" with respect to assessments made for capital improvements by amending section 4243 of the Internal Revenue Code. An additional sentence could be added to the new subsection (b) now proposed to be added to section 4243, or, the definition of "dues" as contained in section 4242, IRC, could be amended. The amendatory language in either case need merely provide that:

"* * * the term 'dues' does not include any charges paid for maintenance, storage, or custodial care of property personally owned by a member."

Such an amendment would in no way adversely affect the Internal Revenue Service in its legitimate efforts to enforce proper administration of the dues tax law.

Sincerely yours,

THOMAS G. CARNEY,
Attorney for Rochester Yacht Club.

STATEMENT OF JAMES F. FORT, AMERICAN TRUCKING ASSOCIATIONS, INC.

This statement is submitted in connection with proposed amendments to H. R. 7125 which would in turn result in highly desirable changes in sections 4481, 4482, and 4483 of the Internal Revenue Code. Present provisions of the sections were established as a result of part II of the Federal-Aid Highway Act of 1956 which provides for a special tax of $1.50 per thousand pounds on motor vehicles having a taxable gross weight of more than 26,000 pounds.

The trucking industry is fully in support of the proposed amendments and its position is given in this statement in the order in which the amendments are proposed.

Section 154 (a) would provide separate classifications for highway motor vehicles used exclusively in combination with semitrailers equipped with furniture van or automobile transporter bodies. This amendment would serve to correct inequitable application of the tax in the case of two specific classes of trucks engaged in the transportation of two specific commodities.

It is realized that under the terms of the statute discretionary authority was of a necessity given the Internal Revenue Service to provide a rather broad framework for assessing the $1.50 tax. Under the classification being used, motor vehicles have been segregated into gross weight categories according to the empty weight of the power unit, (truck or truck tractor) with each weight class assigned a taxable gross weight against which the rate of $1.50 is applied.

Generally speaking, this has been a satisfactory method, particularly when consideration is given the wide variety and type of motor vehicle use. However, as the assignable vehicle gross weights in relation to the empty weight of the power units are based primarily on the density of general freight, an unjustifiably high tax assessment has been made against transporters of automobiles and household goods.

Both of these commodities are low in density and require a great deal more cargo space relative to weight than do the general run of freight. The maximum gross loads of automobile and household goods carriers are considerably below the gross weight categories into which their vehicles fall under the tax schedule. This is because the empty weights of their power units will not vary greatly from the empty weights of general freight vehicles.

Practically all transportation of household goods and automobiles is performed by motor carriers which transport no other type of freight. In addition, the transportation in each case is performed in particular types of cargo equipment. Easily recognizable trailers of distinctive types are used by each class of carrier. These units readily lend themselves to special categories in the tax schedule which would permit the accompanying power units to receive tax assessments more in line with the gross weights identifiable with actual operations. The development of such schedules is proposed in section 154 (a) and we urge that this amendment be adopted.

A similar situation has arisen, from the tax schedules currently in use, in connection with motor vehicles which are not operated at gross weights of more than 26,000 pounds. Because, as stated above, the gross weight for tax purposes used in the tax schedule is based on the empty weight of the power unit, many such vehicles are subject to, and are paying, the tax. Section 154 (d) would correct this inequity and we urge adoption of the amendment.

The legislative history of the Federal-Aid Highway Act of 1956 shows that the special tax of $1.50 was intended to apply only to vehicles having gross weights of more than 26,000 pounds. However, the tax schedule imposed under section 41.4482 of the Internal Revenue Code, which is based on averages, is requiring the payment of the tax on many vehicles although they are never operated at gross weights in excess of 26,000 pounds.

This obvious inequity would be corrected under the proposed amendment which provides an exemption for any vehicle, regardless of its empty weight, which during the taxable year did not operate with a gross weight in excess of 26,000 pounds. Such an amendment would provide needed tax relief for vehicles which we are certain the Congress did not intend to include when it wrote the prevailing provision in the Federal-Aid Highway Act.

Section 6156, installment payments of tax on use of highway motor vehicles, provides for an option on the part of the taxpayer to pay the tax in quarterly installments. This is primarily an administrative matter but one which the Internal Revenue Service feels it does not have the power to handle under the present statute.

In many cases, particularly those involving large fleets of vehicles, the total annual tax amounts to thousands of dollars. As all units subject to the tax must be registered and the tax paid on July 31, a considerable amount of money must be "invested" in the use tax for the tax year. A quarterly payment provision is applicable in the case of the income tax which is declared in advance and is payable in quarterly installments. Such an arrangement for the special highway use tax would be of tremendous value and would greatly facilitate the taxpayment in a large number of cases. We urge adoption of the proposed amendment.

Section 6423: Permanent Removal of Highway Motor Vehicles From Use, would correct what we believe to be an oversight in the original statute. The due date for the annual tax with respect to a motor vehicle already in service is July 31, of the tax year. There is a provision for prorating the tax with regard to any vehicle put into service for the first time after July 31. However, there is no provision for a credit or refund for a vehicle permanently removed from service after the tax has been paid. Thus, although there is a prorating provision for a vehicle coming into use there is none for a vehicle going out of service.

Inasmuch as the basic provision is for a highway use tax, the lack of a refund for a vehicle no longer in service means that there is a use tax being paid although the use no longer exists. An extreme, but not unlikely example, would be a vehicle destroyed by fire soon after the tax has been paid. The tax payment, not being refundable, is lost and if another vehicle is put into service an additional tax must be paid so that for the highway use by one vehicle a double tax has been assessed. The proposed amendment would correct this by providing the necessary refund for vehicles permanently removed from service and we urge its adoption.

It is our opinion, after careful study of the problems arising from the special highway use tax and following evaluation of the problems with affiliated motor

carrier conferences of our association, that the proposed amendments would lead to greater equity in assessment of the taxes as well as to greater ease of administration. The trucking industry has been subjected to severe tax increases to pay its share of the new, expanded Federal highway program. The rates and general level of the taxes to pay for the program are currently under study, as directed by the Congress, and we realize that the future may bring some revisions. In the meantime, changes, such as those proposed in the administrative and technical aspects of applicable taxes, which result in more equitable application are highly desirable and we urge their speedy adoption.

SWIMMING POOL AGE,
New York, N. Y., July 15, 1958.

Hon. HARRY FLOOD BYRD,
Chairman, Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: We understand that your committee is holding hearings on H. R. 7125. We are particularly interested in Section 182 B: Exemption of Nonprofit Swimming Pool Facilities From the Federal Excise Tax on Club Dues and Initiation Fees and should appreciate your considering the following facts and placing this letter in the record.

As you are undoubtedly aware, the number of swimming pools of all types is increasing at a very rapid rate. The enclosed copy of our Market Report on the Swimming Pool Industry will give you some facts and figures on this growth.

Within the past few years, the nonprofit swimming club has been filling a very important function and the number of this type of organization is growing rapidly. Its important functions are:

1. It provides relatively inexpensive and extremely healthful form of recreation, both for children and entire families. Health experts agree that there is no better all-around form of exercise than swimming.

2. That swimming is an inexpensive form of recreation is particularly important during periods of recession or depression. During the early 1930's (we have been publishing Swimming Pool Age for 32 years), it was the only form of recreation millions of Americans could afford.

3. Nonprofit swimming clubs are an extremely significant factor in teaching children to swim. They have developed training programs for all ages of youngsters and are extremely active in the field of competitive swimming.

America will surely win Olympic swimming events for many years to come as a result of these training and competitive swimming programs.

At the beginning of World War II, an appalling percentage of young men entering the Armed Forces were unable to swim. This necessitated the expense and time-consumption involved in training millions of men to swim and yet, despite this, thousands of servicemen drowned because of their inability to swim.

4. Experts in the field of social welfare agree that two important factors in the elimination of juvenile delinquency are better family life and the diversion of young people's energies to beneficial recreation. Certainly, the nonprofit swimming club provides both.

The elimination of this tax cannot cause a significant decrease in Government revenue. On the other hand, it will definitely tend to increase the number of such clubs, thus providing thousands of American families with an opportunity to participate in beneficial, healthful sport and recreation.

Your kind consideration is appreciated.

Sincerely,

ROBERT M. HOFFMAN, *Publisher.*

(The enclosed 1958 Market Report was made a part of the committee files.)

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
Nevada, Mo., July 12, 1958.

HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SIR: As president of the Nevada, Mo., Branch of American Association of University Women I would like to urge that the fellowship amendment to H. R. 7125 introduced by Senator Flanders (No. 11 on the Senate Finance Committee Calendar) be favorably reported to the Senate floor for a vote.

Education has many critical problems at the present time. Our association has a fine program of scholarships and fellowship funds and many women receive aid to further her education through this program. Exemption from admissions tax would make it possible for more women to receive this assistance and help solve the problem of shortage of qualified teachers.

Will you please exercise your influence in the passage of this proposed law.

Very truly yours,

MRS. STANLEY D. ROTNER.

MIDWEST STOCK EXCHANGE,
Chicago, July 14, 1958.

Re H. R. 7125.

Hon. HARRY F. BYRD,
Chairman, Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: When H. R. 7125 was pending before the House Subcommittee on Excise Taxes, George H. Barnes, the then chairman of the board of the Midwest Stock Exchange, testified before the subcommittee and suggested certain changes in the stock transfer tax provisions. Our objections have been satisfied by sections 4321-4323 of the bill as passed by the House of Representatives.

The purpose of this letter (which we respectfully request be included in the record of the hearings before your committee) is to urge that the bill as passed by the House be reported out by your committee for passage with no changes in these sections.

Mr. Barnes has read this letter and directs me to inform you that he concurs.

Very truly yours,

JAMES E. DAY, *President.*

THE WINE CONFERENCE OF AMERICA,
Washington, D. C., July 14, 1958.

Re H. R. 7125.

Hon. HARRY FLOOD BYRD,
Chairman, Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: This statement is in support of the provisions of the above bill dealing with wine, particularly title II.

It is submitted on behalf of the member associations of the Wine Conference of America. The conference consists of the 21 principal wine associations representing the producers, importers, bottlers, and distributors of over 95 percent of the wine sold in this country. The names of these 21 associations are printed on the reverse side of this stationery.

The wine provisions of H. R. 7125 have the full support of the United States wine trade.

In addition, since H. R. 7125 was introduced, there has been discussion between ourselves and the Alcohol and Tobacco Tax Division of the Internal Revenue Service with regard to certain technical changes in language. Our support of this bill before the committee includes these technical changes that will be presented to you on behalf of the Treasury Department through the Alcohol and Tobacco Tax Division of the Internal Revenue Service.

We hope that the provisions of the bill concerning our industry will be favorably reported by the Committee.

Sincerely yours,

EDWARD W. WOOTTEN, *Secretary.*

STATEMENT OF NEW YORK STOCK EXCHANGE SUBMITTED BY JOHN R. HAIBE, V. P., NEW YORK CITY, N. Y.

STOCK TRANSFER TAX

Section 141 of the Excise Tax Technical Changes Act of 1957 (H. R. 7125) provides for a change in the method of computing the documentary stamp tax imposed on stock transfers. (See sec. 4321, p. 58, line 5.) It provides for a tax of 4 cents on each $100 of the actual value of the total stock involved in a

transaction, with a maximum tax of 6 cents per share (the maximum per share tax under the present system).

The proposed tax rate of 4 cents per $100 of market value was adopted by the House Ways and Means Committee after consideration of statistical data presented by the New York Stock Exchange in December 1956. This data (see exhibit A attached) indicated that a rate of 4 cents per $100 of actual value would yield an estimated 5 to 6 percent increase in revenue from this tax and was a more equitable rate than a rate of 5 cents per $100, which would have resulted in an increase of 35 percent in the stock transfer tax burden borne by millions of American investors. The Treasury Department had previously testified in January 1956 that it favored the 5-cent rate since a study of stock prices in November 1955 indicated that they were "historically high" and might decline, thus reducing revenue from a tax based on market value. In November 1955 the Standard and Poor's 500 Common Stock Price Index stood at a level of 44.05 (November average of daily closing index). The average level of this index over the intervening 31 months has been 44.03. On June 30, 1958, the index closed at 45.24. These figures indicate that stock prices over the past 2½ years have remained at levels which would have maintained or slightly increased stock transfer tax revenue had a rate of 4 cents per $100 of market value been in effect as provided in H. R. 7125.

EXHIBIT A.—*Estimated Federal stock transfer taxes*

	1st 9 months, 1958	Full year (projected)	Increase in Federal stock-transfer tax	
			Dollars	Percent
I. New York Stock Exchange reported stock volume:				
Present stock-transfer tax	$6,077,000	$8,103,000		
Estimated Federal stock-transfer tax at rate of 5 cents per $100 of market value	8,187,000	10,916,000	$2,813,000	35
Estimated Federal stock-transfer tax at rate of 4 cents per $100 of market value and with 6 cents per share maximum	6,406,000	8,541,000	438,000	5
II. All securities transactions executed through New York Stock Exchange member firms:				
Present stock-transfer tax	[1] 12,500,000	16,700,000		
Estimated Federal stock-transfer tax at rate of 5 cents per $100 of market value	[2] 16,900,000	22,500,000	5,800,000	35
Estimated Federal stock-transfer tax at rate of 4 cents per $100 of market value and with 6 cents per share maximum	[2] 13,300,000	17,700,000	1,000,000	6

[1] Actual Federal stock-transfer tax paid through New York Stock Exchange Stock Clearing Corp.
[2] Estimated by applying percentage increases on reported stock volume to actual tax payments on all transactions.

ROBERT GOULD CO.,
Cincinnati, Ohio, July 9, 1958.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: This communication is addressed to you in support of H. R. 7125, now before your committee; a measure which it is hoped will be reported favorably.

Over the years, since the repeal of prohibition, we have continuously functioned as brokers of warehouse receipts for bulk whisky. It is the practice of our office to keep apprised of the daily offerings of distillers, rectifiers, bottlers, brokers, and others in the industry, for the purchase or sale of all of the various types of distilled spirits. These regular contacts throughout all the States of the Union, where the sale of bulk whiskies is permitted, have enabled us to consummate transactions embodying large quantities of bulk whiskies and to remain ever cognizant of all major sources of supply and demand. The foregoing is recited to indicate to your committee that the writer is in a position to garner and possess such information as would support the observations herewith directed to you.

Our attention has been directed to several positions, taken by a very limited number of the firms engaged in the distilling industry, in relation to this proposed

legislation, which contentions are as follows: (1) The enactment of H. R. 7125 will afford certain segments of the industry great competitive advantages in the marketing of over 8-year-old merchandise; (2) the comingling provisions of part 2 of H. R. 7125 embrace adequate relief as to the present burdensome forceout provisions of the law.

If it be true that the above-stated contentions have been made by others, we wish to take the firm view that these contentions are basically unsound. May we please, in this connection, direct to you the following personal observations:

H. R. 7125 will not create any insurmountable competitive advantages to any segment of the industry. It is the writer's unqualified opinion that today there is available for purchase, by anyone who would wish to enter into the marketing program of whiskies which are over 8 years of age, huge quantities of distilled spirits currently the subject of offerings. We can find no reason, therefore, for a contention that the enactment of H. R. 7125 will give any competitive advantage to any particular member of the industry, or to any particular group.

The findings embraced in the report of the United States Tariff Commission in its investigation of the distilled-spirits industry, which was recently filed with your committee, disclosed that there are great quantities of older whiskies available and that there is no concentration of aged goods in the hands of any particular group.

As a broker, this writer is in close contact with many of the smaller distillers and thereby is apprised of their respective holdings and of their present marketing programs. Many of these small distillers are in great distress today because they have an overabundance of aged goods. They are particularly in need of the relief afforded by the elimination of the bonded period and believe that they would be in a much improved competitive position were H. R. 7125 to be enacted into law as now written.

Now we consider the second contention of others, as above recited, and to which contention we earnestly take exception. We approach these unfounded contentions made by others with relation to the comingling provisions of part 2 of H. R. 7125 with great concern. We believe that this proposed law, as adopted by the House of Representatives with relation to the bonding period, is most important, particularly to the smaller people in the industry. It is our position that the comingling provisions of the law alone will not afford adequate and sufficient remedy to meet the present burdensome forceout provisions of the law, and we support these views by the following observations:

In order for one to take advantage of the comingling provisions of the law, he must either possess or acquire the same type of whisky manufactured by the same distiller, so that he will have the younger goods with which to commingle his inventory approaching the forceout period. There are a number of independent distillers who have no young whiskies. In order for these licensees to take advantage of the comingling provisions, they would be burdened with the requirement of going into the market and purchasing the younger whiskies of like distillation, thus increasing their inventory, and, instead of being able to look to comingling as a remedy, might well find themselves with further burdens.

Another segment of the industry which is deserving of consideration, is the number of independent warehousemen. If consolidation or comingling of whiskies were to be the only remedy for the forceout burdens of the present law, then this consolidation would greatly reduce in number the actual barrels being warehoused. The resulting effect of such consolidation would increase the available warehousing spaces and thereby greatly devalue the potentials of the independent warehouseman and the value of his warehousing properties.

From the broker's viewpoint, there is a more serious objection to the confining of the relief of the comingling provisions of H. R. 7125. Over the course of the years we have, through experience, been able to classify and grade the value of the various inspections of whiskies of a given distillery. It is not uncommon in the industry that a certain production of a given season may differ considerably in quality with goods produced by the very same distiller in another season. These things are known in the trade, and a particular season's inspection of a given distillery is graded and valued according to its quality. Now, if comingling were to be the only remedy available for forceouts, the destruction of whisky categories and types and the elimination of those quality standards established over the years could well serve to be a further deterrent to an already distressed market. The comingling would be all right for that distiller who is going to use his own comingled goods in his own finished package. It would be harmful from a banking viewpoint, where the banker might justifiably question the quality of the comingled product, and it would be harmful to the broker who could not easily

identify the category or quality in making a sale to a bottler other than the distiller who commingled the particular goods.

Therefore, although under certain circumstances, there are some advantages which might accrue from the commingling features of H. R. 7125, at the same time, we must emphatically recite that equitable remedy from the present burdensome provisions of the limited 8-year-old bonding period can be best effected, with the greatest fairness to all, with the inclusion in the law of the elimination of the now obsolete bonded period. The two provisions, i. e., commingling, with the unlimited bonded period, will together bring about the much needed relief. Commingling, standing alone, can do further harm.

With the expressed hope, therefore, that House Resolution 7125 as passed by the House of Representatives will receive the early approval and support of your committee, I am

Genuinely yours,

ROBERT GOULD.

COLUMBIAN CARBON CO.,
New York, N. Y., July 11, 1958.

Re H. R. 7125.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR BYRD: One of the provisions of the above indicated House bill, also known as the Forand bill, which is scheduled for early consideration by your committee proposes, among other things, to make the actual value of shares or certificates of corporate stock the base for the documentary stamp taxes imposed upon original issues of such shares or certificates and upon transfers thereof. Enactment into law of that provision would correct a discriminatory distinction between par-value and no-par-value shares which has been held unfair by purchasers and sellers of no-par-value shares almost since its inclusion in the Revenue Act of 1917.

The shares of stock of Columbian Carbon Co. were originally issued, and are still, on a no-par-value basis. It has seemed sound principle to the company's directorate that market or book value is more correctly revealing to either an actual or prospective investor than any arbitrarily assigned value. While no actual or prospective investor in Columbian shares has ever taken issue with that view, many have complained that our adherence to principle burdens them with the penalty of discriminatory issuance and transfer taxes.

The above-discussed provision of H. R. 7125 is only one of the many it proposes for revision of excise taxes as the result of recommendations submitted jointly by the staffs of the Joint Committee on Internal Revenue Taxation and the Treasury Department. Most of the provisions appear to be noncontroversial. The House Ways and Means Committee seems to hold that the slight loss of revenue from enactment of the bill into law would be more than compensated for by increased fairness and equity and by improved administration of excise taxes.

In these circumstances, I trust that you will not take it amiss that, on behalf of the directorate, management, and a large body of stockholders of Columbian Carbon Co., I urge your committee to consider and report the bill to the Senate in due time for its enactment during the current session of the 85th Congress.

Sincerely,

C. E. KAYSER.

CELANESE CORPORATION OF AMERICA,
New York, N. Y., July 11, 1958.

Re H. R. 7125.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: Having heard that the Forand bill, H. R. 7125, may be scheduled for early consideration by your committee, we are writing to urge that efforts be made to take it up in the near future with a view to its enactment in whole or in part prior to the expiration of the 85th Congress.

This seems particularly desirable in view of the fact that the bill has been the subject of extended hearings and study covering a period of nearly 2 years by

the House Ways and Means Committee and its Forand subcommittee, which resulted, as you know, in its passage by the House. The bill represents a long overdue comprehensive revision of the excise-tax law which would bring about increased fairness and equity and better administration of excise taxes.

Our company is particularly interested in section 141 of the bill, which would amend sections 4301 and 4321 of the Internal Revenue Code so as to make the actual value of shares or certificates of corporate stock the base for the documentary stamp taxes imposed by those sections upon original issues and transfers, and thus abolish the present distinction between par-value and no-par-value stock in imposing such taxes. While this distinction may have had some meaning when initially adopted in the Revenue Act of 1917, at a time when most par-value shares were issued for a subscription price equivalent to the par value, this reason has disappeared in the current practice of issuing stock at a par value representing only a fraction of the subscription price. This confusing practice is doubtless due in part to the discriminatory stamp tax distinction between par-value and no-par-value shares. Thus, for example, if a company is about to issue 100 shares at $100 per share, it can reduce its stamp tax to 11 cents by setting a par value of $1 a share, as against a tax of $11 which it would pay if the shares were issued at no par value. Thus, shares which have the same market value will be subject to a 100 times greater tax if they are issued with no par value rather than with a par value.

The common stock of our corporation, which is traded on the New York Stock Exchange, is still no par value. We feel that no-par-value stock prevents unnecessary confusion and deception to investors, which would arise from assigning par value which might have no relation to the actual value of the stock. Nevertheless, as a result of this, we and our shareholders suffer a substantial unnecessary loss in taxes on the issuance of new shares and the transfer of already issued shares.

The stamp tax provisions are examples of the increased fairness which will result from the enactment of this bill. Many of its other provisions are noncontroversial in nature and will greatly improve the fairness and administration of excise taxes. In view of the great amount of work which preceded the enactment of the bill in the House, we feel it most desirable that your committee consider and report it to the Senate, with or without committee amendment, in time to be enacted before the expiration of the 85th Congress.

Very truly yours,

LAWRENCE S. APSEY,
General Attorney.

CONGOLEUM-NAIRN, INC.,
Kearny, N. J., July 10, 1958.

Re H. R. 7125.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR Senator BYRD: On behalf of my associates on the board of directors and in the management of Congoleum-Nairn Inc., I respectfully solicit your personal support of the Forand bill for the revision of Federal excise taxes, which I understand is scheduled for early consideration by your committee.

Congoleum-Nairn Inc. is a New York corporation with 1,239,860 shares of common stock, no par value, outstanding; all fully listed on the New York Stock Exchange and owned of record by approximately 7,800 stockholders.

My associates and I have long been of the opinion that the present distinction, for Federal excise tax purposes, between par-value and no-par-value stock is inequitable, illogical, and arbitrary, being totally unrelated to market value or book value. Under the circumstances, it seems to us that an unjustifiable financial hardship has been and is being imposed upon the holders of no-par-value stock, from the standpoint of the significant additional expense to which they are subject, in the event of transfer or sale.

We respectfully urge that your committee favorably and promptly report the Forand bill to the Senate, to the end that the existing inequity in question may be eliminated.

Very sincerely yours,

F. J. ANDER.

McCORMICK DISTILLING CO.,
Weston, Mo., July 12, 1958.

Senator HARRY F. BYRD,
Chairman, Senate Committee on Finance,
Senate Building, Washington, D. C.

DEAR SENATOR: We have been advised that the Senate Finance Committee is to hold hearings Tuesday and Wednesday of next week, July 15 and 16, on the Forand bill which has been passed by the House (H. R. 7125).

We are a very small distillery operating at Weston, Mo., the present management coming into possession of the property in 1950. The operation is a family-controlled business with net assets of approximately $900,000 paid in. To date the company has made no profits although having operated for some 8 years. In the year 1956 it was necessary for us to tax pay some $350,000 for purchased whiskies which had reached the age of 8 years, and for which tax had to be paid or the whiskies destroyed. This was a very definite hardship on our company but that period we have survived.

At the present time we have in our warehouses approximately 10,500 barrels of whisky having been produced in the years 1950 through 1956. Of this quantity of aging products, some 4,400 barrels reach the 8-year age during this and next year and if our sales continue as at present it will be necessary for us to tax pay between 2,500 and 3,000 barrels of merchandise which will come of age. This will necessitate tax payment of between $750,000 and $1,000,000, which is impossible for a company of our size.

Due to the continuation of the wartime tax of $10.50 per proof gallon on distilled spirits, this industry has not progressed with population increases as has other commodities. This, together with forced sales of 8-year old whiskies at less than production costs, to avoid tax payment, has worked a hardship on the industry. Our sales, therefore, have not approached our estimates or expectations and although we are making progress through increased sales, we shall have a definite surplus of 8-year-old whiskies for the next 2 years.

In February of 1957 we had a disastrous fire in the distillery which prevented our producing any whisky during the 1957 year, with the result that we will have a definite shortage in 1964, and if the bond extension period is granted we feel that we can offset this loss of production by using some of our older whiskies. If the bonding period extension is not granted, we undoubtedly will have to dispose of our 8-year-old whiskies at substantial losses, or destroy the product entirely as we do not have facilities to ship out of the country to avoid tax payment; if, on the other hand, the extension is granted we know that we will be able to tax pay all of the barrels we have in storage and will keep our continuity of whiskies for the trade which we are developing.

We are fully familiar with the controversies in the distilling industry and concur fully with the attitude of the Distilled Spirits Institute which provides for comingling of spirits and/or the extension of the bonding period, but without the right to claim age over 8 years if the tax is not paid, as we feel that no group should receive special benefits as a result of the present oversupply of aged whiskies. We also realize that the Alcohol Tax Division of the Treasury Department has proposed many changes in the distilling industry which are included in this bill which will not only reduce expenses to the Government, but will simplify procedure in the industry. This portion of the bill is long overdue and badly needed by both Treasury and industry.

In summation, therefore, as a small business concern we trust that your committee will approve the bill including the recommendations of the Distilled Spirits Institute as we feel it is a fair approach to the bonding extension needs. However, we as well as others need relief and we feel that if the changes as suggested by the Distilled Spirits Institute are not approved, then of necessity the bill in its present form should be accepted.

Respectfully submitted.

CLOUD L. CRAY, *President.*

STATEMENT OF PAUL CUNNINGHAM, PRESIDENT, AMERICAN SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS, NEW YORK, N. Y.

The American Society of Composers, Authors, and Publishers (ASCAP) is an unincorporated association consisting of some 4,000 writers of musical compositions and their 1,000 publishers. On behalf of its members, the society licenses performances of copyrighted musical works to users engaged in performing these

works publicly for profit. The royalties received from these users are distributed among the society's members in accordance with criteria established by the membership. Among these users are roof gardens, cabarets and similar establishments frequently operated in connection with hotels.

In 1943, the cabaret tax was raised from 5 percent to 20 percent. This rise contributed to the increase in unemployment of musicians and entertainers, who already were finding it difficult to secure employment as a result of technological changes which had occurred in the entertainment field as a result of mechanization, mechanical reproduction, the rise of mass communications media, and the like.

The cabaret, while it provides food and drink to its patrons, certainly attracts customers largely on the basis of the entertainment it provides. The entertainers who appear in these establishments are primarily people of the theater, and in fact the same entertainers frequently present much the same entertainment at cabarets as before audiences in theaters. It would certainly appear that the entertainment in cabarets should be taxed at no higher rate than the entertainment in theaters, namely 10 percent ad valorem.

If only entertainment were furnished in a cabaret, the 10 percent rate would apply. Where only food and beverages are served, no excise tax is collected. Where entertainment, food, and beverages are combined, however, the 20 percent rate is levied. This is clearly discriminatory, since any of the services or refreshment supplied to clients singly is taxed either at a lower rate or not at all.

Today, the security and well-being of the Nation's writers of musical works and their publishers depend to an increasing extent on the public performances of their musical property, rather than the sale of printed copies of these works. However, the opposition of the American Society of Composers, Authors, and Publishers to a continued cabaret tax of 20 percent is not due to a narrow concern as to the level of performance royalties received from cabarets. Our support of the reduction of the cabaret tax to 10 percent is based on our conviction that this reduction is necessary to the maintenance of a healthy and prosperous entertainment industry, no segment of which should be discriminated against by Federal law or regulation in favor of any other. It is axiomatic that our popular arts can flourish only in an atmosphere of economic stability and opportunity.

For these reasons, the American Society of Composers, Authors and Publishers joins other representatives of the entertainment industry in urging your committee to take prompt steps to reduce this onerous and discriminatory 20 percent tax against cabarets to the 10 percent ad valorem level generally prevailing in comparable fields.

HILLTOP SWIM CLUB, INC.,
Haverstown, Pa., July 14, 1958.

Re excise tax administrative changes bill H. R. 7125 (secs. 131 and 132)

SENATE FINANCE COMMITTEE
Senate Office Building, Washington, D. C.

(Attention: Mrs. Elizabeth B. Springer, Chief Clerk)

GENTLEMEN: We are happy for the opportunity to submit the following statement in support of sections 131 and 132 of H. R. 7125 as passed by the House of Representatives.

We strongly urge support of the above bill and particularly sections 131 and 132 exempting nonprofit swimming facilities from the 20 percent excise tax on initiation fees and dues and the 10 percent excise tax on admissions.

The Hilltop Swim Club, which has a membership of 450 families and is located in Haverford Township, Pa., is, we believe, a typical nonprofit swimming organization which would meet the exemption provisions of the above-mentioned sections. The membership of the Hilltop Swim Club is representative of the residents of Haverford Township who have, by the formation of the swim club, sought an opportunity for healthful activities on behalf of the members of their families. In these days of juvenile delinquency and great tensions, people throughout the country have become more and more conscious of the need for facilities providing for sunshine and healthy exercise. Too frequently these facilities are not adequately provided by the political areas in which we live. Haverford Township, for example, has no public swimming facilities. As a matter of fact, in order to establish a swimming club considerable time and effort on the part of those wishing to do so is required to overcome objections

to the location of such a club in almost any area of the community. Unfortunately, zoning requirements present an obstacle to the construction of such facilities even in relatively isolated areas notwithstanding the fact that the taxpayer is relieved of the tax burden which would be present should public facilities be maintained.

The excise tax as now constituted is an additional obstacle to both the establishment and operation of swim clubs since it discourages participation for obvious economic reasons.

The exemption from the tax will do much toward promoting healthy recreational opportunities made available by swim clubs.

Respectfully submitted.

GERALD L. SMITH, *President.*

AIR TRANSPORT ASSOCIATION,
Washington, D. C., July 14, 1958.

Subject: Section 164 of H. R. 7125.

Hon. HARRY F. BYRD,
Chairman, Finance Committee,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: On behalf of our membership, the certificated airlines of the United States, we respectfully urge the Finance Committee to approve section 164 of H. R. 7125 in the form in which it now appears in that bill.

Section 164 would permit bulk users of gasoline for nonhighway purposes to receive quarterly refunds of the 1-cent increase in the Federal gasoline tax imposed by the Highway Revenue Act of 1956. The House version of the bill which became the Highway Revenue Act of 1956 provided for an exemption from the increased tax for nonhighway users. The Senate version altered this provision, providing for a refund of the tax to nonhighway users, a quarterly refund to nonhighway users of more than 100,000 gallons of fuel per quarter and an annual refund to all other nonhighway users. In conference this provision was modified to provide an annual refund to all nonhighway users regardless of the amount of gasoline consumed.

During the fiscal year 1957 the air transport industry used approximately 1,200,000,000 gallons of gasoline and thus accumulated a $12 million annual refund during that year. In fiscal 1958 it is estimated that the air transport industry used approximately 1,400,000,000 gallons of gasoline and thus accumulated an annual refund of $14 million. At the end of fiscal year 1957 several of the larger airlines each had sums well exceeding $2 million tied up in refundable tax collections, which they were not able to recover from the Treasury Department until after the close of that fiscal year. The amounts so tied up are larger for fiscal 1958, due to the substantial increase in the gallonage used by the industry. A similar situation exists with regard to the smaller airlines which, although having a lesser amount of refunds involved, likewise have proportionately smaller amounts of working capital available to them. The gasoline consumption of the airlines is rising rapidly each year and, consequently, unless relief is afforded from the annual refund provision, the amounts of working capital tied up in annual refunds will increase substantially each year.

With the airlines' financial resources strained to the utmost to finance the conversion from piston aircraft to jet aircraft, this "freezing" of substantial portions of our working capital imposes a serious and unwarranted hardship.

The former chairman of the Ways and Means Committee, the Honorable Jere Cooper, explained the purpose of section 164 of H. R. 7125 as follows:

"The committee believes that more frequent refunds should be available to large volume users in this category, so that the moneys to which they are entitled will be more readily available for use by them as working capital. To accomplish this, the Committee amendment retains the present yearly refund arrangement in section 6421 (c) of the Internal Revenue Code, but adds a provision permitting a claim to be filed for a calendar quarter by any ultimate purchaser who is entitled to a refund of $1,000 or more with respect to gasoline used during such quarter for qualifying nonhighway or local transit purposes. Limiting quarterly refunds to claimants in this category will avoid the considerable administrative problems that would be created if they were made available to all persons eligible for refunds.

* * * * * * *

"This amendment is not expected to have any revenue effect." (Page 8748, Congressional Record of June 20, 1957.)

In view of the foregoing this association respectfully urges the Finance Committee to approve section 104 of H. R. 7125.

Cordially,

S. G. TIPTON, *President.*

AMERICAN COUNCIL ON EDUCATION,
Washington D. C., July 15, 1958.

Senator HARRY FLOOD BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: I am the comptroller of the University of Notre Dame, and I am writing to you as a member of the committee on taxation and fiscal reporting to the Federal Government of the American Council on Education. The council has authorized me to represent the committee in presenting to you a statement concerning H. R. 7125, legislation that would provide exemption from excise taxes for all nonprofit educational institutions. The American Council membership includes 140 national and regional educational associations with interests in education at all levels, and 1,028 institutions including nearly all the accredited junior colleges, colleges, and universities in the United States.

I am authorized also to write as spokesman and representative of the Association of American Colleges, which is the national organization of colleges of the liberal arts and sciences, with 703 members all of which are accredited 4-year liberal arts colleges.

The committee on taxation and fiscal reporting to the Federal Government believes that the principle of tax exemption of colleges and universities is based upon the public services rendered by these nonprofit institutions. Any impairment of this principle would have tragic consequences. The greatest social need in this day of increasing enrollment is to increase the resources of these public service institutions in order that they meet the growing demands upon them. It is with this in mind that I should like to direct my comments to the excise tax technical changes bill, H. R. 7125, already passed by the House of Representatives.

This bill provides, among other things, for the exemption of manufacturer's, retail, transportation, and communications excise taxes for colleges and universities operated by nonprofit organizations.

Our committee has spent considerable time discussing these taxes, and feels strongly that the provisions in H. R. 7125 concerning these exemptions are both desirable and sound.

The American Council on Education and the Association of American Colleges have adopted resolutions urging the Senate of the United States to take favorable action on the provisions included in the excise tax technical changes bill.

The committee has discussed the discriminatory nature of these taxes. Colleges and universities, both privately and publicly supported, have been traditionally exempt from taxes; yet, in this instance, excise taxes are levied against the privately supported institutions but not against the publicly supported institutions.

Almost half of all the students enrolled in institutions of higher education are enrolled in privately supported colleges and universities. These schools already are generally hard pressed to meet their operating expenses in fulfilling this important public responsibility. With the prospects of enrollment doubling by the year 1970, it is all the more urgent that privately supported colleges be given every sound means of assistance and encouragement to aid them in meeting their part of the increasing demand for higher education. The savings to privately supported institutions by the exemption from excise taxes has been estimated at $3 million a year. This amount, although not large, would be of significant assistance to most of these institutions.

It is our judgement that privately supported colleges and universities should enjoy the same tax exemption privileges as publicly supported colleges and universities, and that the private institutions should be relieved of an unfair and burdensome Federal tax. We believe this to be in the public interest and earnestly hope that you will lend your support to this legislation.

Sincerely yours,

G. E. HARWOOD,
Comptroller, University of Notre Dame.

STATEMENT OF INTERNATIONAL BUSINESS MACHINES CORP., SUBMITTED BY DANIEL M. GRIBBON, WASHINGTON, D. C.

The purposes of this statement are to urge the enactment of section 117 of H. R. 7125 and to suggest to the committee certain desirable amendments to that section in order to accomplish significant improvements in the administration of the excise tax provisions dealing with leases of taxable articles.

1. Section 117 of H. R. 7125 would remove the present discrimination in the excise tax law against leases of taxable articles

The manufacturers' excise tax is a tax on sales; in the manner of an afterthought, it summarily declares that a lease "shall be considered a taxable sale" (sec. 4217, Internal Revenue Code of 1954) and imposes the applicable rate of tax on each and every lease payment made throughout the entire life of a leased article, even though the total taxes paid may far exceed the tax that would be due upon the sale of that same article. A lease, however, differs from a sale in several vital respects, and the law should be amended to recognize this difference so that a lease will not be taxed more heavily than a sale.

IBM is vitally concerned with this matter because it leases thousands of business machines to its customers. Although since January 1, 1957, all IBM machines have been available for purchase, the majority of its customers to date are continuing to lease. Therefore, the discrimination against leases in the present law will continue to be a major problem for IBM and its customers unless Congress corrects the situation.

Many businesses are dependent upon installations of business machines. If a customer chooses to purchase an installation, the total excise tax on the sale would be limited to 10 percent of the sale price of the installation. But if a customer chooses to lease an installation, the law requires that an excise tax of 10 percent be paid on each and every lease payment. In the average case there will, in approximately three years, be paid as much excise tax as would have been paid had the installation been purchased outright. As long thereafter as the customer continues to lease the installation, additional taxes will continue to be paid over and above the amount that would have been paid upon a purchase of the installation.

Moreover, the Revenue Service takes the position that under the present law if a customer which first leased an installation should later decide to purchase the installation no credit will be allowed against the 10-percent excise tax that will be due on the purchase price. In addition, if another customer leases or purchases the installation after it has been used by the first customer, the full excise tax on lease payments or on the purchase price will still be exacted. This is not true in the case of a lease of a business machine which has once been sold or the second sale of a business machine. Such machines under the present law are completely free of further excise tax; in other words they are taxed once, not twice or forever.

The eternal taxability of the lease arises from the awkward—and apparently unintentional—wording of the present section 4217 which categorically requires that "the lease of an article * * * shall be considered a taxable sale of such article." This language was put into the law for the sole purpose of preventing evasion of the tax "* * * by a lease contract which does not involve passage of title" (S. Rept. No. 665, 72d Cong., 1st sess. 44 (1932)). Unfortunately its effect has been to penalize lessors and lessees and place them at a substantial disadvantage compared to those who sell and purchase similar articles.

Section 117 of H. R. 7125 would remove this unintended discrimination in the law. It recognizes that a lease is not a one-time transaction like a sale but that it can go on indefinitely. The initial lease of an article is approximated to a sale and a total tax is computed at that time, so that whether a manufacturer sells or leases its product, the excise tax will be the same. Such recognition of the true nature of the lease has already been put into law for one group of taxpayers, namely, the manufacturers of utility trailers for passenger cars. Subsection (d) of section 4216 of the Internal Revenue Code of 1954, which was added to the law in 1955, permits the manufacturer who leases a utility trailer for use with a passenger car to pay a total tax on each leased trailer on the same basis as if the trailer had been sold. An amount equal to the applicable tax rate applied to each rental payment is paid until an amount has been paid which is equal to the total tax that would be due on a sale. Thereafter no tax is due, whether the trailer remains subject to the same lease, a new lease,

or is sold. If the trailer is sold before the total tax is paid, a tax equal to the difference between the total tax and the amounts previously paid is due.

There is no reason why this treatment should not be extended to all leased articles, and this is precisely the purpose which would be accomplished by section 117 of H. R. 7125. It does so by repealing subsection (d) of section 4216 and by adding to section 4217, the section which now merely provides that a lease shall be considered a sale, new subsections (b), (c), and (d). New subsection (b) extends the "total tax" treatment to "any lease * * * of an article taxable under this chapter * * *." As is indicated in the report on excise taxes to the Committee on Ways and Means from the Subcommittee on Excise Taxes (House of Representatives), dated December 31, 1956, at page 12, this approach is agreed to in principle by the Treasury and joint committee staffs.

We strongly urge that this committee approve section 117 of H. R. 7125 as the only fair method of treating leased articles under the manufacturers' excise tax law.

2. *The section should be amended to provide equal treatment for leases of new and used articles*

Inadvertently, it would seem, the legislation passed by the House to correct the discrimination against lessors under present law provides one basis for computing the tax on the lease of a new article and a different basis for computing the tax on the lease of a similar article which has been used.

In the case of the first lease of an article, section 117 provides, in a new subsection (c) to section 4217, that the total tax shall be computed on the "constructive sale price" of the article, which is essentially the price at which the article would be sold at wholesale.

The first excise tax technical changes bill (H. R. 12298) considered by the House Ways and Means Subcommittee contained a somewhat similar provision which would have computed the total tax on the basis of the "fair market value" of the article, that is, on the same basis now applied to utility trailers. This basis was changed to the "constructive sale price" in section 117 of H. R. 7125 insofar as it relates to leases of new articles, but in the provision of the section relating to leases of used articles, no comparable change was made.

Section 117 provides that where an article has been leased before the effective date of the act, and where the first lease to which the act applies is not the first lease of an article, the total tax is to be computed on the "fair market value" of the article. It seems clear that the purpose of the Ways and Means Committee in adding a separate provision for leases of used articles was to provide for a lesser tax upon the lease of a used article than would be due upon the lease of a new article. The House report (H. Rept. No. 481, 85th Cong., 1st sess. (1957)), for example, states at page 26 that "the proper maximum or 'total' tax in the case of leases should be the amount of tax that would be due if the article had been sold at retail," i. e., the constructive sale price.

The difficulty is that the "fair market value" provision fails to carry out this purpose. The constructive sale price—or wholesale price—of many leased articles is 60 percent or 70 percent of the retail sale price of such articles. If it is assumed for illustrative purposes that such articles depreciate, say 10 percent a year, the fair market value will exceed the constructive sale price for 3 to 4 years after the article has been placed in use. Accordingly, if section 117 is passed in its present form, a greater tax will be due upon articles that have already been leased up to 3 or 4 years than would be due if the same articles were leased new.

The ideal solution would be to base the tax upon used articles at their constructive sale price. The House report indicates that such a method may not be administratively feasible because of individual variations in used articles arising from age and conditions of usage. This administrative difficulty, however, hardly justifies exacting a greater tax upon the lease of a used article than would be imposed upon the lease of the same article new.

It would, therefore, seem fair and in keeping with the purpose of the legislation to provide that the tax due upon the lease of a used article shall in no event exceed the tax that would be due if the same article were leased new. The constructive sale price, or wholesale value, of the article when sold at retail new would be the "maximum tax" to be collected. If the tax computed on the fair market value of a used article would be less than the maximum tax on a new article, the lesser amount would be due.

There is attached hereto as appendix A a suggestion as to how section 117 could be amended to provide equal treatment for leases of new and used articles.

3. The section should be amended to clarify the requirement that the lessor be engaged in the sale of similar taxable articles

Section 117 provides in substance that the lease of an article may not be taxed as a sale unless the person making the lease is also engaged in the business of selling the leased article. In explanation of this requirement, the House report states at page 27:

"Your committee believes that where manufacturers only lease particular types of taxable articles and do not also sell them, competitive inequalities do not exist to a degree sufficient to warrant the involved administrative burden of determining a proper tax base on new articles where no sales were made."

Subsection (d) (1) of section 4217 as passed by the House requires that a manufacturer, to obtain the benefits of section 117, must not only sell the same type of article but also the same model of that article. We believe that this additional requirement will introduce uncertainty and confusion into the administration of the law and is unnecessary to a full accomplishment of its purposes.

Wherever a manufacturer sells the same type of article as it leases, it should be entitled to the benefits of section 117. Model differences are, in some cases, minor in nature and often occur with considerable frequency. As improvements to a particular type of article are developed, they become standard and are incorporated into all models thereafter marketed. In many instances, accordingly, earlier models of a particular type of article are no longer manufactured. Certainly the lessees of such earlier models should not be penalized because they are leasing an older model no longer in production.

If the manufacturer-lessor were required to be engaged in the business of selling, in arm's length transactions, the same type of article that it leases, the purpose of section 117 would be fully accomplished. Moreover, elimination of the requirement that the manufacturer be engaged in selling the same model will make it unnecessary for taxpayers and the Revenue Service to consider in detail the various improvements and developments which may or may not amount to a different model of the same type of article.

There is attached hereto as appendix B a suggestion as to how section 117 could be amended to clarify the requirement that the manufacturer be engaged in the business of selling leased articles.

RECOMMENDATION

The committee is urged to approve section 117 of H. R. 7125 with the amendments explained above and set out in appendices A and B.

APPENDIX A

PROPOSED AMENDMENTS TO SECTION 117 TO PROVIDE EQUAL TREATMENT FOR LEASES OF NEW AND USED ARTICLES

(Only subsections affected by proposed changes are set forth. Material to be deleted is enclosed in black brackets, new matter in italic)

SEC. 117. LEASES OF CERTAIN ARTICLES SUBJECT TO MANUFACTURERS EXCISE TAXES.

* * * * * * *

(c) DEFINITION OF TOTAL TAX.—For purposes of this section, the term "total tax" means—

(1) [except as provided in paragraph (2),] the tax computed on the constructive sale price for such article which would be determined under section 4216 (b) if such article were sold *new* at retail on the date of the first lease to which subsection (b) applies; or

(2) if the first lease to which subsection (b) applies is not the first lease of the article, the tax computed on the fair market value of such article on the date of the first lease to which subsection (b) applies, *if such computation would result in a lower tax.*

Any such computation of tax shall be made at the applicable rate specified in this chapter in effect on the date of the first lease to which subsection (b) applies.

(d) SPECIAL RULES.—

* * * * * * *

(4) TRANSITIONAL RULES.—For purposes of this subsection and subsections (b) and (c), in the case of any lease entered into before the effective date of subsection (b) and existing on such date—

(A) such lease shall be considered as having been entered into on such date;

(B) the total tax shall be computed [on the fair market value of the article on such date] *as provided in subsection (c)*; and

(C) the lease payments under such lease shall include only payments attributable to periods on and after such date.

APPENDIX B

PROPOSED AMENDMENT TO SECTION 117 TO CLARIFY SELLING REQUIREMENT

(Only subsections affected by proposed changes are set forth. Material to be deleted is enclosed in black brackets, new matter in italics)

SEC. 117. LEASES OF CERTAIN ARTICLES SUBJECT TO MANUFACTURERS EXCISE TAXES.

* * * * * * *

(d) SPECIAL RULES.—

(1) LESSOR MUST ALSO BE ENGAGED IN SELLING.—Subsection (b) shall not apply to any lease of an article unless at the time of making the lease, or any prior lease of such article to which subsection (b) applies, the person making the lease or prior lease was also engaged in the business of selling in arm's length transactions the same type [and model] of article.

STATEMENT OF O. A. JENKINS, CHAIRMAN, JEWELRY INDUSTRY TAX COMMITTEE, INC. TO BE H. R. 7125, A BILL TO MAKE TECHNICAL CHANGES IN THE FEDERAL EXCISE TAX LAWS AND FOR OTHER PURPOSES

This statement is filed on behalf of the Jewelry Industry Tax Committee, an organization representative of all levels of the jewelry industry—manufacturers, wholesalers, and retailers alike. It has been estimated that the number of jewelery retailers in the United States exceeds 40,000. And it will be shown hereafter that with very few exceptions they come, quite definitely, under the Government's classification of small business.

It is the purpose of this statement respectfully to alert this committee to a discrimination in the administration of the Federal excise-tax laws which is just about as flagrant and inequitable as could be conceived and to urge immediate legislation to correct it.

THE ISSUE

In two recent decisions, *Nathan Gellman, et al.* v. *United States* (235 Fed. (2d) 87) and *Torti* v. *United States* (249 Fed. (2d) 623), the United States circuit court of appeals held that certain types of sales were not subject to the Federal excise tax on jewelry. These were, generally speaking, sales made for distribution by the purchaser as prizes, premiums, awards, etc. For instance, in Gellman the types of transactions held not taxable were:

1. Sales made to lodges, churches, and clubs for disposition by these customers as prizes.
2. Sales made to bars, taverns, and cafes to be disposed of as prizes.
3. Sales made to industrial concerns to be disposed of in the following manners:
   - (*a*) As premiums in connection with the sale of other merchandise.
   - (*b*) As incentive awards to employees.
   - (*c*) As awards to employees or preferred customers.
4. Sales made to operators and concessionaires (as in amusement parks) for disposition as prizes on games played.

Generally, similar types of sales were involved in the Torti case.

As of March 13, 1958, the Internal Revenue Service of the United States Treasury Department issued Revenue Ruling 58–125, stating in part:

"The Internal Revenue Service will recognize the decisions in the cases of *Nathan Gellman, et al.* v. *United States* (235 Fed. (2d) 87), and *Torti* v. *United States* (249 Fed. (2d) 623), as precedents in the disposition of other cases involving the meaning of the term "sold at retail" for purposes of the retailers excise tax."

On April 21, 1958, a ruling was requested, on behalf of the Jewelry Industry Tax Committee, "making it clear that wherever a sale made by a wholesaler would be exempt from excise tax, under Revenue Ruling 58–125, a similar sale made by a retailer will likewise be exempt."

As of May 20, 1958, a telegraphic ruling was issued by the Internal Revenue Service stating that the Gellman ruling, above referred to, was not applicable to retailers and that on the contrary, sales made in any of the various categories enumerated in the Gellman case are subject to the Federal retail excise tax if made by retailers.

It is respectfully submitted that the last mentioned telegraphic ruling makes an unwarranted distinction between wholesalers and manufacturers on the one hand and retailers on the others, a distinction which cannot be justified under the law or under elementary principles of equity.

THE LAW INVOLVED

It is the plain import of both the Gellman and the Torti decisions that it is the character and purpose of the sales there involved rather than the type of seller (e. g., whether he was a wholesaler, a manufacturer, or a retailer) which rendered them not subject to Federal retail excise tax.

Referring to section 2400 of the Internal Revenue Code, the Court in Gellman stated:

"The decisive issue in this case is whether the sales described in categories (1) to (4), inclusive, were sales at retail within the meaning of the applicable excise tax statutes."

The trial court had interpreted the phrase "sold at retail" as being the equivalent of "sale for a purpose other than resale." The circuit court held this to be reversible error stating that the said interpretation was "opposed to the interpretation given 'retail' by the Supreme Court in the Rolland Co. case, and is not supported by any standard dictionary definition of the term or by any other persuasive authority", 235 F. (2d) 87, 91).

Nowhere in reaching this conclusion does the Court indicate any concern with who made the sales in question—whether he was a retailer or a wholesaler. On the contrary, after calling attention to the fact that the Government in its brief concedes that the sales to customers in category (3) supra, (involving purchases to be given as premiums, as incentive awards to employes and as awards to employees and preferred customers) are not retail sales, the Court states:

"There are apparently no specific regulations pertaining to the transfer of merchandise by concessionaires, punchboard operators, and the like. We seriously doubt whether the prizes awarded in connection with games of skill or chance at fairs, carnivals, clubs, and bars are transferred with a donative or charitable intent. A charge is usually made for the privilege of playing the games and the prizes are used to induce the players to spend their money. It seems clear that the prizes are purchased and used for business purposes. The offering of door prizes is also usually motivated by business purposes, such as increasing the admissions at the door, or increasing the number of participants in any enterprise that may be in progress. *We can see no substantial distinction between Category (3) customers and Categories (1), (2), and (4) customers so far as the use made of the merchandise purchased from the taxpayers is concerned*" (235 F. (2d) 87, 92). [Italic supplied.]

It is on this basis—on the basis of the motives of the customer in making his purchase, the use to which he puts the purchased merchandise—that the Court, in Gellman, predicated its decision that the sales in question were not subject to excise tax. The rationale in Torti was similar.

To sum up, it is plain that sales which are not "sales at retail" are not subject to the instant excise tax. It is further plain that Torti and Gellman held that sales of the type falling into the categories here under consideration, were, in fact, not "sales at retail." They were so held not because of the business level of the seller, but because of the motives of the customer in making his purchase and the use to which the the acquired goods was put. Hence, under Gellman and Torti, purchases so motivated and so used are not "sales at retail", and cannot be subjected to the excise tax on such sales—no matter who makes them.

THE DISCRIMINATION INVOLVED

Confinement of Gellman and Torti to wholesalers and manufacturers places the retailer under decided competitive disadvantage and would in all probability strip him of an important market.

For decades, retailers have been competing with wholesalers and manufacturers for "Gellman" and "Torti" type sales. The telegraphic ruling of May 20, above referred to, would effectively deprive them (i. e., retailers) of any possibility of continuing to compete for this market. It would say to concessionaires, industrial concerns, bazaars, churches, etc., "Avoid the retailer in buying your prizes. For 100 watches bought from him is a 'retail sale' and will cost you 10 percent more than the same watches bought from anyone else." In principle this is the same as telling the wholesaler he can make retail sales—i. e., to the ultimate consumer for his direct personal satisfaction—without excise tax.

The inequity involved herein is compounded by the character of the parties against whom it is perpetrated. From an economic point of view, they constitute generally speaking, the weakest element in the industry. The best available figures indicate that the average annual sales volume of jewelry stores is somewhere in the neighborhood of $60,000; and that more than 87 percent of all retail jewelry stores do an annual volume of less than $100,000. A recent survey indicated that the typical jewelry store had a net profit in 1956 of slightly over $3,200. Truly, this constitutes "small business" in the purest sense of the word. And yet here through an arbitrary distinction between them and their suppliers, they are being stripped of one of their substantial prospects for income, and those prospects are being delivered over to the larger stronger (although fewer in number) segments of the industry, thereby increasing the now existing disparity. It would seem that the inequity involved here needs no further elaboration.

NO VALID REASON HAS BEEN ADVANCED FOR THE DISCRIMINATION WHICH IS THE SUBJECT OF THIS STATEMENT

There have been discussions with the Internal Revenue Service concerning this matter. As a result, it is suspected that the only excuse for the instant discrimination is that the Service foresees difficulties in administration if retailers as well as wholesalers are given the benefit of the Gellman decision and of the revenue ruling of March 13, 1958, supra, recognizing same. One is tempted to become trite on this score—to propound such questions as whether this is a government of men or a government of laws. Since when, in the United States, have executive and administrative officials been able to say that in order to reduce possible administrative complications, the law as handed down by Congress or the courts will be applied to the benefit of one class of citizens and not to another? Certainly, such an attitude would constitute obvious abuse of discretion.

In this connection, it is noteworthy that it is not the custom of the Internal Revenue Service to apply the retail excise tax on the basis of who makes the sale. A transaction has always been a "retail sale" or not depending upon the character of the sale. If a wholesaler makes a sale which is properly definable as "retail," he is taxed. Conversely, if a retailer makes one which, under accepted decisions, is not so definable, he has not been taxed and should not be. A transaction which is intrinsically not a "sale at retail" cannot become such simply because it is made by A instead of B.

The retail jeweler has, for years, contended that the excise tax constituted an unfair and unwarranted burden upon his industry. Certainly, it should not now be so administered as to cause him special hardship—as to assure that its impact on him will be even more onerous than it is on other segments of the jewelry industry—as to make certain, by very virtue of inequitable imposition of the tax, that definitive and important markets in which he formerly participated will be handed over to others.

CONCLUSION

Under the law, as expressed and interpreted by the courts, on the basis of every principle of equity and fair play, in support of basic governmental policies regarding small business, the discrimination which is the subject of this statement should be corrected. It is respectfully urged that legislation making the principles of Gellman and Torti applicable to retailers as well as to wholesalers and manufacturers should be promptly promulgated.

STATEMENT OF RICHARD E. DALEY ON BEHALF OF THE CLUB MANAGERS ASSOCIATION OF AMERICA ON H. R. 7125

My name is Richard E. Daley. I am past president of the Club Managers Association of America, representing more than 1,700 managers of business, social, and country clubs in the United States.

As chairman of the association's governmental affairs committee, I have been asked to present to this committee our association's views on several important provisions of H. R. 7125 which will benefit hundreds of community clubs and thousands of taxpayers across the country. I shall mention these only briefly.

ASSESSMENTS FOR CAPITAL IMPROVEMENTS

Our association strongly supports the enactment of that portion of section 182 of H. R. 7125 exempting from club dues tax any assessment paid for the construction or reconstruction of any social, athletic, or sporting facility (or for the construction or reconstruction of any capital addition to, or the capital improvement of, any such facility).

The spiraling costs of capital improvements make it almost financially impossible for many small (and large) clubs to maintain their athletic facilities in satisfactory operating condition, and the 20 percent club dues tax on any assessment for construction or reconstruction of such facilities adds materially to these costs. An exemption of these assessments from the club dues tax would be of vital help to many of our clubs now trying to raise funds for necessary improvements to their physical facilities.

LIFE MEMBERSHIPS

Briefly, our association is pleased to note from the report of the Committee on Ways and Means (H. Rept. No. 481, 85th Cong., 1st sess.) that there is full agreement a change should be made in the annual tax on life memberships in social clubs. The present taxing system may result in a tax bearing no relationship to the amount paid for the life membership or the value of the perquisites. Many life memberships in clubs are owned by members who, by necessity, have become absent or nonresident members, never able to take an active part in the club. In many cases the dues tax on such memberships must be paid by the clubs themselves because of commitments made many years ago when the clubs were initially soliciting investment capital to begin operations.

Our association strongly endorses section 182 (a) of H. R. 7125, which provides that the annual tax on life memberships be equivalent to the tax on the annual dues and membership fees of the type of annual membership providing privileges most nearly like those of the life membership. For example, where a life member is nonresident, he should be required to pay only the club dues tax required of a regular nonresident member.

HONORARY MEMBERSHIPS

Revenue Ruling 55-198, Internal Revenue Bulletin 1955-14, 25, as amended in Internal Revenue Bulletin 1955-42, 28, has caused considerable concern and confusion among taxpayers. In this ruling, the Commissioner of Internal Revenue has now defined "life membership" in a club to include "an honorary member of a club who is entitled to the use of the facilities of the club for a period of indefinite duration."

The revenue ruling uses as example (d) "all members who have been active resident annual members of the club for a period of 40 years or more."

In Revenue Ruling 55-198, the Commissioner has misinterpreted the term "life membership" as it appears in section 4241 (a) (3). Originally, the term was meant to include those memberships which are granted for life as a result, for example, of a substantial initial contribution by the member, this initial contribution not being subject to the club dues tax. Section 4241 (a) (3) was intended to charge the club dues tax on that membership so long as the life member continued to use the club actively without paying any further dues on which the club dues tax would apply.

The Commissioner has now taken this term "life membership" and stretched it to include this unique situation where, after 40 years of contributions and

payments of club dues tax, a member is released from payment of any further dues. This is different from life memberships, because for the 40 years prior to such honorary membership, the member has paid both club dues and club dues tax.

Many clubs have provided for such honorary memberships after long and active participation by members, not only because of the honor, but also because many older members 75 or 80 years of age usually have very little occasion to use the club. It is also true that such members may no longer have the income to pay dues and tax. Under Revenue Ruling 55-198, it would be necessary in such situations to ask the member to withdraw from the club if he could not pay the club dues tax.

For example, in a social club where the dues would be $150 per year, the club dues tax would be $30 per year whether or not the honorary member ever attended the club. However, it is now understood the Internal Revenue Service will permit the club dues tax to apply to a lesser amount of dues established by club bylaws where it can be shown that the 40-year members use the club substantially less than active resident members.

The Internal Revenue Service has also recently amplified Revenue Ruling 55-198 by the publication of Revenue Ruling 58-188, Internal Revenue Bureau 1958-17, 23, which holds that a 20-year non-dues-paying membership given to a member who has reached 70 years of age and has been a member for 20 years is not a "life membership" within the meaning of section 4241. This is only a partial solution to the tax problem involved.

We therefore respectfully urge that the tax be based upon the actual amount of dues paid, as recommended in section 132 (a) of H. R. 7125, which provides in part that "No tax shall be payable under this paragraph on any life membership for which no charge is made to any person."

MINISTERIAL AND SPECIAL MEMBERSHIPS, AND HONORARY MEMBERSHIPS GRANTED THE WIDOWS OF MEMBERS

What has been said above regarding the inequity of the club dues tax on honorary memberships after 40 years of active membership also applies to the other classes of memberships listed as examples (b), (c), and (e) in Revenue Ruling 55-198. To tax such memberships as full active resident annual memberships is unfair and inequitable.

Our association recommends that where no club dues are assessed upon such honorary members, no club dues tax should be required to be paid.

DUES TAX ON LOCKER FEES

One nuisance tax which causes serious confusion and difficulty has been the so-called tax on locker fees announced by the Internal Revenue Service in Revenue Ruling 55-818, Internal Revenue Bureau 1955-21, 33.

In that ruling, the Internal Revenue Service held that charges for lockers for a period of more than 6 days came within the meaning of "dues" as defined in section 1712 (a) of the Internal Revenue Code of 1939 (now sec. 4242 of the 1954 Code). The assessment and collection of this de minimis type of tax has caused more administrative expense and loss of time on the part of club managers than almost any other tax. The revenue collections under this interpretation of the term "dues" are negligible.

The Internal Revenue Service has also ruled that not only are locker rentals subject to the tax, but the tax must also be paid on charges for cleaning of golf clubs. Since this charge is usually about $1.50 per month, the club managers are charged with a responsibility of collecting 30 cents club "dues" tax per month from only those members who ask for the cleaning service.

Our association recommends the elimination of this type of nuisance tax by a change in the Internal Revenue Service position noted above, or a legislative change in section 4242 to make it clear that "dues" refer to assessments or charges for social or athletic privileges or facilities, not "housekeeping" necessities.

REDUCTION OF THE 20-PERCENT CLUB DUES TAX

More importantly, however, we are seriously concerned with the continuation of the 20-percent club dues tax rate which long ago should have been reduced to

the 10-percent level which would have been in effect if the Excise Tax Reduction Act of 1954 [1] had been enacted as passed by the House of Representatives.

You will recall that prior to World War II the tax on club dues and initiation fees was 10 percent. Immediately after the outbreak of the war these taxes were increased to the 20-percent rate.[2] As club managers we were more than glad to cooperate in collecting as much increased revenue as possible for defense purposes, with the understanding these emergency increases would be eliminated upon the termination of hostilities.

Unfortunately, the 20-percent rate was not reduced after World War II, and it remained with us during the postwar years as well as the Korean emergency. Again, during the Korean hostilities, we clearly understood the need for additional revenues from all possible sources, and we were more than willing to assist in collecting the 20-percent tax.

The time has now come, however, when this "substantial inequality" (as a House subcommittee described it) should be removed. Like many other excise taxes which were increased as war measures and later reduced, the maximum rate of the club dues tax should not exceed 10 percent in peacetime. The growing importance of clubs in the community and civic life of our country has done away with the notion that the club dues tax is a tax on a "luxury." The widespread memberships in and activities of community and social clubs have made them an active and integral part of American family life for middle-class taxpayers.

The expenses (including Federal, State, and local direct and indirect taxes) of operating business and family clubs have constantly and substantially increased in recent years, and, in turn, the amount of club dues taxes paid to the Government has increased proportionately as the dues are raised to cover the additional costs. This growing spiral of costs and taxes can be slowed down considerably by a logical and reasonable reduction of the club dues tax to 10 percent.

Our association respectfully requests this committee to recommend that the club dues tax be lowered to 10 percent. The effective date of the amendment could be January 1, 1959, so that a loss of revenue to the Treasury, if any, would be postponed until 1959 and 1960.

By Dr. Anna L. Rose Hawkes, president, AAUW, Washington, D. C., and Dr. Elizabeth S. May, chairman, fellowship program committee, AAUW

The American Association of University Women, a nonprofit corporation, long ago recognized the importance of providing graduate scholarships to encourage gifted women to continue advanced study.

Two years ago the association published Investment in Creative Scholarship, 1890–1956, which tells the story of the fellowship program of the association. "Funds for fellowship of the American Association of University Women have come almost entirely from women of modest means—the members of the association," says the author, Ruth Wilson Tryon. Since 1890 the fund-raising program has been organized through chairmen in the 48 States and 1,398 branches. Support has been nationwide. Annual contributions have increased each year. The association has given more than $2 million in awards to enable some 1,200 women to carry on graduate and postgraduate study. "The story of how the money to support such a program was raised is not only impressive as a chapter in the history of the association," says Mrs. Tryon, "it is significant in the annals of American women as a story of practical idealism and organizational achievement."

Currently the funds available for fellowships and grants for advanced study exceed $200,000 per year. It is estimated that between one-fourth and one-third of this amount is raised by the sale of tickets on which admission taxes

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[1] See General Statement in House Report No. 1807, 83d Cong., 2d sess., which states: "Those excise tax rates which are now above 10 percent are reduced to 10 percent under this bill. The committee believes that this reduction will stimulate business and employment, not only in those industries directly affected by these taxes, but also in other industries, since consumers will pay less for many of these taxed items and have more money available for other purchases. Some of these taxes enter directly into business costs and a reduction of such costs is desirable. Furthermore, this change provides a more equitable tax system by leveling down those rates which are now excessively high and thus removes discrimination."

[2] Sec. 543 (a) of the Revenue Act of 1941 increased the tax from 10 percent to 11 percent. Sec. 302 of the Revenue Act of 1943 increased the tax from 11 percent to 20 percent as a "war tax rate."

are charged for such as theater benefits, Gilbert and Sullivan operas, pantomimes, Punch and Judy shows, and the like. In many communities the members of AAUW are responsible for bringing valuable educational events which would otherwise not be available.

These awards have contributed to the careers of many distinguished women—teachers in colleges and universities, research scientists, women in government posts, in independent writing, and other professional work.

The fellows have carried on their work in the widest range of subjects, from cancer to 17th century Spanish drama; from electromagnetic waves in the ionosphere to primitive peoples in South Africa and economic developments in Japan; from ancient pottery of the Near East to contemporary poetry and the newest elementary particles of nuclear physics.

A study made 8 years ago of 404 fellows showed that three-fourths of them had served on the staffs of institutions of higher education. The list included a college president, 7 academic deans, and 97 full professors; 48 had been chairmen of their departments. And many of the 404 were recent fellows who had yet to reach the peaks of their careers.

Thus the fellowships are helping and will help to meet the shortage of trained personnel, helping to prepare teachers who are masters of their subjects and researchers who are equipped to extend the boundaries of knowledge.

Private organizations which have long engaged in substantial educational work can be encouraged by constructive tax policy. Useful work by existing well-established organizations will encourage other organizations to develop similar activities.

Great emphasis has been placed in recent congressional hearings on education and national defense, particularly, the importance of offering scholarships and fellowships to well-qualified students to enable them to prepare themselves for professional work and to strengthen the educational system of the country. Encouragement to private organizations which have long been raising funds for scholarships and fellowships will give them leverage and strengthen an important public purpose.

Benefits for the fellowship fund, for a time, were exempt from admissions taxes under section 4233 of the Internal Revenue Code. In 1956, however, the Internal Revenue Service reviewed exemptions under this section and reversed this ruling, so that these activities are no longer tax exempt. The association attempted to prevail upon the Service to restore this exemption. It was not until after H. R. 7125 had passed the House that we were advised to seek congressional action. In view of the association's tax-exempt status and the status of the fellowship fund, the AAUW believes that the fellowship fund should again have tax-exempt status as provided by Senator Flanders' amendment.

It is estimated that the adoption of Senator Flanders' amendment to H. R. 7125, as far as the association is concerned, would cost the Government less than $5,000 a year. On the other hand, it would be a great incentive to the members of the association and encourage them to raise even larger amounts if this additional sum was available for their fellowship program. It would stimulate attendance at these benefit performances on the part of the public when they realize that the admission ticket which they purchased was tax free. The exemption is limited so as to apply only to performances the proceeds of which inure exclusively to a foundation, trust, or organization described in section 501 (c) (3) which is exempt from taxes under section 501 (a) of the Internal Revenue Code.

NEW ENGLAND TELEPHONE & TELEGRAPH CO.,
Boston, Mass., July 16, 1958.

HON. HARRY FLOOD BYRD,
Chairman, Senate Committee on Finance,
Washington, D. C.

DEAR SENATOR BYRD: Attached here to is a statement submitted on behalf of the telephone companies of the Bell System which it is respectfully requested be made a part of the record in the hearings which are being held currently before your committee on H. R. 7125, the Excise Tax Technical Changes Act of 1957.

We are gratified to note that section 133 of H. R. 7125 incorporates a number of the proposals presented over the past several years by the Bell System to the Subcommittee on Excise Taxes of the Committee on Ways and Means of the

House of Representatives and to representatives of the Joint Committee on Internal Revenue Taxation and the Treasury Department. In its present form the bill contains many improvements and its enactment will materially facilitate the administration of the communications excise-tax law. Certain additional problem areas will remain, however, and if time is available for further work on the bill we should appreciate consideration of the suggestions contained in the attached statement.

Although we believe that section 133 of H. R. 7125 will materially facilitate the administration of the communications excise-tax law, we wish to emphasize that it has long been the position of the telephone industry that the Federal excise tax on communication services is discriminatory, that it constitutes an unjust burden on users of telephone services, and that it should be repealed. Our immediate concern, however, lies in the danger that it will become a permanent part of the tax structure and no longer be considered a temporary measure resulting from emergency conditions. We therefore urge that a section be added to H. R. 7125 providing a termination date for this tax.

Sincerely yours,

R. V. JONES,
Vice President and Comptroller.

STATEMENT FILED BY ROBERT V. JONES, VICE PRESIDENT AND COMPTROLLER, NEW ENGLAND TELEPHONE & TELEGRAPH CO., WITH RECOMMENDATIONS OF THE BELL TELEPHONE SYSTEM FOR MODIFICATION OF THE EXCISE TAX TECHNICAL CHANGES ACT OF 1957 (H. R. 7125).

1. Clarification by statute of the status, rights, and duties of persons charged with the collection of excise taxes

Excise taxes on services and facilities, of which the communications tax is one, differ from most other excises because the person furnishing the service or facility is not the taxpayer. He acts as a collecting agent for the Government. His duty to collect the taxes, make returns and pay the taxes over to the Government is clear. Penalties are provided for failure to do so. This duty must be performed in situations of uncertainty due to reversed or modified rulings and where regulations or rulings are being challenged. Taxpayers frequently differ with regulations or rulings setting forth the classification of the services furnished them. In such areas of controversy the collecting agent is in the position of having to perform his functions as best he may without specific statutory guidance or protection.

A method of providing at least partial protection to collecting agents could be adopted by adding a new section to subchapter E of chapter 33 of the Internal Revenue Code of 1954, which might be entitled "Liability and Indemnification." This proposed method is suggested by section 3102 (b) of the Internal Revenue Code of 1954—Chapter 21: Federal Insurance Contributions Act—and section 3403—Chapter 24: Collection of Income Tax at Source on Wages. These two sections, taken together, contain language concerning the indemnification and liability of employers in respect of social security and income taxes deducted, withheld, and paid.

Such a new section should contain appropriate statutory language to the effect that the person receiving any payment for services or facilities on which a tax is imposed upon the payor thereof and who makes a collection of the tax from the person making such payment, and pays it over to the Government, shall not be liable to any person by reason of having made such collection, and shall be indemnified against the claims and demands of any person based upon the ground of such collection having been made.

2. Establishment of a statutory period of limitations on credits and refunds of excise taxes where a collecting agency is involved

Considerable uncertainty has existed in recent years regarding the period for which a collecting agency may give credit or refund of excise taxes.

For many years the Bell System used a rule, supported by Internal Revenue Service rulings, that credit or refund could be made (and subsequently claimed) for taxes billed within a 4-year period ending with the date upon which the customer claimed the credit or refund.

In 1955, it was learned that the Revenue Service had determined that the date upon which the collection agency filed its return was controlling. Thus, telephone companies could claim credit only for taxes included in returns filed

within the 4-year period next preceding the filing date of the return in which the credits are claimed. (Revenue Ruling 55-488, C. B. 1955-2, 652.)

As a result of this change in position, refund procedures have been considerably complicated. The personnel who handle the customer contract are not in possession of the information required to determine the period for which refunds or credits are allowable since the returns are prepared and filed from a central point. Computation of refunds and explanation of such computations to the satisfaction of customers thus present difficult problems.

This ruling, which was made under section 3813 of the 1939 code, has also been applied under section 6511 of the 1954 code. Such an interpretation implies that the collecting agency is the taxpayer, which would be directly contrary to section 3467 of the 1939 code and sections 4251 and 4291 of the 1954 code. However, an additional uncertainty has arisen recently because of the Court of Claims decision in *Armor* v. *U. S.* While we have not studied this holding and its implications fully, it seems clear that the court does not agree with the Revenue Service's interpretation. Further, we understand that the position taken by the court was that advocated by the Government attorneys.

Telephone companies are currently faced with the problem of determining the applicable period of limitations under the 1954 code. It should be pointed out that the code is not at all clear as to what such period should be where a collecting agency is involved. The 1939 code provided a specific period of limitations for excise taxes, whereas the 1954 code establishes a uniform period of limitations for all internal revenue taxes in section 6511 (a), which provides in part as follows:

"Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was required to be filed (determined without regard to any extension of time) or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid."

Section 3467 of the 1939 code and section 4251 of the 1954 code provide that the excise taxes "shall be paid by the person paying for the services or facilities."

The collecting agency under both codes must collect the tax from the person making payment for communication service or facilities (1939 code, sec. 3467 (b); 1954 code, sec. 4291). Section 4291, in describing the tax which must be so collected, refers to the tax as "imposed upon the payor" or "any payment for facilities or services."

Section 6511 (a) of the 1954 code would seem to impose a 2-year limitation on claims filed by a taxpayer (customer). It would also seem to provide a 2-year limitation on the making of refunds by a collecting agency. To hold the 3-year limitation applicable would require a construction either that the collecting agency is the taxpayer, which would be directly contrary to sections 4251 and 4291 of the code, or that the return made by the collecting agency is a return for each and every taxpayer (customer) whose tax payments are included in the return.

These problems can be eliminated if the appropriate sections of the 1954 code are amended to provide:

1. That a collecting agency may give credit for, or make refunds of, excise taxes billed to, or paid by, the taxpayer (customer) within the year period next preceding the date of presentation of his claim to such collecting agency, and the collecting agency should be permitted to claim the full amount of such refund or credit on a timely return subsequently filed.
2. That a collecting agency be required to collect tax on charges for services and facilities billed during a period of years dating back from the date the tax is found to be payable.

The code also should provide that where a refund of amounts paid for communication services and facilities is made by a public utility pursuant to a final order of a regulatory authority, the amount of excise tax involved, together with any interest thereon may be refunded to customers pursuant to such order, and may be taken as a credit on a subsequent timely return without regard to any statutory period of limitation upon the refunding or crediting of any such internal revenue tax.

On occasion, a regulatory authority will make a determination under which a public utility is required to refund to its customers certain charges for services

which were collected during preceding periods, including Federal excise taxes which were imposed with respect to such charges. The period covered by such refund orders may well extend beyond the statutory period of limitation for which refunds of taxes may be made and credits therefor claimed on excise-tax returns. While, under a practice which has hitherto been accepted, protective refund claims may be filed by the utility in behalf of itself and its customers to save the utility and its customers from loss in this respect, additional work and expense is incurred by both the Government and the public utility where reimbursement for refunds relating to such prior periods is delayed until the protective refund claims have been processed and allowed by the Internal Revenue Service. No tax revenue losses would be involved if the suggested modification were made.

3. Elimination of the "catchall" provision in the definition in H. R. 7125 of "wire mileage service"

The definition of "wire mileage service" as contained in H. R. 7125 is such that it would be difficult to apply. This is because an effort has apparently been made to designate "wire mileage service" a catchall for services not covered by other subsections. Experience has shown that such definitions lead to inconsistent and erroneous interpretations. A major area for controversy in this particular case arises in connection with application of exemptions to services furnished customers who are exempt from tax on wire mileage service but not general or toll services. It is suggested that section 4252 (c) be redrafted substantially as follows:

"(c) WIRE MILEAGE SERVICE.—For purposes of this subchapter, the term 'wire mileage service' means

[(1) any radio or telephone service, and]

[(2) any other wire or radio circuit service]

the furnishing of wire or radio circuits of whatever nature not included in any other subsection of this section, except that such term does not include services *or facilities* used exclusively in furnishing a wire and equipment service."

4. Amplification of the definition in H. R. 7125 of "wire and equipment service"

Wire and equipment services are primarily furnished by firms who lease, in whole or in part, circuits and facilities from communications common carriers which they use in rendering such services, and tax at the wire and equipment service rate on the entire charge for the service is collected by such firms. However, a problem arises when, by interpretation, circuits and facilities furnished by a communications common carrier, not used by the lessee to furnish a wire and equipment service, are held to be in the wire and equipment service category solely because of the use which is made of such circuits and facilities by the lessee.

In our proposal much of the language used in the present statutory definition of wire and equipment service has been retained. However, language has been added to make it clear that the tax is on the service and not upon the components thereof such as wire, wire mileage, and equipment. In addition, provisions have been added the purpose of which, as is apparent from their context, is to delineate clearly the wire and equipment service category and avoid confusion between that category and the wire mileage category.

The following wording, we believe, supplies adequate definition:

"(f) WIRE AND EQUIPMENT SERVICE.—For purposes of this subchapter, the term 'wire and equipment service' includes stock quotation and information services, burglar alarm or fire alarm service, and all other similar services (whether or not oral transmission is involved). *The tax shall be computed on the total amount paid for the service, without regard to the components, such as wire, wire mileage and equipment, utilized in rendering such service. Wire and equipment service, as defined herein, furnished by a communications common carrier shall be taxed as such; provided, however, that the term 'wire and equipment service' shall not be construed to include any wire mileage which is included in paragraph (c), and provided further, that wire mileage and related facilities supplied to a lessee by a communications common carrier shall not be deemed to constitute wire and equipment service furnished by a communications common carrier solely because of the use which is made of such wire mileage and related facilities by such lessee.* Such term does not include teletypewriter exchange service."

5. Clarification of the status of extensions connected to a private branch exchange

It is suggested that section 4252 (a) (1) of H. R. 7125 be changed to read:

"(1) any private branch exchange (and any fixed or mobile telephone or radiotelephone station connected, directly or indirectly, with [such an] *a private branch* exchange), and".

This change is thought desirable because the words "such an exchange" could refer either to a private branch exchange or to a regular telephone exchange mentioned in section 4252 (a).

STATEMENT IN SUPPORT OF REDUCTION OF FEDERAL EXCISE TAX ON MANUFACTURED TOBACCO, SUBMITTED BY THE TOBACCO INSTITUTE, INC., WASHINGTON, D. C.

Manufacturers of smoking tobacco, chewing tobacco, twist, and snuff are rapidly finding themselves in an untenable position. Costs of raw material and other production expenses involved in the manufacture of these products have risen steadily. For example, the average price of burley tobacco, the principal ingredient, has increased from 22.2 cents per pound in the 1934–38 period to 60.8 cents per pound in 1957, or 171 percent.

On the other hand, consumption of these manufactured tobacco products has declined constantly as is shown by the fact that in the decade 1911–20 an average of 446 million pounds were manufactured. In 1957, production of these products had dropped to 179 million pounds—a decrease of almost 60 percent.

Approximately 3 million persons in farm families are engaged in the growing of tobacco and thousands of production workers earn their livelihood in the manufacture of tobacco products. In order to provide a healthy market for the growers of leaf tobacco and continued employment for the factory workers who process the raw leaf into usable products, such as smoking tobacco, chewing tobacco, twist, and snuff, it is evident that relief is necessary for the manufacturers.

The Congress can provide this relief by lowering the Federal excise tax on manufactured tobacco products from the present rate of 10 cents per pound to 4 cents per pound. This much-needed relief would affect the Federal revenue only to the extent of $10 million.

The Tobacco Institute, Inc., in behalf of the producers of smoking tobacco, chewing tobacco, twist, and snuff, respectfully urges the favorable consideration by the Senate Finance Committee and the Congress of this request.

STATEMENT IN SUPPORT OF AN AMENDMENT TO H. R. 7125 TO PROVIDE FOR MORE EQUITABLE TREATMENT OF MANUFACTURERS OF CIGARETTES AND OTHER TOBACCO PRODUCTS IN THE PAYMENT OF THE FEDERAL EXCISE TAXES

This statement is submitted in behalf of the Tobacco Institute, Inc., a nonprofit organization, comprising practically all the manufacturers of cigarettes and other tobacco products except cigars.

Excise taxes on tobacco products in the United States came into being about the middle of the 19th century, and manufacturers of the products were required to purchase and affix to the products stamps of appropriate denominations before the products were sold. Long afterwards, excise taxes were imposed on a variety of other products, made payable after their sale without the use of stamps and reported, usually quarterly, by the manufacturers to the Internal Revenue Service. This latter class of excises did not follow the pattern of the earlier tobacco products excise taxes requiring advance payments of the taxes. They were adjusted to more modern and efficient business procedures of tax accounting by return. The archaic stamp prepayment excise tax system on tobacco products long before the sale of the product still continues and gives rise to a discrimination against tobacco manufacturers. The prepayment system makes it necessary for the manufacturers to borrow funds or use their resources to purchase the required Federal tax stamps before the taxed merchandise is sold. The industry has in excess of $150 million tied up at all times because of such requirements.

By the Internal Revenue Code of 1954 Congress sought to end this discrimination against the tobacco manufacturers by provision in section 5703 (a), subchapter A, chapter 52, for the payment of tobacco excise taxes by return,

as other excise taxes are paid. To implement this changeover, the act gave the Secretary of the Treasury power to promulgate regulations to carry out the intent of Congress so expressed. To date, no such regulations have been promulgated by the Secretary, and thus the intent of the act to establish the return system for the tobacco industry has not been effected.

In December 1956, a memorandum was filed by the tobacco manufacturers with a subcommittee of the Committee on Ways and Means of the House of Representatives in support of a petition asking that the Congress direct the Secretary of the Treasury to carry out the intent of the Congress by permitting manufacturers of tobacco products to pay their Federal excise taxes in the same manner as other payers of excise taxes.

In response to the petition, H. R. 7125, which is now under consideration by your committee, would revise section 5703 (b) in part as follows:

"* * * the Secretary or his delegate shall, by regulations, prescribe the period or event for which such return shall be made, the information to be furnished on such return, the time for making such return, and the time for payment of such taxes; except that he shall institute for manufacturers of tobacco products a return system with a prescribed period of not less than 7 days. The first such period shall begin not later than August 4, 1958 * * *."

The general practice has long been to defer manufacturers' excise tax payments until after sale of the product and payment by the customer absorbing the tax. The 7-day provision of H. R. 7125 does not bring the tobacco excise tax payments in conformity with this general practice. Despite protracted hearings on this matter by appropriate congressional committees, no good reason has ever been advanced why the delayed payments procedures generally enforced in the case of other important Federal excise taxes should not be made applicable to tobacco excise taxes as well.

We respectfully submit that the bill under consideration by your committee, H. R. 7125, should accordingly be amended to provide for a return system of payment with prescribed periods for payment of not less than 1 month after the tax accruing the previous month, making unnecessary in such case the use of stamps. This would cause recurring savings of between 3 and 5 million dollars annually to the Government, as represented by the cost of printing, shipping, storing, handling, selling, and accounting for such stamps.

This could be accomplished by amending H. R. 7125 as follows:

In section 5703 (b), page 381, lines 11–15, strike out "except that he shall institute for manufacturers of tobacco products a return system with a prescribed period of not less than 7 days. The first such period shall begin not later than August 4, 1958" and insert "except that he shall institute for manufacturers of tobacco products a return system with a prescribed period of not less than one month, with the payment of the tax to be required no sooner than the last day of the month succeeding the period covered by the return. The first such period shall being not later than September 1, 1958."

In section 5703 (c), page 382, lines 4–6, strike out "If the Secretary or his delegate shall by regulation provide for the payment of tax by return and" and insert "If the Secretary or his delegate shall, in the regulations providing for the payment of tax by return * * *".

This does not represent a request for tax reduction—all that is involved is a 1-month nonrecurring tax lag, not a tax loss, in order to put the tobacco industry on the same basis as most other major industries subject to excise taxes.

MANUFACTURING CHEMISTS' ASSOCIATION, INC.,
Washington, D. C., July 16, 1958.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: The industrial alcohol technical committee of the Manufacturing Chemists' Association, Inc., respectfully requests the Committee on Finance to give favorable consideration to H. R. 7125, the Excise Tax Technical Changes Act of 1957, and to incorporate in the bill the proposed corrections and changes to perfect the intent of the bill which we understand have been recommended to your committee by the Treasury Department.

This bill is of particular interest to the manufacturers of industrial alcohol since the provisions of title II amend the internal revenue laws relating to distilled spirits and make related changes in subtitle F (procedure and ad-

ministration). The changes recommended by the Treasury Department in this portion of the House bill are needed for technical clarification and perfection of the intent of a highly technical and voluminous regulatory statute. We have given detailed study to all of these recommended corrections and changes, a copy of which is attached,[1] and we strongly urge their adoption.

The Manufacturing Chemists' Association, a national chemical trade group with 169 member companies, represents more than 90 percent of the chemical productive capacity of the United States. Our industry committee making this request was formed at the suggestion of the Alcohol and Tobacco Tax Division of the Internal Revenue Service and is composed of representatives of all the principal producers of industrial ethyl alcohol. This committee has worked closely with the Alcohol and Tobacco Tax Division on drafting the recodification of the technical and administrative provisions of the Internal Revenue Code as they relate to alcohol. The Alcohol and Tobacco Tax Division has been most cooperative in this endeavor and has given industry adequate opportunity to present its views with respect to the provisions of interest to the industry. We feel that Alcohol and Tobacco Division has done a commendable job of modernizing the alcohol revenue law through H. R. 7125 to provide, in the words of Mr. Dwight E. Avis, Director of the Alcohol and Tobacco Tax Division of the Internal Revenue Service, "a more efficient system of regulatory control and to permit industry to take advantage of technological developments."

In the past two decades ethyl alcohol has become a major industrial chemical and is produced for the most part synthetically from petroleum gases. A smaller quantity is produced from grain and other agricultural products. Industrial alcohol producers and users need the modernized legislation to permit them to adopt new processes, to lower costs, and to improve production techniques in this growing industry.

Our industry believes that the Treasury Department's recommended amendments to H. R. 7125, and the bill amended as proposed, are necessary to permit the issuance of modernized industrial alcohol regulations, and we accordingly urge that H. R 7125 and the proposed Treasury Department amendments be approved by the Committee on Finance and by the Senate.

Respectfully submitted.

M. M. ROSSON,
Chairman, Industrial Alcohol Technical Committee.

DEERE & Co.,
Moline, Ill., July 15, 1958.

Re exemption of spare parts for farm equipment, section III of H. R. 7125.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance, United States Senate,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: It has long been recognized that the excise tax on automobile parts and accessories does not apply to the sale of parts to be used in the manufacture of farm equipment. However, the Treasury Department has taken the position that the excise tax on automobile parts and accessories does apply to the sale of spare parts and accessories for use on farm equipment, if the parts and accessories are suitable for use on or in connection with automobiles or trucks, even though not primarily adapted for such use.

There is, of course, the same justification for exempting spare parts for the repair of farm equipment as there is for exempting the same parts when used in the manufacture of new farm equipment. Furthermore, Congress actually attempted to provide the same treatment in 1951. In the Revenue Act of 1951 Congress authorized a credit or refund of the tax in the case of parts "used or resold for use as repair or replacement parts or accessories for farm equipment." This provision is contained in section 6416 (b) (2) (F) of the Internal Revenue Code of 1954.

Unfortunately, the procedure provided for administration of the credit or refund provision now contained in the law has been so complex as to be completely unworkable. There are many thousands of retail farm-equipment dealers. Each year the average dealer makes thousands of separate sales of repair parts—both of parts which are initially taxable and of those which are not. The

[1] The recommendation of the Treasury Department appears in the formal report inserted in the record by the chairman at the opening of the hearing.

different farm-equipment repair parts (taxable and nontaxable) used on each brand of farm equipment number in the tens of thousands.

Since the spare-parts tax is a manufacturer's tax, the retail dealer does not know whether or not a particular farm-equipment spare part was initially taxable in the hands of the manufacturer. It would be a tremendous burden if retail farm-equipment dealers were to be required, on each sale of a farm-equipment part, first to ascertain whether the part was initially taxable or nontaxable, and, if taxable, to make a written record of the sale, and finally to assemble all the records of such sales and transmit them periodically through trade channels back to the parts manufacturer. Furthermore, if the retail dealer handles only farm equipment, so that all or substantially all of his sales of spare parts are for use on farm equipment, as is generally the case, this burdensome refund procedure would be completely unnecessary and pointless.

The manufacturer's price on the average taxable farm-equipment spare part is substantially less than $1. The tax is, therefore, only a few cents. The tax saving is obviously not adequate for the cost of clerical labor which would be incurred in complying with the burdensome refund procedure which has been provided under section 6416 (b) (2) (F), the present credit or refund provision. This is not to speak of the administrative cost which would be imposed on the Internal Revenue Service if refunds were claimed under this provision and if the Service actually undertook to examine and audit the immense volume of certificates which would have to be filed pursuant to its procedures.

As a matter of fact, so far as we have been able to determine, no refunds have been made under the terms of the credit or refund provision since its enactment in 1951.

The need for a realistic and workable exemption of farm equipment spare parts and accessories has been recognized by the Committee on Ways and Means and by the House of Representatives. Such an exemption is contained in section 111 of H. R. 7125, the excise-tax technical-changes bill, which is now before the Committee on Finance. Section 111 makes effective the relief from tax intended by present law by permitting the sale of parts and accessories on a tax-free basis when they are to be used or resold for use as repair or replacement parts for farm equipment.

We heartily endorse section 111 of H. R. 7125 and urge that it be approved by the Senate Committee on Finance and enacted into law.

The Committee on Ways and Means has estimated that enactment of section 111 will result in only a negligible revenue loss. We concur in this estimate. Furthermore, it should be noted that the tax now being collected on parts and accessories for farm equipment is being kept by the Government merely because of the unworkable nature of the credit and refund machinery provided under the 1951 law.

Please include this letter in the printed record of the July 15 and 16 hearings by the Committee on Finance on H. R. 7125.

Respectfully submitted.

WALTER F. KAUTZ,
Director, Tax Department.

HOLLIN HILLS COMMUNITY ASSOCIATION,
Fairfax County, Va., July 15, 1958.

Re section 132 of H. R. 7125, exemption of community swimming pools.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SIR: On behalf of the above-named community association, I am writing with reference to H. R. 7125, the excise tax technical changes bill, which is presently before your committee. As owner of a community-type swimming pool, we are interested in the provisions which would exempt such swimming pools from the excise tax on admissions and club dues.

I wish to call your attention to the provisions of section 132 (b) (3) of that bill which might have unintended effects on organizations such as ours. That section provides that dues paid to a club providing swimming facilities for its members shall be exempt from excise tax if "such organization is not controlled by, or under common control with, any other organization."

It is believed that the intent of this language is correctly stated on page 41 of House Report No. 481 which accompanied the bill in the House:

"Furthermore, the exemption should not go to facilities which are part of, or connected with, other organizations. If the latter condition were not imposed, it would be possible to separate the swimming facilities of, say, a country club, which it is intended should continue to be taxable, and obtain tax exemption on such part of the overall total of the country club facilities."

However, the language appears to go further than necessary to prevent this evasion. It is respectfully suggested that the proposed section 4243 (c) (4) would be fully as effective if it were amended to read as follows:

"(4) such organization is not controlled by, or under common control with, any other organization the dues or initiation fees of which would be subject to the tax imposed by section 4241 (a)."

The reason for our interest in this is as follows: Our association is a community association with numerous activities in addition to the ownership of a swimming pool. These activities include maintenance of park areas, installation of street signs, control of improvements by homeowners in the area, representation of our subdivision in county matters, etc. We currently impose dues on an annual per-family basis to support these purposes. These dues are clearly not subject to dues tax. However, we were informed by counsel that if we operated a swimming pool and charged annual dues for its use, even if the swimming pool dues were billed separately and on an optional basis, the Internal Revenue Service might contend that our entire dues were subject to excise tax. To avoid this problem our community swimming pool is operated by a separate membership corporation. This separate corporation has a slightly different membership than the community association, but since 80 percent of the members are the same, it might be held under the present language of section 132 (b) (3) to be "under common control with" the community association and thus not eligible for dues exemption. Because of the difference in membership which has grown up, it would be quite difficult for us to consolidate the two corporations at this time.

In view of the tax reasons which compelled us to set up separate organizations, it seems quite possible that there would be other community groups with the same problem. It is respectfully submitted that these problems could be solved by the amendment suggested above which would bring the language of the bill into accord with the intent of the Committee on Ways and Means as expressed in the House report.

I hope very much that this point can receive favorable consideration.

Please insert this letter in the printed record of the Finance Committee hearings on H. R. 7125.

Respectfully submitted.

EDMUND BRUNNER, *President.*

STATEMENT OF EVAN HOWELL, ATTORNEY FOR THE MANUFACTURERS OF STENCIL-CUTTING MACHINES USED IN MARKING FREIGHT SHIPMENTS

Mr. Chairman and members of the committee, my name is Evan Howell. I am attorney for Marsh Stencil Machine Co., Belleville, Ill., Ideal Stencil Machine Co., Belleville, Ill., and Diagraph-Bradley Stencil Machine Co., of Herrin, Ill. I am appearing for them in support of an amendment offered by Senator Dirksen, of Illinois, to H. R. 7125.

The attached petition, which has previously been placed in the hands of every member of this committee, sets forth the position of the stencil machine companies and points up the merit of their claim to be included in the provisions of this act "to make technical changes in the Federal excise tax laws, and for other purposes."

This petition has previously been considered by the Joint Committee on Internal Revenue Taxation and by letter dated April 18, 1958, Mr. Colin F. Stam, Chief of Staff, advised Hon. Aime J. Forand that "* * * the petition * * * has general merit * * *." On May 13, 1958, Mr. Forand introduced H. R. 12481 in the exact form as the amendment now pending before your committee, introduced by Senator Dirksen.

I respectfully submit that the amendment is necessary to express the real intention of Congress, that it is germane in every sense of the word, and that, upon the basis of its universal acceptance by the Members of Congress in both bodies, it should be adopted by the committee in executive session.

PETITIONS OF STENCIL-MACHINE MANUFACTURERS FOR ELIMINATION OF EXCISE TAX ON THEIR PRODUCT

In Behalf of Diagraph-Bradley Stencil Machine Co., Herrin, Ill., Ideal Stencil Machine Co., Belleville, Ill., Marsh Stencil Machine Co., Belleville, Ill. (May 14, 1958)

Tax referred to: Internal Revenue Code of 1954; Subchapter E, other items; Part I, Business Machines; section 4101, Imposition of tax.

This section of the code originally appeared as section 3040 (a) (6) Business and Store Machines (Revenue Act of 1941) which included a number of business and store machines including cash registers and stencil-cutting machines. Under the Internal Revenue Code of 1954, section 4101 included stencil-cutting machines and a new section 4102 was added exempting cash registers.

Tax is discriminatory

The stencil-cutting machine referred to in the law is actually a typewriter used for cutting mimeograph stencils for office use.

The stencil machines manufactured by the three petitioners cut stencils in heavy carboard, sizes ranging from ¼, 7/10, ½, ¾, ⅞, 1, and up to 1⅝ inches high for factory use.

Thus in marking large freight shipments the machines made by Diagraph, Ideal, and Marsh should not be included in the category of "Business and store machines" for the reason that they are used in the factory and shipping department along with scales, trucks, tape sealing machines and other material handling equipment which are not subject to excise tax.

Tax is hardship on three small companies

The margin on stencil machines is so small that the amount of the tax might mean the difference between profit and loss to the manufacturer in normal years. Stencil machines must compete with other forms of marking such as tags, labels, crayons, etc., on which there is no excise tax.

In the 11-year period 1930–40 only 800 machines per year were sold by the above 3 firms. During the war years 1941–45 all stencil machines went into the war effort. Sales at the present time are less than 2,000 machines per year.

Amount of tax is insignificant

Two thousand units at an average tax of $15 per unit would amount to only $30,000 per year, which represents an insignificant amount to the Treasury.

Questions of doubt as to applicability of tax

When the tax became effective the three stencil-machine manufacturers protested to the Commissioner of Internal Revenue that their machines were not covered by the langunge contained in section 3040 (a) (6) of the Revenue Act of 1941.

Certain individuals in the Miscellaneous Tax Unit of the Treasury Department were of the opinion that the shipping-room-type of stencil machine made by Diagraph, Ideal, and Marsh were not taxable.

However, the Commissioner as a matter of policy concluded to follow the broad wording of the statute, and the three stencil machine manufacturers began paying the excise tax.

War production rule upheld petitioners position re classification

The War Production Board on August 11, 1942, ruled "stencil cutting machines of the type made by you are not included in item (2). Your stencil machine is not classed as office machinery and jurisdiction over the manufacture and distribution of such machines lies with the Consumers' Durable Goods Branch of the War Production Board." (Copy of letter below.)[1]

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[1] See the following letter:

WAR PRODUCTION BOARD,
Washington, D. C., August 11, 1942.

MARSH STENCIL MACHINE CO.,
Belleville, Ill.

GENTLEMEN: This is in answer to your letters regarding the restrictions imposed by general limitation order L–54–c on the production and distribution of the stencil-cutting machine which you manufacture.

Stencil-cutting machines of the type made by you are not included in item (2), list B, of order L–54–c. Your stencil machine is not classed as office machinery and jurisdiction over the manufacture and distribution of such machines lies with the Consumers' Durable Goods Branch of the War Production Board. You should refer any further inquiries to that Branch for consideration.

Very truly yours,

N. G. BURLEIGH,
Chief, Services Branch.

Reason for no contest in 1941

The three stencil-machine manufacturers did not protest the inclusion of their product as a business and store machine at the time the act of 1941 became effective because most of their machines were going into the war effort, exempt from tax and quite justifiably they expected the tax to be removed at the end of the war. Up until this time no determined effort has been made to call the attention of Congress to the fact that they were erroneously included. Since these companies are all small, it is imperative that they now ask Congress for remedial relief.

Simple amendment would correct injustice and clarify intention of Congress

Section 4102 should be amended to read as follows:

"SEC. 4102. EXEMPTIONS.

"No tax shall be imposed under section 4191 on the sale of cash registers of the type used in registering over-the-counter retail sales, *or on the sale of stencil-cutting machines of the type used in shipping departments in making cutout stencils for marking freight shipments.*"

See H. R. 12481 by Mr. Forand introduced May 13, 1958.

AMERICAN ASSOCIATION OF STATE HIGHWAY OFFICIALS,
Columbia, S. C., July 15, 1958.

Hon. HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: My name is Claude R. McMillan, chief highway commissioner of the State of South Carolina. I have the honor of being the president of the American Association of State Highway Officials and as such I am speaking for the State highway departments in this statement.

I regret that I am unable to appear personally before your committee as it holds its hearings on H. R. 7125, but time and the workload of keeping the big road program moving will not permit it at this time.

Our major interest in H. R. 7125 centers in the Bible amendment which is subparagraph B of section 4362 of subchapter C on conveyances which reads as follows and which we support:

"Conveyances by or to the State or local government: The tax imposed by section 4361 shall not apply to any deed, instrument, or writing to which a State or Territory or political subdivision thereof, or the District of Columbia is a party."

While the money involved in the interstate highway program is in the approximate figure of some $7 million, the real and valid objection to the documentary real estate stamp tax by the State highway departments lies in its adverse effect upon successful negotiations with property owners for the acquisition of property for needed highway rights-of-way at a reasonable cost.

It is the property owner who must buy and affix the documentary stamp at the rate of $1.10 per $1,000 of property value when title is transferred to the State.

All too often, after lengthy and otherwise successful and cordial negotiations with the property owners, the advice that he must buy $10, $20, or $30 of stamps, ends the negotiations and acquisition is completed in the courts under a condition of strained relations. Many times acquisition through the courts is not the most economical manner to acquire property.

One must keep in mind that in obtaining property for public highways the transaction is almost always with an "unwilling seller," which complicates the nuisance effect of the stamp-tax requirement.

In testifying before the House and Senate Public Works Committees, I have discussed this problem and we are happy that your committee is now giving consideration to our problem.

The State highway departments first recognized the problem in 1950 and the matter has been the subject of formal action and protest every year since that time.

The extent of property needed for the interstate highway program and the large number of property owners involved, which may reach as high as 2 million people, makes the problem extremely serious and dictates relief.

We respectfully request the repeal of the real estate documentary stamp requirement on the transfer of title of property taken for highway purposes by the enactment of the Bible amendment.

Sincerely,

O. R. McMILLAN, *President.*

BARTON DISTILLING CO.,
Bardstown, Ky., June 3, 1958.

In re: H. R. 7125.

Mrs. ELIZABETH SPRINGER,
Chief Clerk, Committee on Finance,
United States Senate, Washington, D. C.

DEAR MADAM: I am enclosing herewith the brief which you have suggested in your letter in lieu of personal appearance in connection with H. R. 7125. I am also enclosing herewith a copy of the letter containing the data proposal and a followup letter referring to the same suggestion so that you may have a complete file on the proposal and the brief.

Would you be so kind as to submit the enclosed brief and proposals to the proper party so that they will receive their careful consideration.

Your cooperation in this matter is very sincerely appreciated. Please advise when a definite date for the hearing has been set.

Most sincerely yours,

OSCAR GETZ, *President.*

DEAR SIR: I am addressing this letter to you in the hope that the accurate background knowledge it contains with reference to Federal distilled-spirits excise taxation will be of use to you when such taxation is again considered by Congress. My letter could have been sent to you earlier in the year, but I wished to avoid any inference of special pleading while 1957 tax legislation was being considered.

We of the distilled-spirits industry feel sincerely that present Federal distilled-spirits excise tax rates are too high, but this is, of course, a matter for the Congress to decide.

There are, however, two historical inaccuracies regarding liquor taxation which have gained general currency and which, I believe, should be corrected. One is that excise tax rates on sale of distilled spirits have slowly increased since the formation of the Republic. The other is that these rates have always gone up during war periods and remained up after cessation of hostilities.

The history of United States liquor taxation, 1791–1957, leads to contrary conclusions. Documents in the Oscar Getz Library of the Barton Museum of Whisky History at Bardstown, Ky., show that the following has been the pattern of taxation since 1791:

Jan. 25, 1791	9 cents to 25 cents a gallon according to proof.
May 8, 1792	7 cents to 18 cents a gallon according to proof.
July 1, 1802	All liquor excise taxes abolished.
Sept. 19, 1814	20 cents per proof gallon.
December 1817	All liquor excise taxes abolished.
1818–62	No liquor excise taxes.
Aug. 1, 1862	20 cents per proof gallon.
Mar. 7, 1864	60 cents per proof gallon.
July 1, 1864	$1.50 per proof gallon.
Jan. 1, 1865	$2 per proof gallon.
July 20, 1868	50 cents per proof gallon.
August 1872	70 cents per proof gallon.
Mar. 3, 1875	90 cents per proof gallon.
Aug. 27, 1894	$1.10 per proof gallon.
Jan. 16, 1920	National prohibition.
Jan. 12, 1934	$2 per proof gallon.
July 1, 1938	$2.25 per proof gallon.
July 1, 1940	$3 per proof gallon.
Oct. 1, 1941	$4 per proof gallon.
Nov. 1, 1942	$6 per proof gallon.
Apr. 1, 1944	$9 per proof gallon.
Nov. 1, 1951	$10.50 per proof gallon.
At present	$10.50 per proof gallon.

Far from rising steadily through the decades, our Federal distilled-spirits tax rates have gone up precipitately, beyond what had been traditional, only in recent years. Before that, for 147 years—during war periods and periods of economic crisis alike—the tax rate had remained in the narrow range of 50 cents to $2.25 per proof gallon. It will be noted that the tax was abolished after the War of 1812 and that it was reduced from a war high of $2 to a rate of only 50 cents several years after the end of the War Between the States.

These facts are offered solely as accurate background information which may well prove useful to you when Federal distilled-spirits tax rates are considered in the future.

I do have one suggestion to make, however. Regardless of whether or not the present $10.50 rate is completely justified, I believe it should be kept in mind that present distilled-spirits sales totals (which have increased moderately in the last 2 years) are possible only in a period of unparalleled national prosperity. Even in this prosperity, we of the industry feel that the tax rate, by pricing low-income consumers out of the market, has acted as a form of social prohibition and has brought about a dangerous amount of bootlegging.

My suggestion, however, deals not with this but with the very serious effects a sudden economic downturn would have on the industry. In such a contingency, sales would drop so sharply (in large part because of the present rate) that in a matter of a few months, the livelihoods of many thousands of distributor personnel, retailers, and distillery workers would be threatened.

Under present excise-tax legislation, as I understand it, the tax rate would remain in effect for a full year. In that period of time, with the tax rate "frozen" during a possible economic recession at an unrealistic level, the industry's employment status would be irreparably injured and thousands of small-business men would be forced out of business.

Would it not be possible, therefore, in writing the next tax bill (regardless of whether the tax rate itself is changed) to include a clause providing for quick executive action to lower the rate when and if, in the judgment of the President, this became necessary because of economic conditions?

Sincerely,

BARTON DISTILLING CO.,
OSCAR GETZ, President.

GETZ TAX PROPOSAL FURTHERED

Joseph Palester, Barton Distilling Co., Chicago, Ill.; Clark Gavin Associates, New York, N. Y.

Growing interest in the proposal of Oscar Getz, president of Barton Distilling Co., that Congress vest the President with power to lower the excise tax on distilled spirits in the event of an economic emergency, has led to an informal ruling on the conditions under which such tax action could be taken.

Mr. Getz had pointed out in an open letter to all members of the United States Senate and House of Representatives that under present law the excise-tax rate must remain in effect for a full year. In the event of even a moderate recession, he said, many retailers—the small-business men of the industry—would be ruined unless the tax could be lowered overnight. This could be avoided if the President were given emergency powers. Many Members of both Houses have said they will support the proposal.

Colin F. Stam, chief of staff of the Joint Committee on Internal Revenue Taxation, has now outlined, in a letter to Mr. Getz, the legal procedure which it would be necessary to follow in bringing about the needed reform.

"Under present law," he said, "the President is given authority to vary the tax rates in the field of tariffs and when dealing with foreign governments who tax American citizens. These laws are hedged about with sufficient criteria so that there would be no unlawful delegation of legislative authority by the Congress.

"I do not believe that merely stating that the President may lower a tax if he feels economic conditions warrant it would be a sufficient criteria to prevent such a measure from being an unlawful delegation of legislative authority.

"If the law provided that the President must find that certain relevant facts must exist before the rate may be lowered or raised, then the law would not violate the rule against unlawful delegation of authority."

Commenting on Mr. Stam's analysis, Mr. Gets said:

"This clears the way for enactment of the proposal for emergency executive powers at the next session of Congress, in retailers' behalf. There is no legal barrier and an evident willingness in both Houses to act on the proposal. The industry should now certainly do everything in its power to see the proposal through."

BRIEF RE GETS PROPOSAL FOR FILING WITH SENATE COMMITTEE ON FINANCE AND WAYS AND MEANS COMMITTEE OF THE HOUSE OF REPRESENTATIVES

My name is Oscar Gets. I am president of Barton Distilling Co., Chicago, Ill., and Bardstown, Ky., and founder of the Barton Museum of Whiskey History at Bardstown.

I am very much concerned with one phase of pending excise-tax legislation in re distilled spirits.

The press has reported President Eisenhower's request that Congress reenact the present $10.50-a-proof-gallon excise on sale of all distilled spirits. They have further reported the virtual certainty that Congress will comply with this request.

In this connection—and especially because of favorable prospects for reenactment of the $10.50 rate—I wish to urge, as forcefully as I can, that your committee consider very seriously a proposal I made some time ago that a "safety valve" be written into legislation applying to the distilled-spirits excise, in behalf of many thousands of retailers in my industry, small-business men who are threatened with ruin if they must bear for a full year the burden of this high excise in a period of continuing and possibly worsening recession.

As excise legislation is written, the rates fixed must remain in effect for a full year. Members of Congress have told me that any attempt to alter rates through legislative action during such a year, after a tax bill has become law, would be burdensome and well nigh impossible.

Two years ago, at a time when the Nation was enjoying record prosperity but at which time I thought I discerned signs of a coming economic downturn, I memorialized each Member of Congress personally in behalf of distilled-spirits retailers. I suggested that Congress vest the President with power to lower the excise tax on distilled spirits in the event of an economic emergency. My open letter at that time, of which you received a copy, pointed out that under present excise-tax legislative procedures the excise tax rate must remain in effect for a full year. In the event of even a moderate recession, I warned, many of my industry's small-business men might well go bankrupt. This could be avoided if the President were given the emergency power I recommended. Many Members of both Houses said that they would support the proposal.

Colin F. Stam, chief of staff of the Joint Committee on Internal Revenue Taxation, kindly outlined to me the legal procedure which it would be necessary to follow in bringing about the needed reform.

"Under present law," he said, "the President is given authority to vary the tax rates in the field of tariffs and when dealing with foreign governments who tax American citizens. These laws are hedged about with sufficient criteria so that there would be no unlawful delegation of legislative authority by the Congress.

"I do not believe that merely stating that the President may lower a tax if he feels economic conditions warrant it would be a sufficient criteria to prevent such a measure from being an unlawful delegation of legislative authority.

"If the law provided that the President must find that certain relevant facts must exist before the rate may be lowered or raised, then the law would not violate the rule against unlawful delegation of authority."

The situation is now such in my industry that the emergency does exist. At the moment it affects only a small minority of retailers but the problem may very well become acute in a full-year period of continuation of the $10.50 excise.

I would like to sketch out briefly (but will elaborate if you wish) the circumstances peculiar to this industry which lead me to this serious conclusion:

1. The $10.50 excise represents (on any bottle size) well over half of the price paid by the consumer. This is not even remotely true in any other industry affected by excises.

2. In the States reporting direct sales at retail, apparent consumption of distilled spirits was down 4.9 percent in the January-through-March quarter. Most industry executives fear, objectively, that the situation will worsen in coming months.

3. Fewer than 30 percent of all retailers licensed to sell distilled spirits (there are roughly 195,000 on-and-off-premise retailers in the Nation) account for approximately 90 percent of sales volume. Contrary to a quite general assumption, liquor retailing is, for most retailers, not a very profitable occupation. On distilled-spirits sales, the average retailer will gross only about $25,000 annually. He is subject to the general inflationary cost rises common since the end of World War II and still continuing.

On a cost-profit basis, literally thousands of these retailers have been for several years on the borderline.

A 5-percent decrease in sales, if continued—and the possibility of an even sharper drop—will push them over the line.

This, I believe, would be unfair if caused primarily by an artificial element over which the retailer has no control—a high excise tax rate which, however justifiable in normal times, is discriminatory in a period of economic emergency.

May I renew my plea, therefore, that in the tax bill, when it is written, and assuming that the $10.50 rate will be reenacted, the "safety valve" powers I have recommended be included to prevent, if the emergency becomes more acute before July 1, of 1959, a catastrophic and completely unnecessary debacle among distilled-spirits retailers.

UNITED STATES CONFERENCE OF MAYORS,
Washington, D. C., May 27, 1958.

Mrs. ELIZABETH B. SPRINGER,
Clerk, Senate Committee on Finance,
Washington, D. C.

DEAR MRS. SPRINGER: The United States Conference of Mayors is very much interested in H. R. 7125, the excise tax technical changes bill, now pending before the Senate Committee on Finance. The conference hopes that the committee might act on this bill in the very near future so that it may be considered by the Senate during this session.

The conference is particularly interested in the enactment of section 4221, relating to tax-free sales of tires and tubes on original equipment, and section 4222, dealing with registration of State and local governments to eliminate use of tax-exemption certificates.

We hope that this letter might be placed in the files of the committee so that the members might know of our interest in this matter.

Very truly yours,

HARRY R. BETTERS, *Executive Director.*

THE WESTERN UNION TELEGRAPH CO.,
New York, N. Y., May 20, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR BYRD: The Western Union Telegraph Co. wishes to express its general accordance with section 133 of H. R. 7125 (p. 40) (85th Cong., 1st sess.) to the extent that the said section relates to the Federal excise taxes on the services which the telegraph company furnishes to the general public, namely, (1) telegraph, (2) wire mileage, and (3) wire and equipment.

The only qualification we make to the foregoing approval of the relevant section of H. R. 7125 is based on the conviction personally expressed by Western Union Vice President G. Stewart Paul on February 7, 1958, to the Committee on Ways and Means of the House of Representatives (hearings, 85th Cong., 2d sess., pt. 3, p. 3553) that it would be in the public interest to eliminate the volume-destroying excise tax on telegraph communications imposed by section 4251, et seq., of the 1954 Internal Revenue Code.

The Telegraph company recognizes that the definition of "general telephone service" contained in section 4252 (a), as amended by section 133 of H. R. 7125 (p. 41), will deny to the telegraph company, common carriers, radio broadcasters, telephone companies, and the public press an exemption which they now enjoy for certain telephone circuits which extend beyond a "local exchange area."

Despite this provision, the Western Union Telegraph Co. nevertheless respectfully submits that the amendments to the existing excise taxes on communication services proposed by H. R. 7125 should be enacted during the current session of the Congress.

Although the following statement may be repetitive of that submitted November 29, 1950 (see hearings before subcommittee of Committee on Ways and Means, House of Representatives, 84th Cong., 2d sess., on excise taxes, p. 1030), it is deemed expedient to submit to you a succinct exposition of the grounds underlying the telegraph company's general approval of H. R. 7125.

The inequities affecting the telegraph company which this bill would remove were the subject of thorough and painstaking consideration by representatives of the communication industries and the governmental departments interested in the subject matter.

In a formal presentation to the Ways and Means Committee on August 10, 1953 (hearings, 83d Cong., 1st sess., pt. 3, pp. 1021–1030), the Telegraph Co. urged—

(1) that the exemption accorded installation charges in connection with local telephone service be extended universally to all installation charges made in connection with transmission services, whether telephonic or telegraphic;

(2) that charges billed for salaries of operators (primarily private wire service) be exempt;

(3) that the exemption accorded in the existing law to common carriers utilizing the telephone companies' teletypewriter exchange service (TWX) be extended to telegraphic message service; and

(4) that charges for "Intrafax" (facsimile) service be exempt from tax, on the ground that it was essentially an intercommunication and interior system, and as such did not fall within the fair intendment of the excise tax as originally imposed.

It will be recalled that the Ways and Means Committee in 1953 had under consideration a complete revision of the Internal Revenue Code. In all, 40 distinct topics were the subject of public hearings. By reason of time limitations, the committee, in executive sessions, restricted its deliberations to matters of substance and recommended the enactment of what we now know as the Internal Revenue Code of 1954.

In recognition of the fact that it took no affirmative action with respect to inequities existing under the various excise tax acts, the succeeding Congress appointed a subcommittee of the Committee on Ways and Means to devote specific attention to excise-tax problems.

On October 13, 1955, a representative of the Western Union Telegraph Co. testified before the subcommittee, urging the same four changes which were presented to the full committee in 1953. In addition, the committee's attention was directed to the fact that the Telegraph Co. was being deprived of an exemption from tax on wires leased from telephone companies (foreign exchange trunks) through an automatic expansion of a "local exchange area," by reason of an extension of the dial system (hearings before subcommittee of the Committee on Ways and Means, House of Representatives, 84th Cong., 1st sess., on excise-tax technical and administrative problems, pp. 451–463).

Prior and subsequent to the formal presentation to the subcommittee on October 13, 1955, several conferences were held with representatives of the staff of the joint committee, the Treasury Department, and the Internal Revenue Service, at which conferences the telegraph and telephone companies clarified their respective contentions and submitted economic data requested by Government representatives.

Since the inequities of which we have complained are all of long duration, have deterred the public's (and, more particularly, businessmen's) use of telegraph service with resulting deleterious effect on the volume of telegraph business, and have exerted an unwarranted competitive handicap, we earnestly urge the Senate Finance Committee to approve and enact H. R. 7125.

The comprehensiveness of the recorded and unreported considerations given to the technical changes in the excise-tax law affecting communications should, we respectfully submit, induce affirmative action by the Senate Finance Committee respecting H. R. 7125.

It is requested that this letter be incorporated into the official record of the Senate Finance Committe hearings on H. R. 7125.

Very truly yours,

By J. A. C. McGANN,
Assistant Tax Attorney.

NATIONAL ASSOCIATION OF COUNTY OFFICIALS,
Washington, D. C., May 19, 1958.

Hon. ELIZABETH B. SPRINGER,
Clerk, Senate Finance Committee,
Washington, D. C.

DEAR MRS. SPRINGER: The National Association of County Officials is very much interested in the bill, H. R. 7125, particularly section 4221 and section 4222.

Section 4221 refers to the tax-free status of tires which comes as original equipment on automotive equipment. Section 4222 would authorize counties, cities, States, and other local government units to register with the Department of Internal Revenue and receive a registration number in lieu of the present very complicated time-consuming procedure of filing a separate written request for every instant where the local government unit seeks exemption from a Federal excise tax.

Both of these provisions are of extreme importance to our county officials and we would appreciate it very much if the Senate Finance Committee would authorize the opening of the record so that our association and several others in the local-government field could submit written statements on behalf of these particular provisions in this omnibus bill. We would, of course, not want to take the Senate Finance Committee's extremely valuable time for oral testimony since on a technical matter of this nature, we feel written statements would be sufficient.

Thank you very much for your continued kind cooperation.

Sincerely yours,

BERNARD F. HILLENBRAND,
Executive Director.

AMERICAN HOSPITAL ASSOCIATION,
Washington, D. C., May 16, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR BYRD: On behalf of private nonprofit hospitals of the country we wish to call to your attention what we think an unfortunate discrimination against those hospitals, and to urge that H. R. 7125, now pending before your committee, be so amended as to eliminate the discrimination. That bill, as you know, would exempt nonprofit educational institutions from certain Federal excise taxes, and thus put them on a parity in this respect with public educational institutions; but it would grant no similar relief to private nonprofit hospitals.

The Ways and Means Committee rested the proposed exemption of nonprofit educational institutions on the ground of the existing discrimination between them and public institutions. (See H. Rept. No. 481, pp. 14, 29, 51.) We believe that the case for equal treatment of hospitals of the 2 kinds is as strong as the case for equal treatment of educational institutions; in some respects, indeed, we think the case for nonprofit hospitals is the stronger of the 2.

The public importance of the private nonprofit or "community" hospitals of the country needs no demonstration. Its recognition by Congress and by State legislatures is attested, not only by the many tax exemptions already accorded to such institutions, but also by the public aid of other sorts which has been given them—most notably, the grants under the Hospital Survey and Construction Act which have by now totaled nearly $1 billion and have gone about equally to public and private nonprofit institutions. As has been well said, if these private nonprofit hospitals did not exist Government would be compelled to provide a substitute. As compared with public institutions, private institutions, in fact, play a larger part in the field of general hospital care than they do in the field

of education. If we exclude hospitals operated by the Federal Government for the benefit of particular groups, there are nearly three times as many private nonprofit hospitals listed by this association as there are public hospitals.

In addition to their primary function of caring for the sick, hospitals both public and private, though they do not generally meet the definition of "educational institution" contained in H. R. 7125, actually play a major educational role and might well on this basis alone be accorded the same treatment as schools. Hospitals are the centers of graduate medical education through internships and residencies, and of the advanced training of research specialists; they train most of the country's professional nurses; and they conduct many other educational activities, including the training of practical nurses and a great variety of laboratory and other technicians.

For all of these reasons we believe that the same equities advanced on behalf of nonprofit educational institutions apply with at least equal force to nonprofit hospitals.

I take the liberty of enclosing suggested amendments to H. R. 7125 to carry out the recommendation in this letter. The definition of "nonprofit hospital" which we suggest is derived from section 503 (b) (5) of the Internal Revenue Code. If we can give you any further information, or otherwise be of assistance to your committee in considering this proposal, we should be happy to do so.

It would be appreciated if you would include this letter in the record of your hearings on H. R. 7125.

Sincerely yours,

KENNETH WILLIAMSON,
Associate Director.

PROPOSED AMENDMENT TO H. R. 7125, EXCISE TAX TECHNICAL CHANGES ACT OF 1957

Section 108

Page 6, line 13, after the letters "tions" insert the words "and nonprofit hospitals".

Page 6, line 19, after the word "organizations" insert the words "and nonprofit hospitals".

Page 7, line 2, after the word "organization" insert the words "or nonprofit hospital".

Page 7, line 4, after the word "organization" insert the words "or nonprofit hospital".

Page 7, line 8, after the words "section 501 (a)" insert the following:

"; and the term 'nonprofit hospital' means an organization the principal purpose or function of which is the providing of hospital care, and which is exempt from income tax under section 501 (a)".

Page 7, line 11, after the letters "zations" in the second unnumbered line immediately succeeding line 11, insert the words "and nonprofit hospitals".

Section 119

Page 23, line 5, after the word "organization" insert the words "or nonprofit hospital".

Page 25, line 10, after the word "organization" insert the words "; nonprofit hospital".

Page 25, line 14, after the figures "501 (a)" insert the following:

"; and the term 'nonprofit hospital' means an organization the principal purpose or function of which is the providing of hospital care, and which is exempt from income tax under section 501 (a)".

Section 137

Page 51, line 6, after the word "organizations" insert the words "and nonprofit hospitals".

Page 51, line 12, after the word "organizations" insert the words "and nonprofit hospitals".

Page 51, line 17, after the word "organization" insert the words "or nonprofit hospital".

Page 51, line 18, after the word "organization" insert the words "or hospital".

Page 52, line 2, after the word "organization" insert the words "or nonprofit hospital".

Page 52, line 6, after the words "section 501 (a)" insert the following: "; and the term 'nonprofit hospital' means an organization the principal purpose or function of which is the providing of hospital care, and which is exempt from income tax under section 501 (a)".

Page 52, line 9, after the letters "tions" in the second unnumbered line immediately succeeding line 9, insert the words "and nonprofit hospitals".

STATEMENT OF RADFORD HALL, EXECUTIVE SECRETARY, AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION, DENVER, COLO., RELATIVE TO PROPOSED AMENDMENTS H. R. 7125, TO REPEAL FEDERAL EXCISE TAXES ON TRANSPORTATION

The American National Cattlemen's Association was organized in 1898. It is a voluntary association of commercial cattlemen and cattlemen's associations. Twenty-eight State cattlemen's associations are affiliated in the American National.

In January, the American National Cattlemen's Association held its 61st annual convention in Oklahoma City, Okla. During that convention the following policy was approved without a dissenting vote:

"We urge Congress to enact legislation to achieve the following:

"(a) Repeal of transportation taxes; * * *"

We could burden the record with several pages of statements in support of the repeal of these taxes, however, it would, we believe, be repetitious as considerable evidence has already been adduced for the benefit of the committee.

We therefore ask that the name of the association be added to the substantial list of individuals and organizations requesting the repeal of this wartime-imposed tax which is now serving as a depressant on the economy of our Nation.

DAVIDSON COLLEGE,
Davidson, N. C., April 14, 1958.

Hon. SAM J. ERVIN,
United States Senate, Washington, D. C.

DEAR SENATOR ERVIN: I am writing for your advice and assistance in connection with something which seems to me to be very important to our country and particularly to our private educational institutions.

You are probably familiar with the fact that the House passed last year the excise tax technical changes bill (H. R. 7125) which would, among other things, exempt privately supported colleges and universities from excise taxes. It is my understanding that this bill has not yet been reported out of the Senate Finance Committee. It seems to me that this particular provision of this bill deserves the enthusiastic support of all of our Senators and Representatives. It seems obvious that the exemption of private educational institutions from this tax would be in the public interest. State-supported institutions do not, of course, pay any Federal excise tax. The private institutions which provide education for a sizable proportion of our college and university population do not receive financial support from the State or Federal Government for their expenses.

There has been a great deal of discussion in recent months about ways of getting purchasing power at work to improve our economy. It seems to me that the repeal of this particular part of the excise tax would be one of the most effective ways of getting purchasing power into action immediately. Our private colleges and universities could and would immediately expand their expenditures in direct proportion to the relief received from excise-tax payments.

Your help in achieving this objective would be deeply appreciated by all of us who are concerned with private institutions. I would be very grateful if you would give me any suggestions you have which might be helpful to us in achieving this objective.

I had the pleasure of a brief visit with Sam, Jr., at a recent meeting of the Catawba Valley Davidson College Alumni chapter which I had the pleasure of attending.

Sincerely yours,

D. GRIER MARTIN.

JEFFERSON STANDARD LIFE INSURANCE CO.,
Greensboro, N. C., April 15, 1958.

Re H. R. 7125 (proposed).

Senator SAMUEL J. ERVIN,
Senate Office Building,
Washington, D. C.

DEAR SENATOR ERVIN: Last year I wrote you about the above-captioned bill which was a proposed amendment to the excise tax laws which would specifically exempt a nonprofit swimming pool facility from the 20 percent club dues tax. I was informed that this bill was pigeonholed in Senator Byrd's committee pending further study of the entire tax structure. No action was taken on it during the last session of Congress, insofar as I have been able to determine.

My organization, Guilford Hills Park, Inc., discussed the possibility of an excise tax on our organization with the local Bureau of Internal Revenue. At that time their opinion was that since we were each donating $100 as a noninterest-bearing loan as a means of raising the necessary revenue to construct the building, and since our dues would be under the taxable amount, we would not be faced with an excise tax. In good faith, we, therefore, raised over $35,000 and built a swimming pool in our neighborhood. We have some 300 members thereof. Last month the Fourth Circuit Court of Appeals reversed the case *United States* v. *McIntyre*, which had to do with the Rockville Center, Md., community pool. The Fourth Circuit Court held in that case that this type swimming pool organization was a social club and as such would be subject to the 20 percent excise tax on the life membership fee paid by each member.

Needless to state, this comes as a severe blow to our organization. If it is enforced against us, it will cost us approximately $7,000, which sum we do not have, and, therefore, the result would be rather disastrous.

In the captioned bill, under Section 132: Club Dues, Subparagraph C—Nonprofit Swimming Facilities, the proposed law would specifically exempt our organization from such tax. We built our club around this particular legislation hoping that it would be passed and made effective back last May 1 or 2, the date it was introduced in the House. There are four other clubs of similar nature in Greensboro in various stages of progress toward completing swimming pool facilities on the same basis.

Last night we held joint meetings of executive boards and felt that it would be very, very helpful if this bill were passed by Congress this term and made effective on May 2, 1957.

We are preparing petitions for the signatures of our members; there are some 2,400 members of these 5 clubs in Greensboro alone. This will be a rather strong voice from the grassroots of your constituency. We propose to bring these to Washington personally to deliver them to our delegates in Congress. This will perhaps occur within the next several weeks. In the interim I am writing you on behalf of our clubs soliciting earnestly your immediate support of this bill. If you can pry this bill out of Senator Byrd's committee, we will certainly appreciate it.

There are certainly sociological and segregation aspects behind a club of our type. However, since they are not common to the South alone, and in fact began in the North, we feel that the juvenile delinquency combating measures afforded by these clubs far outweigh any selfish motives on our part. We feel that every other nonprofit swimming pool organization will wholeheartedly support this legislation. We plan to contact as many of them as we can to solicit letters and petitions from the other clubs throughout the country to their delegation in Congress.

In closing I would like to again urge you on behalf of 2,400 of your constituents to promptly support our plea.

Yours very truly,

N. B. BONEY, Jr., *Attorney.*

AMERICAN FARM BUREAU FEDERATION,
Washington, D. C., March 10, 1958.

Hon. HARRY FLOOD BYRD,
United States Senate,
Washington, D. C.

DEAR SENATOR BYRD: Your favorable consideration is respectfully recommended of the amendment to H. R. 7125 filed by Senators Magnuson, Smathers, and others to terminate the transportation tax.

The arguments against the transportation tax have been presented to members of the Senate Finance Committee on numerous occasions, and we will not try to elaborate those arguments in this letter. The transportation tax is a tax on a necessity, on the flow of commerce. It's discriminatory as between areas and as between for-hire and private carriage. It artificially increases the economic distance between various areas of our country. We believe its termination should have a priority in any tax revision program.

Your consideration will be sincerely appreciated.

Very sincerely,

CHARLES B. SHUMAN, *President.*

AMERICAN FARM BUREAU FEDERATION,
Washington, D. C., June 20, 1957.

Hon. HARRY FLOOD BYRD,
Chairman, Senate Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: We would like to submit for the consideration of the Finance Committee a recommendation that an additional section be incorporated in H. R. 7125, reading approximately as follows:

"That section 6420 of the Internal Revenue Code of 1954 (relating to gasoline used on farms) is amended by relettering subsections (f), (g), and (h) as (g), (h), and (i), respectively, and by inserting after subsection (e) the following new subsection:

"'(f) AGREEMENT WITH STATES.

"'(1) REQUIREMENTS. The Secretary may, at the request of any State, enter into an agreement with such State under which the State agency which administers the refund of gasoline taxes imposed by the State will make the payments provided by subsection (a) to the persons covered by the agreement.

"'(2) FILING OF CLAIMS, ETC. The time and method for making claims and payments under paragraph (1) shall be determined under the agreement entered into under such paragraph. It is hereby declared to be the policy of Congress that such agreements should be negotiated by the Secretary wherever administration of the provisions of this section may effectively and economically be accomplished thereby, and that each such agreement should provide, to the fullest extent practicable, that claims for payment under this subsection shall be made at the same time, and on the same return or claim form, as claims for gasoline tax refunds under the law of the State with which the agreement is made. Subsection (b) shall not apply with respect to any claim filed with a State under an agreement entered into under this subsection.

"'(3) REIMBURSEMENT OF STATES. Each State which has an agreement with the Secretary under this subsection shall be entitled to receive, in advance or by way of reimbursement, as may be mutually agreed upon, the cost to the State of carrying out the agreement under this subsection.

"'(4) APPLICABLE LAWS. All provisions of law, including penalties, applicable in respect of claims and payments made under this section without regard to this subsection shall (to the extent not inconsistent with this subsection) apply in respect of claims and payments made under an agreement entered into under this subsection.'"

It is our belief that the State agency which is currently making refunds to farmers of State gasoline taxes could also handle the refund of Federal gasoline taxes more economically than the Federal Government. Only one form would be needed and no great amount of extra work would be involved in processing both refunds at the same time.

In addition to the savings in the cost of administering the Federal gasoline tax refund, the change would also mean a substantial saving in time and trouble for each applicant. We do not suppose that any large number of States would

be immediately prepared to enter into such an agreement with the Secretary of the Treasury. Probably in most cases State legislation would be required. One State, Iowa, has already enacted legislation authorizing a State agency to make such Federal refunds if a satisfactory arrangement can be worked out with the United States Treasury. It is our belief that if Federal legislation, as suggested above, were enacted, that many States would take such action as may be necessary to authorize such action.

The above suggested language is an exact copy of the provisions of H. R. 2703 by Congressman Cunningham of Iowa, and H. R. 8005 by Congressman Schwengel of Iowa. I do not know of any reason why the House Ways and Means Committee might be opposed to the proposal. It was not considered by the Ways and Means Committee in connection with H. R. 7125. It did not occur to Congressmen Cunningham or Schwengel or to us that their proposal might be appropriately included in H. R. 7125 until H. R. 7125 had reached the floor of the House with a closed rule.

If the Senate Finance Committee decides to hold hearings we would be happy to appear to answer any questions that the committee may have in connection with the proposal, although this letter may serve the same purpose.[1]

Very sincerely,

MATT TRIGGS,
Assistant Legislative Director.

SAN FRANCISCO CHAMBER OF COMMERCE,
San Francisco, Calif., March 18, 1958.

Subject: Repeal of tax on transportation of persons and property.

Hon. HARRY FLOOD BYRD,
Chairman of the Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: The San Francisco Chamber of Commerce has gone on record many times since the end of World War II as being opposed to the continuance of the Federal excise tax on transportation of persons and property. Special reference is made to our letter to Hon. Aime J. Forand, Chairman of the Subcommittee on Excise Taxes of the Committee on Ways and Means of the House of Representatives, dated November 12, 1956, and our letter of May 8, 1957, addressed to the members of the same committee, reaffirming our position.

Today, we are addressing a letter to Hon. Warren G. Magnuson, Senator from the State of Washington, chairman of the Senate Committee on Interstate and Foreign Commerce, commending him and Senators Smathers, Schoeppel, Purtell, Pastore, Monroney, Bible, Thurmond, Bricker, Butler, Potter, Payne, Cotton, and Morse on their joint sponsorship of an amendment to H. R. 7125 to repeal sections of the Internal Revenue Code of 1954 as amended, thereby doing away with the tax on transportation of persons and property. Also, we commended Senator Smathers, chairman of the Subcommittee on Surface Transportation for his clear and concise statement of the facts underlying this proposed amendment as contained in the Congressional Record of February 24, 1958.

We, therefore, respectfully request that the attached statement of position of the San Francisco Chamber of Commerce urging immediate repeal of the tax on transportation of persons and property and setting forth the reasons therefore be made part of the record of the Finance Committee currently considering the amendment to H. R. 7125.

Sincerely,

A. K. BROWNE, *President.*

MARCH 11, 1958.

Subject: Repeal of tax on transportation of persons and property.

Hon. WARREN G. MAGNUSON,
Senate Office Building,
Washington, D. C.

DEAR SENATOR MAGNUSON: Please accept our congratulations on the amendments to bill H. R. 7125, jointly sponsored by yourself and Senators Smathers, Schoeppel, Purtell, Pastore, Monroney, Bible, Thurmond, Bricker, Butler, Potter, Payne, Cotton, and Morse which repeal the sections of the Internal Revenue

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[1] Mr. Triggs subsequently requested this letter be put in record of hearings in lieu of personal appearance.

Code dealing with the tax on transportation of persons and property. It is particularly gratifying to note that all members of the Subcommittee on Surface Transportation sponsored the amendment as well as the balance of the membership of the Committee on Interstate and Foreign Commerce.

Senator Smathers' statement contained in the Congressional Record of February 24, 1958, presents an outstanding analysis of the facts in support of the repeal of the wartime emergency tax on transportation of persons and property.

It is our understanding that this matter has now been referred to the Committee on Finance. We are, therefore, addressing a letter to Hon. Harry Flood Byrd, chairman of the Committee on Finance, United States Senate, restating the position of the San Francisco Chamber of Commerce in support of immediate repeal of the tax on transportation of persons and property. Copy of our letter is attached for your information.

Sincerely,

A. K. BROWNE, *President.*

STATEMENT OF POSITION OF THE SAN FRANCISCO CHAMBER OF COMMERCE ON REPEAL OF FEDERAL EXCISE TAX ON TRANSPORTATION

The San Francisco Chamber of Commerce urges immediate repeal of the tax on the transportation of persons and property for the following reasons:

(1) Federal taxes on transportation were imposed as wartime emergency measure. The tax laws were amended to provide a tax on the transportation of persons and property for the purpose of creating additional revenue and to discourage nonmilitary use of passenger facilities. The tax on passenger transportation was first enacted in 1941 and amounted to 5 percent. It was increased in 1942 to 10 percent and increased again in 1944 to 15 percent. In 1954 the tax on transportation of persons was reduced to its present level of 10 percent.

Tax on transportation of property of 3 percent was enacted in 1942 and has remained at 3 percent to the present day.

(2) The tax on transportation of persons and property as it now exists is a flat percentage tax and as such is discriminatory to long-haul shippers and preferential to short-haul shippers.

(3) There have been 12 separate and distinct freight rate increases authorized by the Interstate Commerce Commission since 1942. Therefore, Federal excise taxes on transportation have been automatically increased because of the very nature of the tax. In our opinion this is contrary to the apparent intent of Congress when said law was enacted in 1942.

(4) Federal excise tax on transportation of property is a recurring tax. For example, transportation tax is imposed on the movement of the raw materials from the source to the manufacturer, again from the manufacturer to the distributor, again from the distributor to the wholesaler and again from the wholesaler to the retailer or user. To the best of our knowledge this is the only excise tax imposed by the Federal Government, which is a recurring tax. In all other instances the excise tax is assessed only once.

(5) The tax on transportation is only imposed on transportation of persons and property by the public for hire carriers. No transportation tax is imposed on persons and property transported by private carriers. It is therefore discriminatoy and preferential as to the type of carrier used. This discourages the use of public transportation which is a vital arm of national defense and encourages the use of private transportation facilities.

(6) The wartime emergency, which was the basis and reason for the creation of the transportation tax, no longer exists. Therefore the continuance of such tax program is no longer justified.

METALS AND CONTROLS CORPORATION,
Attleboro, Mass., November 5, 1957.

Re bill H. R. 7125.

Hon. HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

SIR: It has come to our attention, through NEMA, that a hearing on bill H. R. 7125 is to be held, the bill proposing an amendment to the Internal Revenue Code which, among other things, would repeal the tax on refrigeration components. This tax is presently embodied in section 4111 of the 1954 Internal Revenue Code.

We wish to place on record the fact that we believe that refrigeration controls sold as components should be exempt from this tax. Our reasons are as follow:

Refrigeration components are defined as cabinets, compressors, condensers, condensing units, evaporators, expansion units, absorbers, and controls for, or suitable for use as parts of, or with household-type refrigerators or quick-freeze units. It is clear that under this definition, these components form a part of the complete refrigerator or quick-freeze unit as sold by the manufacturer thereof. This being the case, when a tax is imposed on the complete refrigerator or quick-freeze unit, this tax is based on the price of the whole unit which includes the components.

Because of this, there is a provision in the code which relieves the manufacturer of the component from making the payment of a tax, since the tax will be paid ultimately by the manufacturer of the complete unit. However, in order to establish his right to this exemption, the manufacturer of the component must obtain tax exemption certificates, and keep records, etc. As you can well realize, this imposes a serious burden on the manufacturer without adding any tax income to the Government.

In most cases, our sales of controls are to the refrigerator manufacturer for inclusion in a new unit. Of course, as to these, we get tax-exemption certificates. However, a few of our sales of these controls are as replacement parts, and consequently we must pay the tax.

In order to separate those controls on which we are to pay the tax from those for which we get tax-exemption certificates, we must study each sale, and know its end use. The work involved in segregating and recording these sales is so great, and the tax payable on replacement parts so negligible, that we believe refrigeration controls should be eliminated from the provisions of the code.

We are writing this letter to the other members of the Senate Finance Committee.

Very truly yours,

TOWNSEND M. GUNN,
Manager, Legal Department.

CONTROLLED COMPANIES OF
AMERICAN DISTRICT TELEGRAPH CO.,
New York, N. Y., December 18, 1957.

Re H. R. 7125, 85th Cong., 1st sess.—Section 133, Communications Tax.

Hon. HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
United States Senate,
Washington, D. C.

DEAR SENATOR: Our attention has been directed to section 133 of H. R. 1725 which would amend section 4253 of the 1954 Internal Revenue Code so as to add thereto a new subdivision (i) reading as follows:

"(i) CERTAIN INTERIOR COMMUNICATION SYSTEMS.—No tax shall be imposed under section 4251 on any amount paid for wire mileage service or wire and equipment service, if such service is rendered through the use of an interior communication system. For purposes of the preceding sentence, the term 'interior communication system' means any system—

"(1) no part of which is situated off the premises of the subscriber, and which may not be connected (directly or indirectly) with any communication system any part of which is situated off the premises of the subscriber; or

"(2) which is situated exclusively in a vehicle of the subscriber."

Such "interior communication systems" are usually referred to in the industry as local burglar- and fire-alarm systems.

This company and its controlled companies which furnish electric protective service in some 40 States in the Nation, wish to submit their view that subdivision (i) above quoted should not be adopted and that the tax presently levied should either be continued upon the electric protective industry as a whole (i. e., central station and local burglar- and fire-alarm companies) or abrogated as to the entire industry. The lifting of the tax upon local burglar- and fire-alarm service while retaining it on central-station burglar- and fire-alarm service would create a severe competitive handicap with respect to the latter element of the industry.

In the interest of a clear concept of the electric protective business, may we briefly point out the following:

From the fact that fire- and burglar-alarm service is included under the subject of "Communications" (sec. 4251 et seq. I. R. C. 1954) and that the words "burglar- or fire-alarm service" in the definitions of wire and equipment service (sec. 4252) are grouped with "stock quotation and information services," it would seem that fire- and burglar-alarm service is regarded as in the field of communications similar to telephone and telegraph service. This, however, is clearly not the case. Such service is devoted only to the protection of customers' premises against burglary and fire.

Burglar- and fire-protective service is, as above indicated, of two major types, namely, central station and local alarm.

Central-station burglar-alarm service is rendered by means of specially trained, armed, and uniformed guards who are on duty day and night in specified offices in the area where service is provided. They are sent to the customer's premises from which an alarm has emanated in order to apprehend an intruder or, if the equipment on the premises is in need of repair, to repair it. In order to alert the guards an internal alarm system is created, consisting of an electrical circuit established on the customer's premises and central office receiving equipment in the company's office, the customer's premises and the company's office being connected by lines leased from either the telephone or telegraph company. The lines so leased are known as "idle" lines, that is unused by the telephone or telegraph company in their business. The electrical energy used on these lines is provided by the central-station companies and not by either the telephone or telegraph company. In the event that the electrical circuit on the customer's premises is disturbed either by attempted entry or by heavy vibration due to unusual trucklonds in the streets or to moisture or a variety of other causes, an alarm in the form of a light or buzzer is registered at the company's central station. Upon receipt of an alarm, guards are immediately sent to the premises to determine the cause of the disturbance. If an unauthorized person is found, the guards detain him and take steps to protect the customer's property, and if they find evidence that a crime has been committed they notify the police. Under certain conditions the guards watch the premises after an alarm, for a stated period, after notifying the customer, until the arrival of the customer or his representative.

This internal electrical system above described is incapable of use as a "communication" system. No customer can use it, for example, to signal or communicate with another customer, nor can the customer and the central-station company itself communicate except in limited coded signals so as to apprise the company that the authorized person has entered or is leaving the premises. In fact, the courts of the State of New York have held that such a system does not constitute the rendition of "telegraph service" but rather is a mere incident in the furnishing of the ultimate service which the customer purchases, viz, protection against burglary (*Holmes Electric Protective Co.* v. *City of New York*, 202 App. Div. 514, Aff'd 288 N. Y. 635; also 304 N. Y. 202). In that case the court said (p. 517, 202 App. Div.):

"Analysis of the testimony adduced and of the various types of contract between petitioner and its customers establishes, in our opinion, that petitioner during the taxable period was not engaged in the sale of electric, telephone or telegraph service within the meaning of the tax laws. The electric signals transmitted over petitioner's wires are only incidental to the ultimate contractual purpose between petitioner and its customers, namely, protection of the customer's premises from unauthorized entry. What the customer buys and pays for is not a telegraph service. That consists essentially in the mere transmission of communications, the service of the telegraph company being completed when the message has been transmitted. Petitioner's customers were purchasing and petitioner was selling what began when the electric signals were transmitted, namely, some form of protection of the customers' premises.

"Railroad and subway companies use electric signal systems to provide safe operation of their trains. Obviously, such companies are not engaged in telegraphic service for their customers, as such term is ordinarily understood. The customers of such companies are buying and the company is selling transportation. Here the customers are buying not telegraphic service as it is ordinarily understood but protection of their premises.

"Petitioner's system cannot be used for the purpose of communication between the subscriber and the general public or persons other than the petitioner, or

even between the subscriber and petitioner except to the limited extent of the prearranged communication the particular type of service employs—all for the purpose of protection."

Moreover, companies furnishing electric protective service have been held not to be public utilities and not to be subject to regulation by Commissions supervising utilities (*Broome v. National District Telegraph Co.*, 24 N. Y. St. Dept. Rep. 101; *Matter of Holmes Electric Protective Co.*, 87 P. U. R. (N. S.) 49).

Central-station fire-alarm service is rendered in substantially the same manner as central-station burglar-alarm service, except that the fire department is alerted where an alarm is received at the central office. If an alarm indicates that a sprinkler system on the customer's premises is out of order, men are dispatched to the premises to investigate and correct the trouble or notify the owner.

Local burglar- and fire-alarm service (which subdivision (1) on page one would exempt from tax), on the other hand, is furnished without the use of leased lines and consists of electrical devices and wires or lines located on the customer's own premises. Upon disturbance of the electrical circuit there installed, due to attempted unlawful entry or to other causes, an electrical impulse is transmitted over the wires or lines, producing an alarm through a gong, siren, or flashing light located on the customer's premises, designed to apprise nearby police or passers-by of difficulty in the premises.

It will readily be seen, therefore, that from a communication point of view, there is a very great distinction between the electric protective systems and "stock quotation and information services" which are included in the definition of wire and equipment service under section 4252 of the act. Judged by the test of communication, burglar- and fire-alarm systems, whether of the central station or local type, should not be included with telephone, telegraph, stock quotation, or other information-service companies which are engaged in the transmission of general intelligence because they have nothing in common with such companies and bear not the slightest resemblance thereto.

Exhibit A, attached, supplies a presentation of the comparative undertakings embraced in supplying central-station and local burglar-alarm service, respectively. As will appear, the amount annually paid for wires leased from other wire-using companies in order to supply central-station burglar-alarm service equals 8 percent of the total service charge. The annual depreciation on all equipment and apparatus employed as an adjunct to supplying the service is equal to 11 percent of the annual service charge. Eighty-one percent of the amount charged annually for central-station burglar-alarm service represents the actual cost of supplying this highly personalized service which, literally, furnishes a substitute for watchmen's services in affording superior protection at lower cost.

In effect, the imposition of any Federal excise tax on amounts charged for supplying central-station burglar-alarm service is a discriminatory impost on the cost of personal services such as supplied in many lines of endeavor, having little to do with the electrical connection maintained between the subscriber's premises and the company's central station. The discrimination is of such an inequitable nature that it is becoming increasingly embarrassing to the company to supply proper explanation to its subscribers.

There are many other compelling reasons for complete elimination of the wire and equipment service tax on the burglar- and fire-alarm industry, including the following:

1. The companies supplying such services are not telephone, telegraph, or communication companies, are not engaged in interstate commerce, and their business is not affected with a public interest.

2. Such services are not essential to the conduct of business as are electric, gas, water, transportation or communication services supplied by public utilities. A concern can do without any special protection or it may rely entirely upon insurance or upon watchmen or upon an alarm which merely rings a bell within or on the outside of the premises, all as substitutes for central station protection, under continuous manual supervision and which dispatches its own armed guard and summons the municipal fire and police forces when needed.

3. The services supplement municipal fire and police protection, providing special protection to concentrated values and against special hazards. Amounts

paid by subscribers to such services are equivalent to a tax self-imposed to supplement the protection afforded by the municipality to general taxpayers.

4. The effectiveness of the services in safeguarding lives and property is attested by their proven record in minimising fire and burglary losses and in capturing burglars and by the substantial recognition of such agencies as the National Fire Protection Association, National Board of Fire Underwriters, International Association of Fire and Police Chiefs, safety councils, fire marshals and all fire and burglary prevention authorities as well as the 57,000 prominent concerns who pay for such services.

5. By adding to the cost of the services the wire and equipment service tax definitely discourages use of the service and its growth and encourages reliance upon inferior and ineffective protection substitutes or none at all. The fact that there are only 57,000 subscribers to central station services, a small fraction of the number of prospective users, is eloquent proof that cost definitely limits the extent of their use despite their far-reaching and immeasurable value.

6. The value of properties protected, excluding banks, exceeds $53,500 million. It is obvious that one single and comparatively small loss through a single fire, act of sabotage, or burglary where central station might have been employed and prevented the occurrence but for this tax, could destroy far more in property value, alone, than the total revenue produced by the tax. Plants can be rebuilt in time, but sacrificed lives cannot be restored nor can lost hours of production be regained. The far-reaching effects of interrupting business, production, and employment in a single plant upon the production of other plants and the whole program for safeguarding the national safety and health is quite obvious.

7. If the customer does not have to pay the wire and equipment service tax concerns furnishing fire- and burglar-alarm service will be subject to the wire mileage service tax from which they are now exempt so that the net revenue loss is decreased.

The Controlled Companies of American District Telegraph Co., in 1957, will collect from customers, as excise tax on fire and burglar alarm service, the sum of approximately $2,975,000. In the same period it will have paid to others for leased wires approximately $3,686,000. Gross revenue loss to the United States Government in complete elimination of the tax would amount to approximately $2,606,400, $2,975,000 minus $368,000). The net revenue loss assuming a 50 percent Federal income tax rate would be $1,303,200.

It is estimated that the Controlled Companies of American District Telegraph comprise about 65 percent of the entire industry, so that total tax elimination would occasion a net revenue loss of about $2 million.

If, however, the tax on burglar- and fire-alarm companies is to be retained in the act, we submit it should, as heretofore, apply to both elements of the industry, namely, central station service and local alarm service. Otherwise, central station service will be put to a serious competitive disadvantage.

There can be no doubt but that local burglar- and fire-alarm service is highly competitive with central station service.

In any large city one will find in close proximity, mercantile establishments of apparently equal size and economic stature, some using central station service and others local alarm service—this both with respect to burglar and fire protection. Numerically, the largest number of concerns operating in the field of electric protection are those providing local alarm service only. This is due to the fact that little capital is required and the service requirements of the customer are at a minimum. Central station companies almost without exception, find it necessary to provide electric local alarm service in order to meet the needs of customers and be able to withstand competition from those companies which furnish only local alarm service.

Underwriters of burglary and fire insurance recognize the important contribution made to the protection of customers' property by burglary and fire protective service, and where the electrical systems are approved by such underwriters the owners of the protected premises receive burglary and fire insurance at reduced premiums. This factor is a common denominator of both types of electric protective service, and applies to both central station and local alarm.

The following table graphically demonstrates the intensity of competition afforded by local alarm service to central station service:

Statement showing approximate effect of burglary protection on burglary insurance premium

	Medium sized establishment				Large establishment	
	Central station	Local	Central station	Local	Central station	Local
Valuation	$10,000	$10,000	$50,000	$50,000	$200,000	$200,000
Annual burglary insurance premium [1]	$220.25	$220.25	$903.75	$903.75	$2,055.75	$2,055.75
Degree of protection service required	(2)	(2)	(2)	(2)	(2)	(2)
Insurance premium discount allowed (percent)	30	20	80	20	40	30
Approximate annual cost burglary protection	$300.00	$60.00	$400.00	$72.00	$1,200.00	$800.00
Amount insurance premium discount allowed	$67.88	$45.25	$181.13	$120.75	$821.50	$616.13

[1] Rate per $1,000 of insurance

1st $5,000	$23.75
2d $5,000	21.50
3d $5,000	17.75
4th $5,000	14.25
Over $20,000	7.25

[1] No. 3 Cert.
[2] No. 2 Cert.

Thus, from the standpoint of the function performed, viz., the furnishing of protective service, the means involved (either through electrical devices and wiring on the customers' premises, as in local alarm service, or through the combination of manpower and electric alarm systems, as in the central station service) as well as from the important feature of cost, the field of electric protective service is one and entire and may not appropriately be divided or segregated into central station and local alarm service. This is a field of service which from the point of view of potential customers affords various grades and types of electric protective service priced in accordance with the measure of protection desired. The identity of purpose and function of the two types of service, the identity of benefits derived therefrom by customers, the substantial similarity of the means employed in the rendition of the service and the sharp competition between the two, make any difference or distinction in tax treatment unreasonable and inequitable.

We respectfully submit, therefore, that an unjust competitive discrimination would result if local alarm service were to be free of tax while central station service were to remain subject thereto, and request further consideration to (1) whether electric protection service should be included within the tax law involved and (2) that in any event the entire industry should be treated in the same way—either entirely relieved from tax or entirely subjected thereto.

May we ask that the foregoing be made a part of the record of the hearings to be held by the Senate Finance Committee on the above bill.

Yours very truly,

E. GASTON, *President.*

EXHIBIT A.—*Comparative presentation of contractual undertakings—Central station and local burglar alarm service*

Service components	Cost proportion	Central station service	Local alarm service
Company's central station	Depreciation on full investment represents about 11 percent of service charge.	Contains control equipment supplying continuous supervision over electrical circuit installed in subscribers' premises. Office staffed 24 hours a day in constant watchfulness for receipt of alarms.	None.
Installation within subscribers' premises.		Much more critical involving dual wiring system so as to afford continuous day and night supervision of electrical circuit.	Simple single electrical circuit equivalent to bell circuit.
Construction standards			
Maintenance standards	Including sales and general and administrative expense represents 81 percent of service charge.	Much more critical. Any circuit interruption must be corrected immediately since central station equipment remains in trouble.	Has 24 hours in which to effect repairs.
Service performance operating standards.		Furnishes continuous circuit supervision.	None.
		Provides check on premise opening and closing, maintaining forces continuously on duty for this purpose.	None.
		Dispatches guard to investigate cause of each circuit interruption and to restore service.	None.
Leased wires	Annual cost equals 8 percent of service charge.	Maintained between premises of subscribers and company's central station.	None.
Typical annual service charge (small installation).		$300	$70.

STATEMENT OF THE NATIONAL JEWISH WELFARE BOARD SUBMITTED BY SANFORD SOLENDAR, DIRECTOR

The National Jewish Welfare Board desires to bring to the attention of the Committee on Finance of the United States Senate its suggestions with regard to the Excise Tax Technical Changes Act of 1957, adopted by the House of Representatives in H. R. 7125, which is now before the Senate committee. We urge the inclusion in this bill of provision for the exemption of voluntary, nonprofit health, welfare, and recreational organizations from the payment of excise taxes.

Our interest in this matter is prompted by the fact that we are the national association of 350 Jewish Community Centers and Young Men's and Young Women's Hebrew Associations throughout the United States, and we are the operating agency providing services to Jewish men and women in the Armed Forces. Our local affiliates and we are engaged in the provision of social welfare and recreational services and we are nonprofit agencies deriving support from voluntary contributions. Our affiliates and we are among the organizations classified as tax exempt under section 501 (c) (3) of the Internal Revenue Code of 1954 (formerly sec. 101 (6)).

Together with other agencies in the health, welfare, and recreational field, we are voluntary community service bodies sponsored by citizens to strengthen and enrich our communities and our Nation. The activities of such agencies are designed to guide the development of youth and to provide wholesome recreational and leisure-time services for all people. They are vital to the national interest.

We ask that H. R. 7125 be amended to afford voluntary, nonprofit health, welfare, and recreational agencies the exemptions from the payment of excise taxes which the bill provides to nonprofit educational organizations, such as schools and colleges. We urge that exemptions presently enjoyed by State and local governments, and in certain instances by the American National Red Cross, be granted to such health, welfare, and recreational agencies as well. We refer to

such taxes as those presently paid by them on purchases of automobiles, trucks, tires, tubes, water heaters, refrigerators, tennis racquets, bowling balls, pool tables, musical instruments, typewriters, mimeograph machines, adding machines, calculators, telephone and telegraph service, and airline and railroad tickets. Many such agencies also are concerned with exemption from admission taxes and taxes on the use of bowling alleys, billiard and pool tables in connection with activities operated under their auspices. All of the aforementioned articles and services are purchased or provided by these agencies exclusively for use in the rendering of community services. It is for this reason that we ask that exemption from such taxes be provided.

Relief from such taxes would be highly beneficial to the sound maintenance and advancement of these community services. The expansion of these programs to meet growing social needs has greatly increased the financial requirements of these agencies. The funds available for these purposes are seriously inadequate and such programs will be aided materially if freed from the payment of excise taxes. Accordingly, we urge upon the committee that the Excise Tax Technical Changes Act as adopted by the House of Representatives be revised to provide that nonprofit health, welfare, and recreational organizations receive the same tax exemptions which the bill affords to nonprofit schools and colleges.

We shall appreciate the consideration of this matter by the committee.

STATEMENT OF O. M. GILLIS, DIRECTOR OF CALIFORNIA STATE DEPARTMENT OF PUBLIC WORKS, SACRAMENTO, CALIF., ON H. R. 7125

This statement is for the purpose of giving the Senate Committee on Finance the views of the department on section 141 of the above measure, on which hearings are scheduled for July 15 and 16, and is in lieu of oral testimony at such hearings.

Section 141 of H. R. 7125 contains numerous proposed changes in chapter 34 of title 26 of the Internal Revenue Code of 1954, entitled "Documentary Stamp Taxes." The proposed change that particularly concerns this department, and all other State and local agencies engaged in the acquisition of land for highways or other public governmental purposes, is the one proposed in section 4362 of the Internal Revenue Code of 1954.

Section 4362 of the Internal Revenue Code of 1954 is a part of subchapter (c), of chapter 34, and is entitled "Conveyances." Section 4361 of the code imposes an excise tax on conveyances. Section 4362 is entitled "Exemptions" and now provides that "the tax imposed by section 4361 shall not apply to any instrument or writing to secure a debt." The change in section 4362, proposed by H. R. 7125 as it passed the House of Representatives, would add a new subsection (b), reading as follows:

"(b) State and Local Government Conveyances.—No State or Territory, or political subdivision thereof, or the District of Columbia, shall be liable for the tax imposed by section 4361 with respect to any deed, instrument, or writing to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor."

For reasons that have previously been pointed out to Senators Knowland and Kuchel, of this State, in correspondence with them which is in this committee's file on H. R. 7125, to which the committee's attention is now invited, this proposed change is highly objectionable to this department and to all other State and local agencies actively engaged in land acquisitions. Stated as briefly as possible, these objections are based on the following grounds:

1. For many years prior to May 1, 1950, when the United States Bureau of Internal Revenue issued its Ruling No. M. T.-39 (I. R. B. 1950-9, 9) conveyances from a private party to a State or political subdivision thereof had been held to be exempt from the Federal documentary stamp tax. This exemption was given specific recognition by a regulation of the Bureau of Internal Revenue adopted in 1932, and by a ruling adopted in 1940 (S. T. 807; C. B. 1940-1, 256) to the effect that a conveyance of realty from a private party to a local housing authority was not subject to the tax.

2. On May 1, 1950, the Bureau revoked this prior regulation and ruling, allegedly because of the cumulative effect of certain United States Supreme Court decisions holding that certain transactions were not exempt from taxation

merely by reason of the governmental character of one of the parties to the transaction. None of these cases involved conveyances, and none of them enunciated principles which are necessarily applicable to the tax on conveyances, although the Bureau, in M. T.-89, saw fit to construe them as being so applicable.

8. In M. T.-40 (I. R. B. 1950, 18-50) the Bureau of Internal Revenue made it clear that the ruling made in M. T.-89 was to be applied without retroactive effect, with respect to conveyances made prior to May 1, 1950, except that any tax which had been paid on conveyances falling within the scope of that ruling was not refundable. Pursuant to these two rulings, the official position of the Bureau, since May 1, 1950, has been that conveyances to or from State agencies are not exempt from the documentary stamp tax merely by reason of the tax-exempt status of one of the parties to the transaction. However, it is our understanding that since the issuance of M. T.-89 on May 1, 1950, virtually all States have been following their prior practice of neither placing documentary stamps on conveyances to State agencies for highway purposes nor requiring the private grantors to do it. Under these circumstances, specifically exempting these transactions from the documentary stamp tax would not result in the loss of any tax revenue now being collected by the Federal Government.

4. Immediately upon receiving knowledge of M. T.-89, the California Department of Public Works, by telegram dated June 1, 1950, addressed to the Commissioner of Internal Revenue, requested clarification of the matter of taxability of conveyances to State agencies for highway purposes. Fred S. Martin, Acting Commissioner, replied by telegram dated June 5 to the effect that the tax-exempt status of the State did not affect the liability of the private grantor who conveyed to the State. Upon receipt of this telegram the California Department of Public Works wrote a letter to the Acting Commissioner dated June 9, 1950, outlining in detail the position of the State of California on this matter, and again requesting confirmation by the Bureau of its original ruling to the effect that conveyances to State agencies for highway purposes were not subject to the stamp tax. Charles J. Vulner, Deputy Commissioner, replied by letter dated June 27, 1950, to the effect that the issues raised in the California department's letter of June 9 were being given extended consideration by the Bureau. This June 27 letter was followed, on August 30, 1950, by a letter in which the Bureau adhered to the position taken in its telegram of June 5.

5. At the next session of Congress, a bill was introduced, on January 8, 1951 (H. R. 890), by Representative Scrivner, amending the Internal Revenue Code to make it clear that the documentary stamp tax was not applicable to conveyances to which a State or political subdivision thereof was a party grantor or a party grantee. This bill was referred to the Committee on Ways and Means, but no action was taken by the committee on the bill. Similar bills have been introduced at succeeding sessions of Congress, including the 85th Congress, but none of such bills has received favorable committee action.

6. It is important to note that the proposed change in section 4362 of the Internal Revenue Code of 1954, quoted above, which appears on pages 69 and 70 of H. R. 7125, as passed by the House of Representatives (proposed subsec. (b) of sec. 4362), does not exempt the transaction between a State and a private grantor from the documentary stamp tax, as does present subsection (a) with respect to instruments or writings given to secure a debt. This proposed change in section 4362 merely provides that the public agency shall not be liable for the tax, and further provides, in effect, that even if the public agency pays the tax, it may still be collected from the private grantor. This suggested change, if enacted into law, would have the net effect of codifying into statutory law the Bureau's administrative ruling of May 1, 1950, which the States contend was erroneous in the first instance—and then compounds the error by making provision for double taxation, in stating that if the tax-exempt public agency pays the tax, it may be collected again from the private grantor.

7. Senator Bible has proposed an amendment to H. R. 7125 that would remedy this situation in a manner satisfactory to all of the States, by making it clear that the private party, as well as the tax-exempt public agency, is exempt from liability for the documentary stamp tax in all of these land acquisitions for public governmental purposes. It is our understanding that Senator Bible's amendment is before this committee for consideration, along with other proposed amendments to H. R. 7125. Favorable action by this committee on the Bible amendment is strongly urged by the California State Department of Public Works and all other State agencies engaged in land acquisitions.

8. Notwithstanding any arguments that may be presented to the effect that the grantor conveying right-of-way or other lands to a governmental agency is responsible for payment of the documentary stamp tax, the fact is that the burden of the tax would in almost every instance fall on the public agency acquiring the property. The reason for this is that in these cases the grantor is an unwilling seller, being forced to choose between a voluntary sale and a condemnation proceeding. Our investigation satisfies us that it is utterly impossible for State highway department right-of-way representatives to negotiate a settlement on the basis of fair market value and then attempt to secure the agreement of the grantor that he will pay the stamp tax charge. In every instance such attempt would result in the failure of the negotiations, and require the additional expense and delay of a condemnation proceeding.

9. In view of the greatly expanded right-of-way acquisition program in all States, due to the enactment of the Federal-Aid Highway Act of 1956, and the Highway Revenue Act of 1956, the importance of obtaining clarifying legislation on the above subject at this session of Congress cannot be overemphasized. As the members of this committee well know, the Federal-Aid Highway Act of 1956 makes provision for a National System of Federal Interstate and Defense Highways. The Highway Revenue Act of 1956 makes provision for additional Federal taxes to be used for the purpose of paying the Federal Government's share, which is roughly 90 percent of the cost of acquiring right-of-way for and constructing this Interstate System, and sets up a highway trust fund into which these additional taxes are to be paid. The obvious purpose of this trust fund is to make certain that these additional taxes will not be diverted from the highway purposes for which they are levied. If any part of the highway trust fund moneys were to be used for documentary stamps on the conveyances from private parties to public agencies in right-of-way acquisitions for the Interstate System, it would result in a direct diversion of these moneys from highway purposes, contrary to the provisions of the Federal law setting up the highway trust fund.

For the reasons above stated, the necessity of favorable action by this committee on the amendment proposed by Senator Bible to H. R. 7125, and the retention of this amendment in H. R. 7125 as it finally passes Congress, cannot be too strongly urged. It is earnestly requested, not only by California, but by all States and all other public agencies engaged in land acquisitions, that such favorable action be taken by this committee at this time, and that the bill so amended be enacted at this session of Congress.

UNITED STATES SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
July 25, 1957.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: I am writing to bring to your attention the attached resolution, adopted by the Western Association of State Highway Officials at the association's annual convention on June 13, in support of H. R. 6849. I have had considerable correspondence with the State Highway Commission of Oregon concerning the importance of this bill to exempt documents conveying real estate to or from States or local governmental units from the discriminatory stamp tax of Internal Revenue Code, section 4361.

Most recently, I have received from the chief counsel of the Oregon State Highway Department a copy of a letter from Mr. Frank C. Balfour, of California, chairman of the right-of-way committee of the association, discussing the desirability of dealing with this problem by amendment of section 4362 (b) of the Excise Tax Technical Changes Act of 1957, H. R. 7125, which is now before the Committee on Finance. I am forwarding this letter to you in the hope that your committee will find it possible to add to that bill the provisions desired by the Oregon State Highway Department and the other members of the Western Association of State Highway Officials.

With kind personal regards,
Sincerely,

RICHARD L. NEUBERGER.

WESTERN ASSOCIATION OF STATE HIGHWAY OFFICIALS,
Salem, Oreg., July 10, 1957.

Hon. RICHARD L. NEUBERGER,
United States Senate,
Washington, D. C.

DEAR SENATOR NEUBERGER: Enclosed for your information are true copies of the resolutions that were adopted by the Western Association of State Highway Officials at its annual conference during the final general assembly in Houston, Tex., on June 13, 1957.

I wish to call your particular attention to Resolution No. 5 pertaining to the imposition of the internal-revenue documental stamp tax upon conveyances of private property to public agencies for public use. This resolution was the subject of a letter that was sent to you on June 17, 1957, by Mr. W. O. Williams, vice president of the Association of State Highway Engineers of Oregon.

Your assistance in obtaining appropriate congressional action in conformity with the objective of the resolution is much appreciated.

Respectfully yours,

H. B. GLAHYER, *Secretary-Treasurer.*

RESOLUTION No. 5

Whereas under present rulings of the United States Bureau of Internal Revenue conveyances of private property to public agencies for public use are subject to the imposition of the internal-revenue documentary stamp tax; and

Whereas, while technical legal liability for such stamp tax rests upon the private property owner, in fact the cost thereof must frequently be borne by the public agencies in order to avoid condemnation proceedings; and, to that extent, imposition of the stamp tax upon such conveyances constitutes an unreasonable interference with and burden upon necessary State governmental functions; and

Whereas H. R. 6849, presently being considered by the Congress of the United States, would eliminate such unreasonable interference and burden by exempting conveyances of private property to public agencies from said documentary stamp tax: Now, therefore, be it

Resolved, That the Western Association of State Highway Officials, in annual convention assembled in Houston, Tex., this 13th day of June 1957, instructs its president and executive committee to actively seek enactment of H. R. 6849 or other appropriate legislation to assure that conveyances of private property to State highway departments for highway purposes be exempted from the internal-revenue documentary stamp tax.

STATE OF OREGON, STATE HIGHWAY DEPARTMENT,
Salem, July 12, 1957.

Hon. RICHARD L. NEUBERGER,
United States Senate,
Washington, D. C.

DEAR SENATOR NEUBERGER: Enclosed herewith is a copy of a letter addressed to members of the American Association of State Highway Officials right-of-way committee, from its chairman, Mr. Frank C. Balfour, of California. I think the letter is self-explanatory, in that it points out the desirability of amending H. R. 7125 as indicated. Should such an amendment not be enacted, the various States will be faced with the problem of having to increase their right-of-way settlements by an amount sufficient to cover the stamp tax. As you know, funds for the Interstate Highway System are 90 percent Federal funds and 10 percent State funds. This means, of course, that Federal revenue will be used to pay the stamp tax.

The Oregon Highway Department is very much in favor of Mr. Balfour's suggestion, and earnestly solicits your support in securing the suggested amendment.

Very truly yours,

LEONARD I. LINDAS, *Chief Counsel.*

STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC WORKS,
Sacramento, July 10, 1957.

Re Federal legislation regarding documentary stamp, tax on deeds of co. .eyance.

To All Members of the Right of Way Committee of the AASHO:

I regret to advise you that, notwithstanding all of the assurances which have been received by the majority of State highway officials from Members of the House that they would support H. R. 6849 to exempt documents of conveyance of real estate to or from the States and their political subdivisions from the requirements of the documentary stamp tax under section 4361 of the internal revenue law, the Excise Tax Technical Changes Act of 1957, H. R. 7125, has been passed by the House and has been referred by the Senate to its Committee on Finance. For the convenience of yourself and your chief administrative officers, I quote from this proposed legislation appearing on page 69:

"SEC. 4362. EXEMPTIONS.

"(b) State and Local Government Conveyances.—No State or Territory, or political subdivision thereof, or the District of Columbia, shall be liable for the tax imposed by section 4361 with respect to any deed, instrument, or writing to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor."

I am sure you will realize that if H. R. 7125 passes the Senate with the amendment to section 4362 (b) we in the State highway departments will be in a worse situation than ever before for the obvious reason that notwithstanding the fact that section (b) clearly exempts the governmental agency from affixing the documentary stamp tax to deeds of conveyance, it goes on to state:

"* * * and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor."

This wording is obviously an attempt on the part of the Commissioner of Internal Revenue to write into the Federal law a prohibition of the States adding the cost of documentary stamp tax to the fair market value to complete acquisition by negotiations, for the reason that if the Internal Revenue Department can show that the State highway department paid the cost of the documentary stamp tax, Internal Revenue officers can still assess the cost of the stamps against the State's grantor, resulting in double collection of the tax.

It appears to me that the only remedy we have is for you to discuss this matter with your chief administrative officer, and have either your Governor, your commission, or your chief engineer immediately transmit a letter to your representatives in the Senate urging that section 4362 (b) of H. R. 7125 be amended to read:

"(b) State and Local Government Conveyances.—The taxes imposed by section 4361 shall not apply to any deed, instrument, or writing to which a State or political subdivision thereof is a party."

Senator Thomas H. Kuchel of California has assured us that he will do everything possible in an appearance before the Senate Committee on Finance to secure the desired amendment of section 4362 (b). However, I am sure you will realize that this question of documentary stamp tax is one that affects all of the States, that it is unfair for the Federal Government to attempt to collect a tax on a deed of conveyance to or from a State, and that we are placed in an untenable position if upon reaching agreement as to fair market value with an affected property owner we must tell him that notwithstanding the fact that he is an unwilling seller he has to pay the Federal Government a tax of 55 cents for each $500 of value involved in the conveyance of real estate.

Your immediate attention and cooperation in securing letters from your chief administrators to the United States Senators representing your State, urging their favorable consideration of the desired amendment to section 4362 of H. R. 7125 pending before the Committee on Finance of the Senate is of vital importance, as this is our last chance to secure relief during the current session of Congress.

FRANK C. BALFOUR,
Chairman, AASHO Right of Way Committee.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION
OF THE UNITED STATES OF AMERICA,
New York, N. Y., July 2, 1957.

Hon. HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

MY DEAR SENATOR BYRD: The national board of the Young Women's Christian Association of the United States of America would like to call your attention to certain provisions of H. R. 7125, the bill to make technical changes in the Federal excise tax laws, which was recently referred to the Finance Committee. The provisions are those which exempt nonprofit educational organizations from payment of certain manufacturers' excise taxes, taxes on telephone and telegraph services and airline and railroad tickets—privileges now enjoyed by State and local governments and in certain instances, the Red Cross.

The national board is greatly disappointed that all nonprofit health, welfare, and recreational organizations are not also accorded these privileges. It seems to us that these organizations perform essential services as do the nonprofit educational institutions and, therefore, should be given the same tax exemption privileges. The YWCA provides a variety of services for women and girls in approximately 1,600 local communities and in 500 college campuses which make a substantial contribution to community well-being.

Since the nonprofit health and welfare organizations do receive exemption with regard to some other types of taxes, it would seem that the privileges contained in H. R. 7125 should be accorded this same group of agencies. We, therefore, earnestly request your consideration of including the YWCA, as well as other nonprofit health, welfare, and recreational organizations in the same category as educational institutions and the Red Cross in allowing exemption from certain taxes as contained in H. R. 7125.

Sincerely yours,

MARIAN S. FOSTER,
Mrs. F. Beardsley Foster, Jr.,
Vice President.

CITY OF NEW YORK,
New York, N. Y., July 2, 1957.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR: I am writing not only as mayor but also as president of the City Center of Music and Drama, Inc., organized as a nonprofit civic enterprise in 1943.

Ever since 1951, when the present exemption provisions were enacted, the City Center has not charged admissions tax on tickets to its performances, which include opera, concert, ballet, light opera, and drama. This has been done openly for years and the local director of internal revenue has never interfered. Now the Government claims taxes should have been collected on tickets sold for theater and light opera.

The fact is that if the City Center is now made subject to admissions tax, either retroactively or prospectively, it will have no alternative but to close its doors. Its present struggle to continue its activities without endowment and subsidy is already a desperate one, indeed. This institution, which at the lowest possible prices has brought the finest in the performing arts to the people of the city of New York, is America's foremost creative cultural enterprise. At present it is supporting an opera company, the ballet company, the drama company, New York Light Opera Co. and an art gallery. The institution has national and international status.

The New York City Opera Co. visits other American cities, including Detroit, Boston, Cleveland, etc.

The New York City Ballet has been to Europe five times, appearing in every major capital city. In 1958 the State Department has already scheduled it for a 5-month tour of the Far East, including Japan, the Philippines, and Australia. The light opera company has been asked to represent the United States at the coming World's Fair in Brussels in 1958.

A simple amendment to the "chautauqua section" which changes the word "and" to "or" will solve the entire difficulty, and, moreover, this will accord with the original intention of Congress. It should be made effective retroactively.

At present, your Finance Committee is considering various amendments to the excise tax law which has just been sent over from the House Ways and Means Committee.

Section 4233 states "than an organization * * * which is operated for the purpose of conducting an annual chautauqua program of educational, cultural and religious activities at a permanent location" shall be exempt.

It seems to us here in New York a shame to risk destruction of an organization which has presented the best in the performing arts in which 500,000 admissions are paid each year and where 1,500 people who work both on the stage and backstage find employment.

If there is any further data you require, please communicate with me.

Very sincerely yours,

ROBERT F. WAGNER, *Mayor.*

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
July 12, 1957.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR HARRY: I am sending you herewith a letter I have received from Mr. R. S. Starr, park manager of Cedar Point, Inc., Sandusky, Ohio, in which he calls my attention to the provision in H. R. 7125 which puts coin-operated and non-coin-operated machines on the same footing.

Mr. Starr makes some very good points in his letter, particularly in regard to amusement parks that remain open for only a few months a year. I shall appreciate your giving Mr. Starr's views your most careful consideration when H. R. 7125 is taken up by your committee.

Sincerely yours,

JOHN W. BRICKER.

CEDAR POINT ON LAKE ERIE,
Sandusky, Ohio, July 6, 1957.

Hon. JOHN W. BRICKER,
Senator, United States Senate, Washington, D. C.

DEAR SENATOR: For some years past, I have been managing the amusement park at Cedar Point on Lake Erie and would like to bring to attention a point or two in connection with the proposed change in the internal revenue law, covering the tax to be imposed on amusement machines, many of which have widespread use in amusement parks.

As the law now stands, the tax is imposed only on coin-operated machines such as slot machines (commonly known as one-arm bandits), pinballs, and similar coin-operated machines, usually played by an individual and operating a machine which has little or not element of skill.

It is now proposed to change this law to include non-coin-operated machines, which are often played by groups of persons and which machines have both a combined element of skill and chance. The recent Supreme Court decision in the Korpan case, concerning pinballs, will now apparently make it necessary that the Revenue Department charge a tax of $250 per machine on all coin-operated machines in connection with which the player can receive a prize or anything of value if he wins the game.

I believe the original intent of the Congress was to tax, at a $250 rate, machines which had no element of skill or such a small element of skill as to be negligible; in other words, gambling machines. The new revenue bill, now to be considered by the Senate, provides for placing non-coin-operated machines on the same basis as coin-operated machines which will greatly complicate the matter for the Revenue Department and all concerned. If a $250 tax is imposed on every machine used in connection with a game that gives a winning player a prize, then just where is this going to lead? How is the Revenue Department going to decide just what game to tax?

We have a fishpond concession where children can fish for toy fish that have a number attached and every player receives a prize, according to the number on

the fish. Under the law, as proposed, would this simple little concession, which, up to now, at least, has been considered a harmless diversion, be considered a gambling concession because it gives a prize and taxed the rate of $250? It has a pump to circulate water and can be easily considered a machine by the Revenue Department, if it sees fit to so classify it. Almost every game has some mechanical features or similarities to present coin-operated machines.

Most machines and games used in an amusement park, to be attractive to the public, must have both an element of skill and chance and must award a prize to the player who wins. These games are played by patrons for fun and amusement, not as gambling such as is provided by slot machines, which have no element of skill.

We do not operate any slot machines, wheels, or similar equipment. We operate only games, machines, etc., which, up to the present time, have not been considered gambling devices. In the use of our equipment, payment is collected from the patron by the attendants who operate the games, and skill is a very important part of playing the games I refer to. We do not consider that the games constitute gambling or that they should be taxed $250 each because they offer some small prize to the winning player. If a $250 tax is imposed on non-coin-operated machines that give a prize, it will mean the elimination of many games which could not pay this tax and remain profitable.

According to the clipping I enclose, the revenue gain to the Federal Government will be negligible from adding non-coin-operated games to the list and I therefore ask that consideration be given to eliminating this from the pending legislation and avoiding a lot of complications for the Internal Revenue Department and loss to amusement parks through at least partial reduction in their operations.

If, however, it is decided to place non-coin-operated games on the same basis as coin-operated games, then I believe that consideration should be given to the fact that most amusement parks are in operation only 3 to 4 months of the year and in all fairness should not be made to pay a full year's tax which, in many instances, will result in closing the particular operations. If the tax is imposed, then a seasonal operator such as an amusement park should only be required to pay for the months he operates the equipment.

Your assistance in bringing the points mentioned in this letter to the attention of the committee working on the revenue bill and the Senate, prior to passage of the new revenue law, will be greatly appreciated.

Respectfully yours,

E. S. Stark, Park Manager.

Ruling Not To Affect Tax Bills Pending

Washington.—The Supreme Court ruling in the Korpan case is not expected to have any effect on the present excise-tax legislation.

A bill introduced last year by Representative Aime J. Forand, Democrat, of Rhode Island, and reintroduced this year, would set up a third tax category for pinballs. Under the bill, pinballs offering prizes of nonredeemable merchandise with a retail value not above $5 would be taxed at $25.

The tax-writing House Ways and Means Committee turned thumbs down on the idea and decided to let the High Court determine the fate of pinballs (the Billboard, March 23).

While it is possible that a separate bill may be introduced to set up the third category, committee spokesmen say there are no indications that action of that type will be forthcoming.

The wide-sweeping Forand bill, which also contains a provision to bring remote control units under the law, passed the House last week. Under the terms of the bill, $10 or $250 will be imposed on machines if they are similar to an otherwise taxable machine (the Billboard, May 13). Committee report issued earlier on the bill pointed out that while the revenue gain from the provision will be negligible, it believes coin-operated and non-coin-operated machines should be on the same footing.

Bill now faces Senate committee and floor action. Indications are that it will be a long time before the Senate can wade through the 429-page bill, which incorporates many changes in the excise-tax laws.

Ro Ko, Inc.,
Kansas City, Mo., July 8, 1957.

Hon. Thomas C. Hennings, Jr.,
Senate Office Building, Washington, D. C.

Sir: I am interested in H. R. 7125, the Forand bill. I think it has the name of excise tax technical changes bill of 1957.

We are against this bill, because we think it is a very unfair taxation on an industry that at its best earns a meager living for its operators. The tax will tend to discourage the use of these machines since the operators are unable to pay a tax of this amount, and, of course, this will be felt not only by manufacturers other than machine, but the various suppliers who furnish merchandise that is used in connection with the operation of the machine.

These machines are referred to as diggers. You may wonder what these diggers are. They are merely hand-operated with no coin slot, and they are entertaining types of gadgets in that the customer uses the digger to pick up the souvenir that he may desire. A reasonable amount of skill is part of the customer's game.

These diggers are usually used by small operators who work with carnivals that travel throughout the country. The carnival industry as a whole reaches into the lives of most every person in the country. The operators of these carnivals at best enjoy 3 to 4 months of profitable operation. The rest of the year is spent fighting rainy seasons and mud conditions, and quartering up until the following season. What little earnings are made are used to carry them from one season to another.

It has been our experience in supplying these carnivals throughout the years that most of them are on a c. o. d. basis which in itself is an indication of their financial condition. Additional taxation, I am sure, will tend to discourage people from this entertainment which, as mentioned before, will reflect in the sales of quite a number of varied types of industry.

The carnival, as such, serves a very useful purpose in the American way of life. I am sure you can remember days of the past when we looked forward to the coming of a carnival on the corner lot for a few days. The changing times have dealt the carnival industry some very severe blows. They are no longer as profitable as they used to be, and they are constantly encountering great difficulty in their efforts to remain a part of our tradition.

I sincerely hope that you will see your way clear to vote against this bill because of its unfair taxation of a very poor and low-earning industry.

Very truly yours,

Sherman Rosenberg, *President.*

United States Senate,
Committee on the Judiciary,
July 25, 1957.

Hon. Harry Byrd,
Chairman, Committee on Finance,
United States Senate.

Dear Mr. Chairman: We are enclosing herewith a letter from Mr. L. N. Ress, State engineer for Nebraska. He proposes an amendment to section 4362 (b) of H. R. 7125, which is now pending before your committee.

It is our hope that Mr. Ress' proposed amendment will receive careful consideration by the committee whenever H. R. 7125 is taken up as committee business.

Sincerely yours,

Roman L. Hruska,
United States Senator.
Carl T. Curtis,
United States Senator.

State of Nebraska,
Lincoln, July 16, 1957.

Hon. Roman L. Hruska,
Senate Office Building,
Washington, D. C.

Dear Senator Hruska: It has come to my attention that a bill has been passed by the House and referred to the Senate, which bill is identified as H. R. 7125. This bill pertains to the requirements of section 4361 of the internal revenue law

for the affixing of revenue stamps to all deeds, instruments, or writing subject to a documentary stamp tax.

You are well aware that all States are engaged in a tremendous expanded highway program, which will involve the acquisition of substantial amounts of rights-of-way involving rather large sums of public funds. Under current provisions, the States, counties, and cities are required to affix revenue stamps to all right-of-way documents. In case of right-of-way transactions you do not have the normal relationship of buyer and seller. Where the landowner is, in effect, an unwilling seller, it is not reasonable to expect that he would pay the cost of revenue stamps unless he were reimbursed for this cost. Consequently, this department is paying the cost of these stamps and affixing them to all our right-of-way documents.

H. R. 7125 makes provisions for exemptions under section 4362. Subparagraph (b) of this section reads as follows:

"(b) STATE AND LOCAL GOVERNMENT CONVEYANCES.—No State or Territory, or political subdivision thereof, or the District of Columbia, shall be liable for the tax imposed by section 4361 with respect to any deed, instrument, or writing to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor."

It appears that this is an attempt to read into Federal law a prohibition of the States to add the cost of documentary stamp tax to the fair market value of rights-of-way acquired to complete the acquisition by negotiation. In the event that the Internal Revenue Department could show that the State highway department paid the cost of the documentary stamp tax to the grantor, the Internal Revenue Department could still assess the cost of the stamps against the grantor, which would result in double collection of this tax. Apparently, the only remedy which the State highway departments have at this stage is to suggest that section 4362 (b) of H. R. 7125 be amended to read as follows:

"(b) STATE AND LOCAL GOVERNMENT CONVEYANCES.—The taxes imposed by section 4361 shall not apply to any deed, instrument, or writing to which a State or political subdivision thereof is a party."

Since this matter is of utmost importance to this department, as well as all other State highway departments, I would appreciate your giving this matter your personal attention at such time as this legislation reaches the Senate floor for consideration.

Sincerely yours,

L. N. RESS, *State Engineer.*

SIEPKER & CO.,
Quincy, Ill., February 3, 1958.

HON. HARRY F. BYRD,
Chairman, Senate Finance Committee, Washington, D. C.

DEAR MR. BYRD: To refute the contention which might come from some opponents to the proposed extension of the bonded whisky period, as presently provided for in H. R. 7125, that whisky much over 8 years old is unpalatable and not fit to be marketed we take this opportunity to call to your attention the fact that during the prohibition era the United States Government permitted the bottling in bond of whiskies way over 8 years of age.

In this connection we distinctly remember that shortly after the repeal of the 18th amendment we, as wholesale liquor dealers, bought and marketed some T. B. Ripy straight Kentucky bourbon—bottled in bond—which had been stored in bond in wooden barrels in distillery warehouses for 17 full years before bottling and which was pronounced as de luxe merchandise by consumers thereof.

After considering the above we trust you will recommend for passage the extension of the bonded whisky period.

Respectfully yours,

EDWARD J. SIEPKER,
Member of Firm.

UNITED STATES SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
April 4, 1958.

Senator HARRY F. BYRD,
Chairman, Senate Finance Committee, Washington, D. C.

MY DEAR SENATOR BYRD: I have been requested by Congressman Bob Wilson, of California, to seek your assistance in connection with a bill introduced by him to amend section 4242 of the Internal Revenue Code of 1954, to exempt from the club-dues tax certain charges made by nonprofit clubs for the use of facilities.

It was Congressman Wilson's thought that if your committee found any merit in his legislative proposal that it might be included as a committee amendment to H. R. 7125, the Technical Amendments Act of 1958, which is now being considered by your committee.

I would appreciate your committee giving consideration to Congressman Wilson's request. In the event your consideration of H. R. 7125 has reached a stage of finality where consideration of Congressman Wilson's proposal cannot be given, I would appreciate it if you could keep this letter on file for consideration of an amendment to any other tax bill which would be germane.

With best wishes,

Sincerely yours,

THOMAS H. KUCHEL, *United States Senator.*

HOUSE OF REPRESENTATIVES,
Washington, D. C., March 31, 1958.

Hon. THOMAS H. KUCHEL,
Senate Office Building, Washington, D. C.
(Attention: Francis D. Tappaan.)

DEAR TOM: My administrative assistant, Leon Parma, today discussed my bill, H. R. 9877, with Tap. The purpose of the inquiry was to determine if perhaps you might be able to do something to include it in H. R. 7125, which is presently under consideration in committee in the Senate.

I would appreciate your comments on this. If you see any other way of getting this included in other pending legislation in the Senate, I would certainly appreciate the consideration.

With kind regards, I am,

Sincerely,

BOB WILSON, *Member of Congress.*

WABASH RAILROAD CO.,
St. Louis, Mo., March 7, 1958.

Hon. HARRY F. BYRD,
United States Senate, Washington, D. C.

DEAR SENATOR: On February 24 there was introduced an amendment to H. R. 7125 which would repeal the excise tax on the transportation of freight and passengers. This bill and the amendment are now pending before the Senate Finance Committee of which you are a member.

At the recent hearings before the Subcommittee on Surface Transportation of the Senate Committee on Interstate and Foreign Commerce, I testified with respect to the railroad situation. One of the major points I made was the necessity for the repeal of this tax. I heartily endorse the supporting remarks made by Senator Smathers at the time of the introduction of this amendment.

The favorable recommendation of the Finance Committee and the eventual adoption of this amendment are of extreme importance to the economy of the Nation and to the transportation industry. I am hopeful that you will see your way clear to support this amendment.

Sincerely yours,

ARTHUR K. ATKINSON.

THE CHASE MANHATTAN BANK,
New York, March 13, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR BYRD: I am writing to call your attention to a provision of the Excise Tax Technical Changes Act of 1957 (H. R. 7125), which is now before

your committee, since in the judgment of the employee benefit trust committee of the American Bankers Association the provision is sound and deserves to be made retroactive.

The provision to which I have reference is section 4303 (b), which appears in the bill in part IV relating to documentary stamp taxes, provides that—

"The tax imposed by section 4301 shall not apply to the issue of shares or certificates of a fund maintained by a bank exclusively for the collective investment and reinvestment of assets of qualified trusts (within the meaning of sec. 401, relating to qualified pension, profit-sharing, and stock-bonus plans)."

We fully appreciate the usual problems incident to retroactivity in the tax field, particularly in connection with excise taxes. There are, however, extremely important reasons why this provision should be given retroactive effect, reasons, I might add, which we believe make this particular provision an exception to the general policy against retroactivity.

First, a word of background. The pooling of employee benefit funds for investment purposes originated only a few years ago and was the natural outgrowth of the tremendous expansion in the number and size of these funds in recent years. Banks throughout the country, who serve as trustees of these funds, recognized that the commingling of employee benefit trust funds would materially reduce the administrative costs, to the benefit of all concerned. In addition, it would permit the smaller funds to participate in certain investments which were so large or of such a nature that they were open to investment only by the largest trust funds.

In the usual case the bank, already serving as trustee of a number of different employee benefit trusts, declares itself trustee of a fund in which all of such trusts which elect to do so may participate. Only trusts which are qualified for exemption from income tax are eligible to participate.

It was necessary that exemption from Federal income tax be secured for the commingled trust fund, for while the individual trusts were themselves exempt from tax there was no automatic exemption for the commingled trust. Beginning in 1955 the Internal Revenue Service ruled that such trusts were to be treated as qualified employees' trusts under section 401 of the Internal Revenue Code and thus eligible for exemption under section 501 (a). The exemption was conditioned on the requirement that each participating trust was itself qualified for exemption and that each such trust expressly provide that the commingled trust constitutes a part of the individual trust.

It is evident, as section 4303 (b) of the excise-tax bill now recognizes, that the mere pooling of employee benefit trust funds, largely for administrative purposes, is not a transaction which should attract a documentary stamp tax. Indeed, section 4303 (a) of the Internal Revenue Code has for years exempted from the application of the issue tax shares or certificates of a "common trust fund," as defined in section 584. Commingled pension funds, like common trust funds, are not associations or corporations in the usual sense, the participating interests are not transferable, and there is, in short, no proper occasion to subject so-called units of participation in the pool to the issue tax.

THE IMPORTANCE OF RETROACTIVITY

The reasons our committee believes that the retroactive application of section 4303 (b) is so essential in the present case are as follows:

(1) In the first place, unless the provision is made retroactive, it will mean that stamp taxes will be imposed on trust funds based entirely on the abritrary matter of when the individual trust happened to enter the commingled fund. Thus, certain trust funds will be free of this burden while others, for no sound reason, will be subject to the tax. Those who were pioneers in the field and blazed the trail for others to follow will suffer the most. We are sure you will agree that this result should be avoided if at all possible.

(2) Generally in questions of retroactivity there is no practical stopping point. To go back indefinitely creates insuperable problems of refund and administrative difficulty. To go back only a few years, on the other hand, creates an arbitrary line of division no more justifiable than the actual date of passage of the law itself. In the present case these considerations are not applicable. If section 4303 (b) is made retroactive to issues occurring on or after January 1, 1955, it will undoubtedly cover all of the deserving cases, since it was not until 1955 that the Internal Revenue Service began to give commingled employee benefit trust funds income-tax-exemption rulings.

(3) Also contrary to the usual case, retroactive application will not involve refunding of taxes. In no case so far as we are aware has any commingled fund paid the issue tax, it having been assumed that the issue tax was not applicable. Recently, however, the Internal Revenue Service has taken the position that the commingled funds are subject to the issue tax and are not entitled to exemption as "common trust funds" under section 584.

(4) So far as the revenue is concerned, the application of this tax to commingled funds cannot be a material factor. While no figures are available to our committee, the rate of the tax and the few years that it has been applicable in the case of these funds would indicate that the amount involved would not be such as to warrant treating similarly situated taxpayers differently because of the effect on the revenue. On the other hand, to the individual trusts concerned and to the banks serving as trustees, if they should decide to absorb the tax themselves, the application of the issue tax would be a very burdensome penalty to impose on a plan that was adopted primarily for administrative convenience.

In summary, we urge that section 4963 (b), as proposed to be amended in the Excise Tax Technical Changes Act of 1957, be made retroactive to transactions occurring on or after January 1, 1955. We earnestly believe that retroactivity to this limited extent is necessary in the interests of fairness to those employee benefit trust funds concerned.

Our committee would welcome the opportunity to discuss this matter with you if you feel that a discussion would be helpful. We also, of course, stand ready to furnish any supporting information which you feel might be desirable.

Mr. John L. Gibbons, executive vice president of Chemical Bank & Trust Co., New York City, is chairman of the employee-benefits committee of the American Bankers Association. He is away from his office at the present time and consequently this letter is being signed by me as a member of that committee.

Respectfully yours,

ESMOND R. GARDNER,
Member, Employee Benefits Committee,
American Bankers Association.

GREENSBORO, N. C., *May 1, 1958.*

Hon. SAMUEL J. ERVIN,
Senate Office Building, Washington, D. C.

DEAR SIR: I urgently request your immediate support of H. R. 7125, section 132, paragraph C, now pending in Congress, with effective date of May 2, 1957, or any time prior thereto.

I urge you to approve the passage of this bill or to sponsor a new bill which would specifically exempt nonprofit swimming-pool cooperatives organized on or after May 2 from the 20 percent Federal excise tax.

Thank you for your cooperation.

Sincerely yours,

MRS. HAROLD SCHLOSS.

GREENSBORO, N. C., *April 27, 1958.*

Hon. SAMUEL J. ERVIN,
Senate Office Building, Washington, D. C.

DEAR SIR: We are members of the Guilford Hills Park, Inc., and are concerned about the possibility of a Federal excise tax on community swimming pools. This is a neighborhood of 500 middle-income families who have already made a sacrifice to obtain a conveniently located swimming pool. We urge you to support the current legislation in the House, H. R. 7125, section 132, paragraph C, when it is presented to the Senate.

Very truly yours,

ELIZABETH M. COOK.
JOSEPH H. COOK.

STATEMENT OF THOMAS W. S. DAVIS, CHAIRMAN, COMMITTEE OF FEDERAL LEGISLATION AND REGULATIONS, NORTH ATLANTIC PORTS ASSOCIATION

The North Atlantic Ports Association, Inc., is a corporate association consisting of public and private operators of marine terminal facilities located on the North Atlantic coast from Maine to and including Virginia. The membership also

includes other persons and organizations who are interested in the purposes and work of the association including consulting and engineering firms, stevedoring companies, financial institutions, insurance underwriters, shipping companies, firms engaged generally in foreign trade, commercial, and trade associations, etc. (Copy of membership list is attached.) The objectives and purposes of the association are to encourage and promote world trade; to help in the development of the foreign and domestic commerce of all ports on the North Atlantic coast of the United States; to aid in the development of ports along sound economic lines; and to promote the exchange of ideas and information on all phases of port activities.

At its annual meeting on April 30 the North Atlantic Ports Association by action of its membership resolved to support an amendment to H. R. 7125, introduced by Senator Magnuson and others, the purpose of which is the elimination of the 8 percent excise tax on the transportation of property and the 10 percent excise tax on the transportation of passengers.

During World War II these taxes were enacted as emergency measures. The 10 percent tax was originally established to discourage passenger travel during World War II yet remains effective and is, in reality, a "penalty tax" on people who do not own automobiles. It is discriminatory for, according to statistics, some 14 million families do not own an automobile and if they travel they must rely on public transportation and must, therefore, pay the tax. The tax acts to discourage travel by common carriers, which is particularly undesirable in this period of declining passenger revenues. It is undoubtedly one of the factors contributing to the heavy losses being sustained by the railroads from their passenger-train operations.

The 8-percent tax on the transportation of property, also a wartime emergency measure, is now a tax on a necessity, not on a luxury. It impedes the free flow of commerce by our for-hire transportation network which network is so indispensable to the life of the Nation. This tax is also discriminatory in that it applies only on charges paid to for-hire transportation companies and not upon the costs of private transportation. It, therefore, acts as a deterrent on the movement of freight by those transportation agencies in the for-hire field, i. e., air, water, highway, and rail. The tax further operates to increase the handicap of shippers whose competitors have lower transportation costs, since the higher the transportation costs, the greater the amount of the tax.

The elimination of the Federal excise transportation tax would in our belief stimulate the demand for goods and services, and contribute to the economy of the country almost immediately, thus assisting in arresting the current economic recession. No less important, repeal of these taxes would help to prevent further deterioration of our essential transportation industries; and in addition, would serve as a much needed stimulus to the movement of domestic and foreign cargoes through our country's ports.

The North Atlantic Ports Association therefore strongly urges favorable consideration by the Finance Committee of the efforts now being made to have these taxes repealed.

MEMBERSHIP ROSTER, NORTH ATLANTIC PORTS ASSOCIATION

CORPORATE MEMBERS

Maine Port Authority, Maine State Pier, 40 Commercial Street, Portland, Maine.
Boston Tidewater Terminal, Inc., 666 Summer Street, Boston, Mass.
Wiggin Terminals, Inc., 50 Terminal Street, Boston, Mass.
Boston Port Commission, 14 Court Square, Boston, Mass.
Fall River Line Pier, Inc., Water Street, Fall River, Mass.
City of Providence, City Hall, Providence, R. I.
John J. Orr & Son, Inc., Municipal Dock, No. 1 Washington Avenue, Providence, R. I.
Connecticut Terminal Co., Inc., State Pier, New London, Conn.
Commissioners of Steamship Terminals, State Pier, New London, Conn.
Cilco Terminal Co., Inc., 535 Seaview Avenue, Bridgeport, Conn.
New Haven Terminal, Inc., 30 Waterfront Street, New Haven, Conn.
Albany Port District Commission, Albany, N. Y.
City of New York, Department of Marine and Aviation, Pier A, North River, New York, N. Y.
Port of New York Authority, 111 Eighth Avenue, New York, N. Y.
Bush Terminal Co., 100 Broad Street, New York, N. Y.

Pittston Stevedoring Corp., 17 Battery Place, New York, N. Y.
Luckenbach Steamship Co., Inc., 120 Wall Street, New York, N. Y.
Pouch Terminal, Inc., 17 State Street, New York, N. Y.
Lumber Exchange Terminal, Inc., Green Street & East River, Brooklyn, N. Y.
Bayway Terminal Division, Penn-Texas Corp., 600 South Front Street, Elizabeth, N. J.
Atlantic Terminals, Inc., Post Office Box 620, Newark, N. J.
Delaware River Port Authority, Post Office Box 60, Camden, N. J.
Camden Marine Terminals, South Jersey Port Commission, Foot of Beckett Street, Camden, N. J.
Delaware River Terminal & Warehouse Co., Pier 170 North, Westmoreland Street, Philadelphia, Pa.
Newark Tidewater Terminal, Inc., 1307 Broad Street Station Building, Philadelphia, Pa.
Philadelphia Piers, Inc., 81 Fairmount Avenue, Philadelphia, Pa.
Bureau of Port Operations, Department of Commerce, Foot of Chestnut Street, Pier 4, Philadelphia, Pa.
Northern Metal Co., Milnor and Bleigh Streets, Philadelphia, Pa.
Chester Tidewater Terminals, Inc., Front and Thurlow Streets, Chester, Pa.
Board of Harbor Commissioners, Post Office Box 1191, Wilmington, Del.
Canton Railroad Co., 300 Water Street, Baltimore, Md.
Rukert Terminals Corp., 1400 Thames Street, Baltimore, Md.
Maryland Port Authority, 1040 Mathieson Building, 10 Light Street, Baltimore, Md.
Norfolk Port Authority, 500 Board of Trade Building, Norfolk, Va.
Norfolk, Baltimore & Carolina Line, 937 East Water Street, Norfolk, Va.
Virginia State Ports Authority, 251 Granby Street, Norfolk, Va.
Southern Tidewater Terminals, Bankers Trust Co., Norfolk, Va.
Newport News Port Commission, Chesapeake & Ohio Railway Building, Newport News, Va.
Richmond Waterfront Terminals, Inc., Post Office Box 446, Richmond, Va.

ASSOCIATE MEMBERS

Tippetts-Abbett-McCarthy-Stratton, 62 West 47th Street, New York, N. Y.
City of New York, Department of Marine & Aviation, Pier A, North River, New York, N. Y.
Stapleton, Flynn & Lilly, 50 Beaver Street, New York, N. Y.
Greenheart & Wallaba Timber Co., 52 Vanderbilt Avenue, New York, N. Y.
James C. Buckley, Inc., 30 East 40th Street, New York, N. Y.
Moran Towing & Transportation Co., 17 Battery Place, New York, N. Y.
Mystic Terminal Co., 150 Causeway Street, room 1102, Boston, Mass.
Philadelphia Port Bureau, Bourse Building, Philadelphia, Pa.
Baltimore Association of Commerce, 22 Light Street, Baltimore, Md.
Lambert's Point Docks, Inc., 1207 Bank of Commerce Building, Norfolk, Va.
Dehmann, Wright & Pugh, Inc., 251 Granby Street, Norfolk, Va.
Curtis Bay Towing Company of Virginia, Inc., Roanoke Dock, Norfolk, Va.

STATEMENT SUBMITTED BY HARRY G. MASON, MANAGER, LAW DEPARTMENT, TUNG-SOL ELECTRIC, INC., NEWARK, N. J.

We recommend section 163, H. R. 7125, insofar as it pertains to section 6416 (b) (3) (A) and (B) Internal Revenue Code of 1954, be modified to permit the initial (selling) manufacturer to grant a credit or refund for Federal excise taxes billed under section 4061 (b) or section 4141 IRC 1954, to a purchasing manufacturer who is authorized to purchase excise tax exempt for use of taxable articles in further manufacture.

Under current excise tax regulations manufacturers of radio, television, and automobile components are required to charge Federal excise tax on all sales unless they have in their possession at the time taxable articles are sold or shipped, an excise tax exemption certificate to cover each purchase order or a blanket exemption certificate issued for a period not in excess of 1 calendar month. Through clerical errors by employees of either the purchasing or selling manufacturer, exemption certificates may be lost, misfiled, or omitted from the purchase order. In such circumstances the selling manufacturer must bill excise

tax. Generally the invoice specifying a Federal excise tax charge is the first indication to the purchaser that he failed to furnish the proper excise tax exemption certificate to cover his purchase order. At this point the purchasing manufacturer usually notifies the initial manufacturer Federal excise tax is inapplicable and requests a credit be issued, by the initial manufacturer, to eliminate the erroneous excise tax billing. However, section 6416 (b) (3) Internal Revenue Code, provides that if excise tax has been paid with respect to the sale of any taxable article such tax shall be deemed an overpayment by the purchasing manufacturer and only the purchaser is entitled to a credit or refund. This means the initial manufacturer cannot obtain an excise tax credit or refund for any amount he may credit to his customer.

This limitation, has been a source of constant annoyance, leaving the selling manufacturer with the dilemma of antagonizing his customer or ignoring the provision. Most purchasing manufacturers (including manufacturers of taxable end products who could offset their own excise tax liability by the overpayment) will, as a matter of course, refuse to pay an excise tax included on an invoice when they are purchasing for further manufacture even though they have not complied with the regulation requiring that the exemption certificate be in the hands of the selling manufacturer at the time of sale or shipment. In such cases we are frequently dealing, not with the tax department of the purchasing manufacturer, but with his purchasing department or his accounting department, who are not familiar with the technicalities of the code but are responsible for not overpaying for their purchases. When they encounter a charge for tax they then issue the exemption certificate and request credit.

Without any loss of revenue, the recommended amendment would reduce the administrative duties required under current section 6416 (b) (3), of the initial manufacturer, the purchasing manufacturer and the Internal Revenue Service in connection with excise tax refunds or credits on transactions which are recognized as giving rise to excise tax overpayments.

Particularly from the standpoint of the Internal Revenue Service, it would appear administration of the excise tax law would be facilitated if a selling manufacturer, who reports and pays the excise tax is permitted to offset his own quarterly excise tax liability by the amount of refunds or credits granted by him to purchasing manufacturers. In such case the Service could verify the tax exempt nature of the transaction at one location, i. e., the selling manufacturer, rather than conduct audits throughout the Nation to verify relatively small credit and refund claims submitted by purchasing manufacturers. This should materially reduce the expenses incurred by the Internal Revenue Service in processing the numerous small credits and refunds and enable the Service to verify the propriety of such credits and refunds on the periodic excise tax audit of the initial manufacturer.

For example on the single day June 3, 1958 our company received excise tax claims from purchasing manufacturers as follows:

Location:	Tax claimed
Pasadena, Calif	$3.71
Long Island City, N. Y	4.99
St. Louis, Mo	8.96
Portland, Oreg	5.50
Fort Lauderdale, Fla	21.66

Under current section 6416 (b) (3) we were prohibited from refunding the excise tax and must advise the purchaser to file a refund claim with his local Revenue Service office. If and when such claim is filed it would appear the administrative expense of the Revenue Service in processing the excise tax refund claim would substantially exceed the amount of tax involved.

NATIONAL JEWISH WELFARE BOARD,
New York, N. Y., June 6, 1958.

Hon. HARRY F. BYRD,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: At the recent biennial convention of the National Jewish Welfare Board in Washington, D. C., a resolution was unanimously adopted by the national council urging that H. R. 7125 be amended to afford voluntary non-

profit health, welfare, and recreational agencies exemption from payment of excise taxes.

I am pleased to forward this resolution to you.

Sincerely,

ALAN J. ALTHEIMER, *Secretary.*

EXEMPTION FROM PAYMENT OF EXCISE TAX

Resolution adopted by the national council of the National Jewish Welfare Board at its biennial convention, Friday, April 18 to Sunday, April 20, 1958, Washington, D. C.

The Excise Tax Technical Changes Act of 1957 does not contain provisions for the exemption from payment of excise taxes by agencies such as Jewish Community Centers, YM and YWHA's and home and country camps. JWB and its affiliates are among the organizations classified as tax exempt under section 501 (c) (3) of the Internal Revenue Code of 1954 (formerly section 101 (6)). Payment of excise taxes is presently made by these organizations on purchases of items, such as automobiles, athletic equipment, musical instruments, office equipment, and also on telephone and telegraph service, and airline and railroad tickets.

Our agencies are also concerned with exemption of taxes on the use of bowling alleys and billiard and pool tables operated under their auspices. All of the aforementioned articles and services are purchased and provided by these agencies for use in the rendering of community service and it is for this reason that they ask that exemption from such taxes be provided.

Relief from such taxes would be highly beneficial to the sound maintenance and advancement of these community services. The expansion of these programs to meet growing social needs has greatly increased the financial requirements of these agencies. The funds available for these purposes are seriously inadequate and such programs will be aided materially if freed from the payment of excise taxes.

Therefore be it resolved that the National Jewish Welfare Board and its constituent agencies urge that H. R. 7125 be amended to afford voluntary nonprofit health, welfare, and recreational agencies exemption from payment of excise taxes which the bill provides to nonprofit educational organizations such as schools and colleges. We further urge that exemptions presently enjoyed by State and local governments and in certain instances by the National Red Cross, be granted to such health, welfare, and recreational agencies as well.

J. T. S. BROWN'S SON CO.,
June 6, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR BYRD: We operate a distillery at Tyrone (Lawrenceburg) Anderson County, Ky., and we have additional warehousing operations at Wilder, Ky., and Bardstown, Ky. We are one of the oldest of the small independent distillers.

Please consider the contents of this communication in connection with your present deliberation anent House Resolution 7125. We are deeply interested in the passage of this law by the House of Representatives, and we urge your committee to report this bill out favorably for early consideration and passage.

It has been claimed that an extension of the bonded period without limitation on labeling would create certain disadvantages for the small distillers. This is emphatically not so for these reasons, among others:

1. Some small distillers have inventories of forecout whiskies which will be a problem under existing regulations.

2. Under present conditions the small distiller is financially unable to pay the Federal taxes and age whiskies beyond 8 years, and therefore cannot compete with the larger companies, who can afford to do this.

3. The sale of whiskies in glass at an age older than 8 years will always be somewhat of a "specialty" field, and normally the small distiller is particularly interested in "specialty" fields, which is one opportunity to compete against the larger distillers. We do not believe the regulation

should be such as to prevent the small company from entering this over 8-year field, should he desire to do so.

The D. S. I. proposal appears to give the larger companies further advantage in that they alone will be financially able to taxpay and age whisky beyond the 8-year period and they will have the opportunity to commingle, thereby avoiding payment of tax on any portion of their inventories approaching 8 years, which they do not want to carry beyond that period.

Reference to the statistics on distilled spirits published by the Alcohol and Tobacco Division of the United States Treasury Department will give evidence of the large quantities of bulk whiskies, which will attain the forceout age during the balance of 1958 and throughout 1959.

If this amendment is not enacted in the near future the outcome for our business and that of our entire industry for the next 2 years is very black.

Please accept our sincere thanks for your courteous consideration of our position as above stated.

Respectfully submitted,

ALVIN A. GOULD,
Chairman of the Board.

UNITED STATES GOLF ASSOCIATION,
New York, N. Y., June 6, 1958.

Re Excise Tax Technical Changes Act of 1957, H. R. 7125.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SIR: The United States Golf Association has on file with your committee a request for permission to appear in any hearings which may be held on H. R. 7125. We understand that such hearings may be held shortly so that action on the bill may be taken before the adjournment of this session of Congress. In the interests of expediting the proceedings, we now withdraw our request and respectfully submit this letter in substitution for a statement at the hearing.

The United States Golf Association is an association of golf clubs throughout the country. Its membership comprises 2,045 private clubs and 186 clubs of golfers who play at public courses. Naturally, the provisions of H. R. 7125 dealing with the club dues and related taxes are of direct concern to this association and its member clubs. We endorse such provisions and strongly urge their enactment at this session of the Congress.

Certain of the provisions of H. R. 7125 would exempt from the club dues tax assessments for the construction or reconstruction of club facilities or capital additions or improvements to them. This exemption would aid in the solution of a serious problem with which many clubs are now faced. The increased demands for athletic and social club facilities resulting from the growth of our population generally and in suburban areas in particular, together with the necessity of restoring to efficient working order club facilities originally constructed years ago, are literally forcing consideration of programs for club construction, reconstruction, or improvement. With costs as they are today, these programs cannot be financed from current operations and special assessments often are required. The addition of the 20 percent tax obviously is a serious deterrent to the adoption and consummation of such plans.

The exemption would result in indirect benefits to the economy as a whole, perhaps surpassing the interests of the clubs. The expenditures for capital purposes to be involved in these programs would provide business for industry and work for labor. In this respect, the exemption can be regarded as an aid to the recovery from the current recession.

The exemption would not result in total loss of revenue. The programs should result in overall increases in club memberships. The additional club dues tax to be paid over the years would serve to offset any immediate tax loss attributable to the exemption.

The present law with respect to the club dues tax, as administered by the Bureau of Internal Revenue, contains a number of inequities as regards life and honorary memberships. H. R. 7125 would correct these inequities to a large extent, and in that regard replace the club dues tax on a basis more fair to those whose interests are involved.

There is another much needed technical or administrative change in the club dues tax which is not provided for in H. R. 7125 but the consideration of which we respectfully urge. Within recent years, the Bureau of Internal Revenue has applied the tax not only to dues as commonly understood but also to charges for club facilities and services the use of which is entirely within the discretion of individual club members. These have included, among others, the charges for such incidental club facilities and services as charges for golf lockers, charges for club storage and cleaning, etc. It has been contended with convincing force that this administrative application of the tax is an unwarranted extension of the provisions of the statute, but the amounts involved in particular cases have not been sufficient to render serious contest feasible. In any event, the application of the tax to such incidental items seems clearly more a nuisance than a revenue measure. The additional taxes collected could not be sufficient to justify the additional accounting burden to the club, annoyance to members and work for the auditing staff of the Internal Revenue Service.

Amendatory legislation appears to be the only practical solution. It is understood that bills have been introduced in the House designed to clarify the situation by providing that charges for purely voluntary facilities and services are not to be subject to the club dues tax. If this relief should be considered too farreaching, the following possible limitation on the application of the tax is suggested. The amendment would provide that the tax is to be applied to facility and service charges incurred at the election of the member only to the extent they exceed in any year a specified percentage, say 25 percent, of the member's compulsory dues for the year. This would take into account not only the problems encountered where the voluntary charges are in fact incidental, but also the problem on the tax-collecting side where the dues are small in relation to the charges for special facilities and services.

It is recognized that tax rates may not be within the scope of the legislation under consideration. Nevertheless, we wish respectfully to register our strong objection to the continuation of the club dues tax at the 20 percent rate. We urge a return to the 10 percent rate, which was in effect prior to the increase which was based on war emergency considerations no longer existing.

Very truly yours,

JOHN D. AMES, *President.*

STATEMENT OF THOMPSON WILLETT, PRESIDENT OF THE WILLETT DISTILLING CO., BARDSTOWN, NELSON COUNTY, KY.

Mr. Chairman and gentlemen of the Senate Finance Committee, I am Thompson Willett, president of the Willett Distilling Co., Bardstown, Nelson County, Ky., and I make this statement on behalf of my firm, which is owned and controlled by my family. Ours is a small, home-owned, independent business, now operated by the third generation, with the fourth already numbering at last count 29, ready, willing, and confident to prove that they can do a better job than their ancestors. My father, still active in his and our affairs, began his distilling work 60 years ago. I made my second start in it in 1933, the year of repeal. So you can see that we are neither beginners, nor amateurs in this industry, for it is indeed in our "warp and woof" and we are conscious of all of its phases, including the extraordinary responsibilities it has in so many respects.

During the 25 years since repeal the Government has made constructive use of its experience with the legal distilling industry in our country to make more efficient and businesslike its operations affecting us. This modernization program is more definitely established by the provisions of H. R. 7125, the Excise Technical Changes Act of 1957, as approved by the House of Representatives' unanimous vote; and the Willett Distilling Co., respectfully advocates its passage into law, without amendment in respect to its provisions affecting distilled spirits. This bill is a superb piece of legislation, in our considered opinion, and we believe that its activation will result in substantial economies and savings to the Government and to the legal domestic industry—also resulting in increased Government revenue.

The act contains an important provision which takes us out of the "unfavored nation" class in a most important element so far as our domestic distilling industry is concerned, with relation to our competition for the American market with distillers from beyond our borders. I refer to the extension of the

bonded period from the present 8 years limit to the 20 years established by this bill.

In no other country, according to our information, is there such a thing as a "bonded period," and the absence of such a law in Canada, Scotland, and France, whose alcoholic beverage producers are now our most important competitors for the legal American market, gives their distillers these important advantages over our domestic producers, namely:

1. The foreign distiller does not labor under the economic pressure developed by the artifice of being forced to pay the tax on his product whether or not he has a market for it, at a time conjured up by either his or our government. The rules of our customs warehouses are so relaxed that effectively, we understand, he has the same freedom here. This is a highly important aspect, for our bonded period reflects upon our market values, especially upon those of whiskies facing forceout, which in turn affect all other ages and categories of the domestic product. The financing of American whiskies is thereby definitely tied in with the bonded period, and the anomaly is that the older an American whisky gets after it is 4 or 5 years old, the more its price is depressed. On the contrary, the older the Scotch and Canadian whiskies become, the more valuable they are, at least according to their prices in the American market.

2. We are virtually excluded from the aged premium market, because we have to taxpay our whisky before it is 8 years old. This has become almost the exclusive province of the Scotch and Canadians, whom we wish no bad fortune, indeed, but only an opportunity to share their high position at least in our own country, of all places. Ninety percent of the Canadian distillers' business is in this country, we understand, and in Scotland and England the citizens are so upset about the shortage of Scotch there, caused by the great exportations to this country, that they may soon be rioting for Kentucky bourbon. We will be glad to supply their wants, we assure you, if we can get the transatlantic shippers to make the east-bound rate on whisky the same as the west bound rate. It is a not so curious fact that it costs more than twice as much for a case of whisky to go to England from the United States as it does for one to come here from the bonnie braes.

Our domestic industry does not have the "no bonded period" and other advantages of the Canadian tax haven, on the one hand; but rather on the other the almost constant depression maintained on and in our American industry by the bonded period reduces our profits before taxes, which not only affects our business adversely, both generally and particularly, but also obviously the Government's revenues as well.

H. R. 7125 should be passed without change to its provisions respecting the bonded period, in our firm opinion, because we are faced with the certain fact that it will be impossible for the stocks of whisky now in existence to be taxpaid within the 8-year period presently permitted. The current methods permitted us to avoid paying the excise tax are economically unjustifiable, and each constitutes at best, only the lesser of two evils. They are now, to remind you, (1) authorized destruction, and (2) redistillation.

Both of these really are tantamount to the same thing as we see them. The second is only a weak attempt at compromise with conscience as an alternative to burning up this property or pouring it down the sewer, but the effect is practically the same from the financial standpoint. They both, we are sure, provide for the ruin of the small distiller if he has to employ them to any more than a very limited extent and bring us back to a question which has recurred again and again to us:

"If the Government approves the destruction of spirits, with the obvious implication that there is no loss of excise tax involved, why won't it let them remain extant?" That is what H. R. 7125 provides, and we say "Amen" enthusiastically.

An impractical, and cruel as well, proposed answer has been made to our question, however. This is that taxpayment be made, at some future date, of the contents of the forced-out barrels on the basis of a gage or measurement of their contents at their eighth birthday.

In our opinion, this is the worst measure so far proposed. At least force-out payment, destruction, and redistillation are sudden death, and are therefore relatively merciful. The appendage of a fixed amount of tax upon a barrel of whisky, from which its substance is continuously evaporating, will constitute an unremovable malignancy which will geometrically compound the destruction of the value of any contents of the barrel, and its owner, too, if he has enough of these packages in his warehouses. The small distiller taking refuge in the

shelter of this device has a more certain chance of being ruined by it than his bigger and better financed brethren perhaps, but they, too, can be placed in serious difficulty if they resort to it, we fear. The financing of this whisky, by the way, will be extremely difficult for many of us.

Comingling, which is provided for in H. R. 7125, is only a stopgap for those who have younger whiskies of the same production and type with which to mix the older goods. But it does not answer the problem of those who do not, or of those who do not wish to disrupt a bottled-in-bond program by such blending-in-bond. We do not object to it for those who want it, and we do not wish to advocate amending it out of H. R. 7125, but all of these methods, which are only more or less suicidal or at least stopgap at best, only point up more clearly, as we see it, the fact that the real, right, fair, decent, honest, straightforward, practical, and conclusive answer to the question of the bonded period is that given by H. R. 7125.

With regard, also, to the contention that the extension of the bonded period would be a competitive help to those domestic distillers who now have substantial stocks of whiskies approaching 8 years of age, insofar as these concerns can enter the aged premium fields now virtually monopolized by the foreign distillers, our first reaction is that such entries would tend to promote the prestige of all domestic whisky products to some extent; for in some markets the whole list of imported products is looked up to by a portion of the consumer group because of the glory of the aged foreign premium numbers. Kentuckians are not renowned for liking to eat humble pie, and we get pretty tired at times of the emphasis in the snooty places—even in the Nation's Capital—on Scotch and Canadian, for we know that in comparison to our own famous product, to paraphrase a line from the play Oklahoma, "There ain't nothing better than Kentucky bourbon and very little just as good."

To the notion that the extension of the bonded period would help, competitively speaking, those distillers who now have stocks of whisky approaching 8 years of age, to the disadvantage of those who do not have any amounts of these goods, we consider this alarm, at least to ourselves, no more than an unwarranted bugaboo. At this time, anyway, should we wish to go into the aged whisky field with more goods than we presently own, we can buy all the bulk goods of other productions we want and can pay for, at prices actually cheaper than it would have cost us to make and hold them. As a matter of fact, 7-year-old bulk whisky in bond is right now quoted at figures lower than those for 4-year-old. This part of the business will be only a small part of the total for any of us, we are pretty sure from this point of forecast, and we are not at all certain that we want to put into it any important amount of our limited time, money, and ability, etc.

Anyway, we already have the competition of the foreign aged whiskies—so what's a little more or less along that line? Frankly, we seriously think that as a matter of simple justice we should not advocate the continuance of advantages in the American market on the part of our foreign competitors as compared with our domestic ones. Incidentally, lest we forget it with reference again to the fact that there is no bonded period in any country except ours, we think it improper, to put it mildly, for our foreign competitors to be so active and vociferous in their efforts to keep us so shackled in this country; especially when they can buy our whisky at force-out prices and ship it to their countries, where they taxpay it at their own sweet will, all the while laughing at the Yankee suckers, perhaps.

The statement of the House Ways and Means Committee, when it said in 1894, while considering the change from a bonded period of 3 years to 8 years, which became the law under which we are now operating, that by "the adoption of an unlimited bonded period * * * the Government would lose no revenue and incur no additional expense in its collection," is as true now as it was then, and we feel sure that you will concur with their conclusion. Twenty years is now, practically speaking, an unlimited bonded period.

We will close by citing you the gist of the argument in 1894 of the eloquent Senator Jo Blackburn from Kentucky, concerning the bonded period question, who not only said that spirits should be taxed on the basis of consumption, which principle in effect has become recognized Government policy in modern times, but rising to the issue as it affected his constituency, also emphasized in certain terms, we read, that the bonded period was an instrument to keep "honest distillers," in his words, "at the mercy of the whisky trust."

We thank you for your consideration, and assure you of our appreciation for your courteous attention.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
July 31, 1957.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate.

DEAR SENATOR: Attached is a letter I have just received from Mr. W. A. Bugge, director of the Washington State Highway Commission.

You will note Mr. Bugge is concerned over the present language of section 4362 of H. R. 7125, the Excise Tax Technical Changes Act of 1957, which is presently before your committee. He has submitted an amendment to section 4362 and I respectfully request you and your committee give careful consideration of its merit.

I would also appreciate it if you would make Mr. Bugge's letter a part of the record of the hearing on H. R. 7125.

Thank you for your many courtesies and kind personal regards.

Sincerely,

WARREN G. MAGNUSON,
United States Senator.

WASHINGTON STATE HIGHWAY COMMISSION,
Olympia, July 23, 1957.

Hon. WARREN G. MAGNUSON,
Senate Office Building,
Washington, D. C.

DEAR SENATOR MAGNUSON: The modified version of H. R. 6849 included in H. R. 7125 is of great concern to our State. This measure now pending in the Senate Finance Committee proposes a condition that if Internal Revenue officers could show the highway department paid the cost of the documentary stamp tax, internal revenue officers could still assess the cost of the stamps against the State's grantor, resulting in double collection of the tax.

I am sure you will realize that this question of documentary stamp tax is one that affects all of the States, that it is unfair, and that we are placed in an untenable position if upon reaching agreement as to fair market value with an affected property owner we must tell him that notwithstanding the fact that he is an unwilling seller he has to pay the Federal Government tax of 55 cents for each $500 of value involved in the conveyance of real estate.

For your convenience, I quote from the proposed legislation appearing on page 69:

"SEC. 4362. EXEMPTIONS.

"(b) STATE AND LOCAL GOVERNMENT CONVEYANCES.—No State or Territory, or political subdivision thereof, or the District of Columbia, shall be liable for the tax imposed by section 4361 with respect to any deed, instrument, or writing to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor."

You will note that even though section (b) clearly exempts the governmental agency from affixing the documentary stamp tax to deeds of conveyance, it goes on to state:

"* * * and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor."

The only remedy we have is to respectfully request your endorsement of an amendment to section 4362 (b) of H. R. 7125 to read:

"(b) State and Local Government Conveyances.—The taxes imposed by section 4361 shall not apply to any deed, instrument, or writing to which a State or political subdivision thereof is a party."

Your endorsement of this amendment is of vital importance to us, as it is our last chance to secure relief during the current session of Congress.

We have been advised that Senator Thomas H. Kuchel, of California, is attempting to help secure the desired amendment of section 4362 (b) in an appearance before the Senate Committee on Finance.

Your efforts to secure the above amendment will be greatly appreciated by your highway department and will be a great service to the people in the State of Washington.

Very truly yours,

W. A. BUGGE, *Director of Highways.*

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
August 5, 1957.

Hon. HARRY FLOOD BYRD,
Chairman, Finance Committee,
United States Senate,
Washington, D. C.

DEAR SENATOR: I am attaching correspondence I have just received from Mr. Jennings P. Felix, attorney for the Washington State Toll Bridge Authority. The correspondence deals with the Federal excise tax of 10 percent on transportation of persons.

H. R. 7125, the Excise Tax Technical Changes Act of 1957, contains section 135. This section exempts ferryboats from the tax on transportation of property; it does not, however, deal with the parallel question of the tax on transportation of persons.

The Washington State Toll Bridge Authority operates the Washington State Ferry System. As you know, this ferry system serves Seattle, Everett, Edmonds, Bremerton, and a number of other cities on Puget Sound. The system is owned by the State and is operated by the State.

Mr. Felix points out that, "It is our position that the Federal Government may not more constitutionally tax the State than the State tax the Federal Government. The statute does not specifically attempt to tax the States but the Internal Revenue Service has taken that position."

Most States have refused to pay the tax, on constitutional grounds. I think that it would be a great service to these subdivisions of government if your committee would include in H. R. 7125 provisions similar to those the attorneys for the Washington State Toll Bridge Authority are recommending.

I realize that it is improbable your committee will have a chance to act on H. R. 1725 in this session. I am hopeful, however, that, by bringing this problem to your attention early, the staff will have some concrete recommendations ready for you when we convene in January.

As always, I appreciate your courtesies in matters of this kind.

Warm personal regards.

Sincerely,

WARREN G. MAGNUSON,
United States Senator.

FELIX & ABEL,
Seattle, Wash., July 30, 1957.

Re Washington State Ferry System—Application of Federal transportation tax.

Hon. WARREN G. MAGNUSON,
United States Senator,
Washington, D. C.

DEAR SENATOR MAGNUSON: We represent the Washington State Toll Bridge Authority in its contest of the Federal transportation taxes as applied to the Washington State Ferry System. The Federal tax is 10 percent of the fares charged for the transportation of persons and 3 percent on the transportation of property. It is our position that the Federal Government may not more constitutionally tax the State than the State tax the Federal Government. The statute does not specifically attempt to tax the States but the Internal Revenue Service has taken that position.

The House recently passed the Excise Tax Technical Changes Act of 1957 (H. R. 7125). Section 135 exempts all ferry systems, whether public or private, from the 3 percent transportation tax upon property. The 10 percent tax is not changed.

We are urging you and Senator Jackson to submit an amendment to section 135, by addition thereto, to exempt State or municipally owned ferry systems from these Federal taxes. A proposed draft is enclosed herewith.

As you know, State-operated ferry systems are but a part of the operation of State highways. Fares are charged in an effort to make the operations self-supporting, to retire bonded indebtedness, and to equitably distribute costs upon the user who is the primary beneficiary. The same theory is behind toll-road systems. Since highways, bridges, and ferries are a governmental operation, the fare itself is a tax.

To attempt to impose these Federal taxes upon the State violates the basic concept of our Government first enunciated as the "Power to tax is the power

to destroy." This doctrine of immunity is that the State cannot tax the Federal Government without the consent of Congress and the Federal Government similarly cannot tax States.

The language of the Federal tax statutes does not purport to tax States or municipalities but neither are they specifically exempted. Not being exempted, the Internal Revenue Service has made efforts to collect the tax and even filed liens. States would not be greatly disturbed over this activity except for the effect of a claim, whether proper or improper, on the salability of its bonds.

It is a peculiar and contradictory position that the Internal Revenue Service would have the Congress take. Congress provides in lieu tax payments to the States; it establishes Federal activities so that private operators cannot use the cloak of Federal immunity to escape State and local taxes; and Congress provides funds for State highway systems. Now the Internal Revenue Service contends the Federal Government not only has the constitutional right but the desire to tax the States. The courts have thus far denied the contentions of the Revenue Service.

The present section 135 exempts both publicly and privately operated ferry system from the tax on transportation of property. It was submitted by Representative Keogh, of New York. In that State, we are advised, the tax on transportation of persons is not important because of mileage limitations.

The primary argument made in behalf of existing section 135 by the National Ferryboat Operators Association is that the tax results in an unfair discrimination upon ferries because competing toll roads, tunnels, and bridges are tax free. See the House report of the Committee on Ways and Means (H. Rept. No. 481, 85th Cong., 1st sess., pp. 49-50). This argument of course applies solely to private ferry operations.

The other reasons given are: (1) convenience in that now truckers for hire are exempt, while those hauling their own produce must pay. Actually, of course, the exempt trucker merely produces his certificate for the examination of the ticket seller. Other simple collecting methods are also available and used. This reason for amendment is not particularly persuasive.

(2) The last reason given by the House to support the amendment is that there are now disagreements between the Internal Revenue Service and the States as to the tax application upon governmentally operated ferryboat services.

Congress should be, and we are confident, is, more interested in reasserting our constitutional tax precepts and protecting States rather than granting private tax exemptions. However, we have no quarrel with the existing section 135 and the desire of private as well as governmental operations to be exempt. The logic in support of the private ferry exemption is sound. We feel strongly, however, that the States should be given the primary consideration.

We call attention, too, to the fact tht the revenue involved is minor, since most States have and are refusing to pay.

There are several lawsuits pending now between the States and the Federal Government: 1 in Michigan, 1 in Florida, and 1 in Washington. The Ninth Circuit Court of Appeals has already ruled that the Federal transportation tax did not apply to King County's operation of a ferry system because of the Constitution. The Internal Revenue Service is disregarding the decision, but in view of the actions of the Internal Revenue Service, it is deemed advisable the question be settled by legislation.

Personal regards.

Yours very truly,

JENNINGS P. FELIX.

A BILL To amend the Internal Revenue Code to make it clear that the taxes on transportation of persons and property do not apply to ferry service provided by State-operated ferryboats

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4262 of the Internal Revenue Code of 1954, as amended and renumbered section 4263 by Act of July 25, 1956, and August 7, 1956, relating to the exemption from taxes upon the transportation of persons, is hereby amended by the addition of the following subsection:

"(f) STATE-OPERATED FERRY BOATS.—The tax imposed by section 4261 shall not apply to ferry service provided by a State (as defined in section 7701 (a) (10)) or by an agency or instrumentality thereof."

2. Section 4272 of the Internal Revenue Code of 1954, relating to the exemption from taxes upon the transportation of property, is hereby amended by addition of the following new subsection:

"(f) STATE-OPERATED FERRY BOATS.—The tax imposed by section 4271 shall not apply to ferry service provided by a State (as defined in section 7701 (a) (10)) or by an agency or instrumentality thereof."

3. The amendments provided by the sections of this action shall take effect as of January 1, 1957. Provisions having the same effect as such subsections shall be considered to be included in sections 3469 and 3475, respectively, of the Internal Revenue Code of 1939 and effective as if included in such sections at the time such sections were added to such code.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
August 12, 1957.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate.

DEAR SENATOR: This is in reference to my letter to you of July 31 and your kind reply of August 7. At that time I referred to you correspondence I had received from Mr. Jennings P. Felix, of Felix & Abel, Seattle, urging that section 135 of H. R. 7125 be amended to specifically exempt State and municipally owned ferry systems from the 10-percent tax levied on transportation of passengers.

Mr. Francis Pearson, chairman of Washington State Public Service Commission, has written me on the same subject. I thought you would want to know the commission's stand on the suggested amendment and would respectfully request that you include his letter, too, in the record of the hearings on H. R. 7125—which you informed me would be considered early in the next session.

Thank you for your many courtesies and warm personal regards.

Sincerely,

WARREN G. MAGNUSON,
United States Senator.

STATE OF WASHINGTON,
WASHINGTON PUBLIC SERVICE COMMISSION,
Olympia, August 5, 1957.

Hon. WARREN G. MAGNUSON,
United States Senator,
Senate Office Building, Washington, D. C.

DEAR MAGGIE: As you know, the Washington Toll Bridge Authority is contesting the Federal Government's attempt to collect the Federal transportation tax as applied to the Washington ferry system. The Federal tax is 10 percent of the fare for transporting persons and 3 percent for the carriage of property.

It is our view that the Federal Government may not validly assert its taxing power against the State. Although the Federal tax statutes do not expressly apply to State operations, the Internal Revenue Service has nevertheless taken the position that all State-operated ferries are subject to the above tax.

The House of Representatives recently passed the Excise Tax Technical Changes Act of 1957 (H. R. 7125). Section 135 thereof exempts all ferry systems, public and private, from the 3-percent tax on property. No change, however, was made in the 10-percent tax on passenger fare.

The purpose of this letter is to strenuously urge you and Senator Jackson to support and submit an amendment to section 135 of the above bill to expressly exempt State and municipally owned ferry systems from the provisions of the Federal transportation tax. I understand a proposed amendment has previously been submitted to you for consideration.

This matter is of utmost importance to the State of Washington and to other States similarly affected. Our State-operated ferries are an integral part of our State highway system. I am certain that you will concur with me that the Federal Government may not and should not be allowed to assert its taxing power against the State.

In closing, I again urge you to support an amendment to section 135 of the above bill to exempt State-owned ferry systems from the above Federal taxes.

Very truly yours,

FRANCIS PEARSON, *Chairman.*

T. W. SAMUELS DISTILLERY,
Deatsville, Ky., June 10, 1958.

Hon. HARRY F. BYRD,
Chairman, Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: May I submit to you, please, for your early consideration, the enclosed statement embodying my thoughts anent H. R. 7125 (the Forand bill) presently pending before your committee.

You may be assured of my deep gratitude for your personal interest in this issue.

In the thought that your committee might prefer the presentation of a written expression, I direct this to you, assuring you, however, that should a personal and oral statement be desired, I will be available upon receipt of your good directions.

Respectfully yours,

S. L. WESTERMAN, *President.*

STATEMENT OF SAMUEL L. WESTERMAN, OF DETROIT, MICH., PRESIDENT OF T. W. SAMUELS DISTILLERY, DEATSVILLE, NELSON COUNTY, KY., IN RE HOUSE RESOLUTION 7125

My name is Samuel L. Westerman. My residence is in Detroit, Mich. I have been associated actively in the distilled spirits industry continuously since 1934. For the past 15 years I have served in the capacity as president of T. W. Samuels-Old Jordan Distillery, one of the smaller independent distilleries which is located at Deatsville in Nelson County, Ky. Our distillery, which is privately owned, has been the source of fine bourbon produced in Nelson County, Ky., since 1820.

Mr. Chairman, may I express to you and to the members of your committee my appreciation for this opportunity to briefly state the views of our distillery, which views I am sure are consistent with those of practically all of the smaller independent distillers. The little fellows in our industry, generally referred to as the smaller independent distilleries, have diminished considerably in number since the advent of repeal, yet, however, this group remains a vital segment of the distilling industry. The records of our Treasury Department, as a result of a careful check made of the distilling industry reflect that there has been a tremendous decrease in the past 12 years in the number of licensees in the American distilling, blending, and rectifying industry. I refer particularly to the smaller, independent distilleries. In 1940 they were 70 in number. By 1952 this number was reduced to 38. Today the number has suffered further reductions. As to the rectifiers, the figures are equally appalling. In 1940 they numbered 184. Today, throughout the United States, the number has been reduced at least 50 percent. The cooperage business, one of the allied industries, showed that they were 14 in number in 1940, while today only 4 remain. The source of the foregoing information, gentlemen, is from the Alcohol and Tobacco Tax Unit of our Internal Revenue Service.

It is our distillery's privilege to enjoy membership in the Distilled Spirits Institute, and in that I am a member of the board of directors of this recognized body, I am cognizant of the views voiced by the various members of this institute. It is my sincere wish to present in this statement the objectives, problems, and thoughts of our independent distillery, notwithstanding any general statement made by the Distilled Spirits Institute.

The smaller, independent distillery, historically, has always enjoyed a prominent position with the industry. Those of us who remain are deeply appreciative of the expressions made by the major distilleries and the larger so-called "independents" who have singularly voiced the view, that notwithstanding the differences that exist and have brought about the "battle of the giants," everything possible should be done to help the little fellow survive. For this attitude, we are extremely grateful. I do not wish to leave the impression here, that I am authorized to be the spokesman for our segment of the industry, but I do wish to place before you the problems of our own distillery, which from prior expressions of others similarly situated, seems to be a common problem of the smaller independents.

Certainly, it is unnecessary for me to relate to you at this late hour that the antiquated law which requires a distiller to-tax-pay, or destroy, or to redistill a product after it has been aged for an 8-year period places upon us a most distressing and pressing problem. The majors of this industry find no difficulties in the multimillion dollar bond issues and are obtaining adequate financial assistance through normal banking channels, through which they can finance, under the existing laws, the whisky which they may wish to market over 8 years of age. The smaller distiller must obtain his financing by pledging with his banks, warehouse receipts for bulk whiskies. These banks, almost uniformly, now require the replacement of collateral, or the discharge of loans which are collateralized by whiskies approaching the 8-year-out-of-bond status.

Historically, because of the general nature of the aging requirements of the product, practically every distiller, large or small, must rely upon banks and other lending channels for financial assistance in carrying out their respective inventory programs. It has been said that certain segments of this industry will obtain great competitive advantages through the enactment of H. R. 7125, in that certain of the larger distilleries enjoy a disproportionate inventory of older whiskies. Our problem today is one of life or death. We are not particularly concerned that someone may, for a temporary period, have an advantage. We are concerned with our older inventories which, without relief, must be sold, if a buyer can be obtained, on a most distressed market. If no buyer can be obtained, we are forced either to destroy this valuable inventory of older whiskies or redistill the same, with resulting substantial losses. On February 10, 1958, and on February 28, 1958, I filed with the United States Tariff Commission, detailed disclosures of each and every inspection of distilled spirits embraced in our distillery's inventories with related gallonage figures for the years 1950 and 1951 and the actual dates when the described barrels will, under the present law, be forced out of bond. These disclosures fully portray our forecount problems.

It is not uncommon, in our view, that legislation generally may impose a little greater hardship upon one segment of an industry than it does upon others. In the couse of time, regulatory legislation will apply with equal treatment to all segments of the industry. We, the little fellows, need the relief afforded by part 2 of H. R. 7125 now. Its enactment at a later date, or its application to goods other than that presently in bond may not serve to be the blood transfusion we need now. The smaller distiller seeks "specialty" fields. We are asking for no subsidy, but we are asking for an opportunity to continue in this industry in the honest conviction that in the course of time the relief of this bill will permit us to meet any competitive advantage that a particular company or several companies might temporarily enjoy.

The Treasury Department of the United States has heretofore indicated that no tax relief is involved, and no loss of revenue will result. The tax will continue to be paid on all distilled spirits sold. The effect of the bill is merely to enable us to pay the tax when we have a customer for our goods in the normal channels of trade. May we further recite the heretofore stated position of our Treasury Department which is as follows:

"The failure to extend the bonding period could force out whisky and lead to greater consumption as a result of distress sales or more intensive sales promotion. The immediate effect would be an increase in excise tax receipts. However, the reaction on the corporate income tax would be unfavorable. On balance, it does not appear that there would be a significant change in total tax collections as a result of the enactment of the bill. In this respect, the Treasury Department has no objection to the passage of the bill."

While the hardships of the current law, which H. R. 7125 seeks to remedy, have been weathered so far in most cases, this hardship is becoming progressively greater and threatens chaos to the entire industry. The passage of the law will enable smaller, independent distilleries to grow. The present 8-year force-out provisions of the law operate as a straitjacket for all of the smaller independents. Even though we may have new markets where our sales may be promoted, and even though our present markets may afford us increased sales, these opportunities are denied the smaller distillery for the following reasons:

(1) The very nature of the product of this industry requires that it has an aging process. We must anticipate at least 4 years in advance what our needs will be, and we must therefore make new whisky today which will not be ready for market until the year 1962.

(2) Because of the fluctuating economic conditions, and particularly because of the present force-out provisions of the law, we must restrict ourselves today and produce our very minimum requirements. Such restrictions in production prevent us from growing today, and will prevent us from growing 4 years from today, or 6 years or 8 years hence, or at any time in the future, unless, however, the threat of the 8-year force-out is removed.

May I again quote to you a statement in this connection, heretofore made by the Treasury Department of the United States:

"Failure to extend the bonding period could force those with excessive inventories to attempt to sell stocks for which there was not a reasonably firm market. This could react to the disadvantage of all members of the industry irrespective of their inventory position."

Mr. Chairman, before concluding, I wish to submit this final thought. The history of this relief legislation clearly evidences the fact that it is unrealistic to sit back and wait for an industry, as competitive as ours, to reach a united position. In fact, there are few, if any industries, which can ever reach total agreement on any vital points. I therefore submit that the withholding of action by your finance committee will provide no solution, but will deny the equitable relief so sorely needed at this time. Any deferment of action will produce only further controversy and create greater demands on the time of Congress. We respectfully submit our hope that this committee will get rid of a bad law once and for all through the passage of H. R. 7215. Such much-needed legislation will eliminate the force out provisions of the 8-year bonding period. It will grant to the United States distiller, large or small, the same treatment under our excise tax laws as is accorded every other United States manufacturer. It will permit a distiller to pay excise tax on his goods when he has a market for them. It would end the forced liquidation of whisky inventories and would serve to preserve the small distiller, and in our opinion strengthen free competition. We strongly urge your favorable consideration.

NATIONAL ASSOCIATION OF PHOTOGRAPHIC MANUFACTURERS, INC.,
New York, N. Y., June 25, 1958.

Re H. R. 7125, Excise Tax Technical Changes Act of 1957.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: In view of reports that your committee will take up H. R. 7125, Excise Tax Technical Changes Act of 1957, we respectfully submit this brief statement covering several points of interest. More specifically, in the area of technical and administrative problems, we will deal with (1) a desirable change in the requirements to be met before filing claims or suits for refund or credit, (2) consideration of the excise tax price base, (3) remedial action to relieve a situation of annoyance and dispute in the somewhat delicate area of diplomatic exemption, (4) brief comment on the revised exemption of export sales and exemption of nonprofit educational institutions, and (5) rates.

(1) Credits and refunds

In your consideration of section 6416 (credits and refunds) of the Internal Revenue Code (sec. 163 of H. R. 7125), we believe that a most helpful and valuable improvement could be made by inclusion of a provision permitting a manufacturer to secure a final adjudication as to the taxability of an article, either by filing a claim for refund or instituting suit in a Federal court, without first securing the written consents of the ultimate vendors or ultimate purchasers (in the case of any tax required to be repaid to such ultimate vendor or ultimate purchaser).

Thus, instead of requiring that such consents be filed with the Commissioner or his delegate at the time of filing of the claim, such a provision would enable a manufacturer to postpone this extensive work burden until it was definitely determined that a refund or credit of tax would be allowable. In the case of any tax required to be repaid to the ultimate purchaser or ultimate vendor, the allowance of the actual credit or refund should, of course, be limited to the amounts represented by the appropriate consents filed with the Secretary or his delegate prior to or after the final determination of tax status.

It does not seem likely that amendment of the statute to facilitate the filing of a claim or suit for a determination of merit will result in undue burdens being placed upon the Internal Revenue Service by reason of the filing of unsupported claims.

In furtherance of the matter submitted above, may we suggest that the amendments proposed by section 103 of H. R. 7125 be extended to include after "(B) has repaid" (line 22, p. 87) some such phrase as "or has satisfied the Commissioner that he will repay" any tax required to be repaid to the "ultimate vendor" or "ultimate purchaser" as the case may be.

The amendments proposed in section 103 of H. R. 7125 under paragraph (a) (1) (C) on page 88 (lines 10 to 25, inclusive) and page 89 (lines 1 through 4) should, we believe, be extended to include after the words "ultimate vendor" on lines 20 and 23 (p. 88) the additional phrase "or ultimate purchaser." This change is needed because makers of newsreels, covered by section 103 (b) (2) (Q), are "ultimate purchasers" rather than "ultimate vendors" and it is entirely conceivable that "ultimate purchaser" claims may be appropriate and justified under other (b) (2) specified uses.

(2) *Excise tax price base*

Section 115 of H. R. 7125 appears to have the highly commendable intent to establish in an industry where the normal method of distribution is through wholesale distributors a uniform excise tax base for articles sold by a manufacturer to retailers when the manufacturer sells such articles to both wholesale distributors and retailers.

It seems equally necessary to consider some provision to establish a uniform excise tax base in industries in which large dollar volume distribution is achieved through sales to regular retail dealers at quantity discount prices (although some or all members of the industry may effect some portion of their distribution through wholesale distributors). In the photographic industry a very substantial and probably the largest volume of distribution of taxable articles, with the possible exception of black and white roll film, is to retailers, many of whom are given quantity discounts which result in price levels that equal or substantially approach the price levels which are or would be applicable to sales to wholesale distributors. We believe this pricing and marketing pattern may similarly occur in other product lines subject to excise tax.

At present, manufacturers of taxable photographic equipment charge and pay excise tax on the selling price of the article in the specific transaction and this often results in a lower excise tax charge to some dealers than to other dealers on the same articles. This is due to the fact that large retail dealers buy articles in sufficient quantities to obtain the applicable discounts whereas small retail dealers, unable to command the capital required for large scale purchasing, do not qualify for such quantity discounts and therefore pay a greater excise tax. This, in some considerable measure, results in an inequitable excise tax differential to the detriment of the small dealer.

It seems reasonable and equitable that in any industry where quantity discount pricing on sales to retailers is rather generally applicable to a large volume of the industry distributions, there is substantial justification for establishing a uniform base for taxable products that will eliminate any excise tax level discrimination.

To effect a desirable correction of this tax level differential the conditions which could be required are comparable to those which appear in lines 20 through 23, page 14 and lines 7 through 13, page 15 of H. R. 7125. In other words, it could be provided that—

(*a*) the manufacturer or producer of such article regularly sells such articles at retail or to retailers, as the case may be,

(*b*) the manufacturer or producer of such article regularly sells such articles to retailers at quantity discount prices in sufficient volume to indicate that his retailers quantity discount prices are established without regard to any tax benefit under this paragraph,

(*c*) the method of substantial distribution for such articles within the industry is to sell such articles to retailers at quantity discount prices.

(*d*) the transaction is an arm's length transaction,

the tax under this chapter shall (if based on the price for which the article is sold) be computed at whichever of the following prices is the lower: (i) The price at which such article is sold, or (ii) the lowest price at which such articles are sold under quantity discounts to retail dealers.

We do not believe the change in excise tax base as recommended above would result in any substantial loss of revenue but it would materially reduce the burden of detail work in the industry. This consideration is, however, secondary to the elimination of the tax disadvantage accruing to the small dealer.

(3) *Diplomatic exemptions*

We also take this opportunity to call your attention to one other area of excise-tax exemption that occasions considerable difficulty through widespread misunderstanding. Certain duly accredited foreign diplomats are accorded exemption from the retailer's excise tax, and exemption from the manufacturer's excise tax on articles purchased directly from the manufacturer. However, several of the large manufacturers of photographic products do not sell direct to individuals and the purchase of a camera, or similar taxable product, from a photographic dealer does not now entitle the accredited diplomat to exemption from the photographic excise tax. However, due to the rather general misunderstanding of this circumstance the dealer will often deduct the excise tax from the amount of the sale to a member of the accredited foreign diplomatic corps and in turn request a refund from the manufacturer. Such requests frequently lead to a lengthy and involved burden of correspondence and the technicality of the disallowance is not easily impressed upon the dealer or the diplomatic customer.

It would be very helpful, therefore, if a suitable remedial exemption were to be included in the proposed amendments to section 163, credits and refunds. We feel certain that under appropriate regulations this exemption would occasion no significant loss of revenue and such exemption would eliminate a situation that is now a source of misunderstanding and embarrassment.

(4) *Comment on proposed exemptions*

As to other proposed exemptions, we wish in particular to endorse:

1. The amendents proposed to be made in section 4221 as they relate to the extension of tax exemption to nonprofit educational institutions, and

2. To commend the proposed simplification of the presently troublesome export exemption requirements. The proposed changes with respect to exemption of export sales, if enacted, will, we believe, do much to eliminate the burden of correspondence now prevailing between dealers and manufacturers on this subject.

(5) *Rates*

In the matter of excise-tax rates as they are applicable to photographic products, we, at this time, only request that this industry be given the same equitable treatment you have accorded it in the past in the event that rate reductions are granted on items of a comparable or competitive nature.

Thank you for your consideration of the matters herein set forth.

Respectfully submitted.

WILLIAM C. BABBITT,
Managing Director.

NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION,
New York, N. Y., June 30, 1958.

Re H. R. 7125.

Mrs. ELIZABETH B. SPRINGER,
Chief Clerk, Senate Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR MRS. SPRINGER: Enclosed are five copies of a statement in support of H. R. 7125, submitted in behalf of manufacturers who are members of the National Electrical Manufacturers Association and whose products fall within the categories of excise taxed articles under sections 4111, 4112, and 4121 of the Internal Revenue Code.

In the interest of expeditious action by the Senate Committee on Finance, we hereby waive our opportunity to appear before the committee. We request that the statement be made part of the record.

We urge prompt and favorable action on the subject bill, which we consider to be important legislation.

Sincerely yours,

H. G. BLAKESLEE,
Chairman, NEMA Excise Tax Committee.

STATEMENT SUBMITTED BY NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION, RE BILL H. R. 7125, PROPOSING AMENDMENTS TO THE INTERNAL REVENUE CODE

This statement is submitted in behalf of those manufacturers who are members of the National Electrical Manufacturers Association, whose products fall within the categories of excise taxed articles under sections 4111, 4112, and 4121 of the Internal Revenue Code.

Repeal of manufacturers' excise taxes

The manufacturers sponsoring this presentation respectfully request that the Senate Committee on Finance give favorable consideration to the eventual removal of the present discriminatory manufacturers' excise taxes on articles covered by Internal Revenue Code, sections 4111, 4112, and 4121.

These articles include, among others, ranges, water heaters, refrigerators, food freezers, food waste disposers, electric dishwashers, electric dehumidifiers, electric fans and room air conditioners, and many electric housewares appliances such as toasters, coffee makers, food mixers, roasters, flatirons, etc.

The rising standard of living in our country has been marked by the transition of these products from luxuries to necessities.

For example, the overwhelming adoption of mechanical refrigeration has practically removed the old icebox, and any attempt to return to early methods of refrigeration would be unthinkable and would create chaos and economic upset. Therefore, mechanical refrigeration, considered a luxury 25 years ago, is now a necessity. It does an immensely better job of safe and lower-cost preservation of food and prevention of spoilage, and has made a direct and substantial contribution to the health of the Nation.

Other electric household products have replaced equipment that is obsolete, inefficient, and hazardous. One such example is the automatic water heater, a necessity in every home for sanitation and for the prevention of infection and disease. The automatic water heater, which makes hot water readily available, is essential for healthful living.

It is becoming more and more the practice of modern home builders to install a range, a water heater, a food waste disposer, and a refrigerator as part of the basic household equipment, just as they install heating, lighting, and plumbing systems. In fact, the food waste disposer (which is part of the sink) and the water heater are integral parts of the plumbing system and, as such, should not be subject to the manufacturers' excise tax.

Government specifications on housing require the installation of water heaters. This household product is considered as much a part of the house as the furnace or the doors. In many municipalities where garbage collections have been dispensed with, requirements are set for the installation of food waste disposers. This means that the customer has no choice but is required by Federal, State or municipal government to install the equipment.

The electric flatiron, used in at least 95 percent of the homes in the United States, has long been recognized as an essential household item.

Electric blankets are being prescribed more and more as healthful aids for arthritic patients and for the elderly.

Room air conditioners and electric fans provide necessary cooling and dehumidification, especially in apartments and other dwellings that might otherwise be intolerable in summer heat.

These are but a few examples of electric household appliances which have long since ceased to be luxuries and have become household necessities. They are a necessary part of the American standard of living.

We heartily endorse certain sections of H. R. 7125

In the meantime, short of the eventual removal of the manufacturers' excise tax, the sponsors of this presentation wish to state their endorsement of the following proposals for revision and interpretation of the present law, as set forth by the Forand Subcommittee on Excise Tax Technical and Administrative Problems of the House Committee on Ways and Means, in H. R. 7125, approved by the House on June 20, 1957.

1. Repeal the tax on refrigeration components, defined as cabinets, compressors, condensers, condensing units, evaporators, expansion units, absorbers, and controls for, or suitable for use as parts of, or with household-type refrigerators or quick-freeze units. At present refrigerator components sold or used in the manufacturers of articles are tax free. H. R. 7125 provides that components sold for replacement purposes likewise have tax-free status.

2. Section 115 of H. R. 7125 provides in part that in the case of sales by manufacturers directly to retailers, the manufacturers' price on which the tax is imposed would be based upon the price at which the manufacturer sells to wholesale distributors. Under present law, the tax base for such sales would be the actual selling price of the manufacturer. The alternative provided by the bill would not be available where sales to the retailer are the normal method of distribution and would not be available where the manufacturer does not make a sufficient number of sales to independent wholesalers.

3. Adopt a uniform procedure with respect to all floor stock refunds of manufacturers' excises permitted by the Internal Revenue Code. To this end, the following changes in existing law should be made:

(*a*) Dealers should be given a period of 2 months and 10 days after the rate reduction date for filing their refund claims with the manufacturer. Manufacturers should be given an additional period of at least 1 month, or possibly as much as 3 months, for compiling dealers' claims and filing a single claim with the Government.

(*b*) Instead of paying dealers' claims prior to, or at, the time of filing their claims with the Government, manufacturers should be required to state that within 30 days after they receive a refund or credit they will pass it on to their dealers.

(*c*) The filing of claims by manufacturers should be integrated with the filing of their quarterly excise tax returns.

Internal Revenue Service regulations, rulings and interpretations

Also, we recommend that prompt and effective steps be taken to insure the promulgation of excise tax regulations, and the prompt publication of Internal Revenue Service regulations, rulings, and interpretations.

In failing to provide adequate information with respect to hundreds of questionable issues on which the Service has been obliged to issue unpublished rulings, the existing regulations impose a serious compliance burden upon taxpayers.

SUMMARY

In summary, our recommendations are:

1. Eventual repeal of all manufacturers' excise taxes imposed under sections 4111 and 4112 of the Internal Revenue Code applying to refrigerators, quick-freeze units, and section 4121 applying to electric, gas, and oil appliances. Thus, all household equipment industries and trades competing for the consumer dollar will be placed on an equal footing.

2. Prompt repeal of the excise tax on automatic water heaters and food waste disposers.

3. Prompt repeal of the excise tax on refrigerator components regardless of ultimate use as recommended under section 112, H. R. 7125.

4. Prompt enactment of the amendment relating to constructive sales price for manufacturers' excise taxes, as recommended under section 115, H. R. 7125.

5. A uniform procedure governing floor stock refunds.

6. The immediate adoption of the coordination and publication of Internal Revenue Service rulings and regulations, including those interpretations made to individual manufacturers based on requests for clarification.

We further ask that you consider our proposals and recommendations as a serious effort to provide the degree of excise tax equity required for the protection of the living standard of the American people and for the protection of this important segment of business, the electrical manufacturing industry.

STATEMENT BY BENJAMIN M. PARKER IN REGARD TO H. R. 7125 ON BEHALF OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

My name is Benjamin M. Parker. I am chairman of the taxation committee of the National Retail Merchants Association with offices at 100 West 31st Street, New York, N. Y.

The National Retail Merchants Association has a membership of over 10,300 department and specialty stores located in every State in the Union and abroad. Its members provide employment for several hundred thousand people and do an annual volume of business amounting to $19 billion.

In the interest of conserving the valuable time of the committee, the National Retail Merchants Association has waived a personal appearance and in lieu thereof submits the following brief statement in regard to H. R. 7125.

H. R. 7125 provides for the first general revision and recodification of the excise tax laws in more than 25 years. Although the bill contains several hundred clarifying sections in its some 420 pages, an estimated revenue loss of only $15 million is involved or less than one-fifteenth of 1 percent of total excise tax revenues. This is a small price to pay for the major savings in compliance and enforcement costs to the Government and taxpayers alike.

This bill involves 8 years of study by interested taxpayer groups and Government tax officials, reflects 2 years of public hearings, legislative drafting and consideration of the Ways and Means Committee in cooperation with the Treasury Department. When this bill was presented to the House in 1957, it was enacted without a dissenting vote.

While this bill, H. R. 7125, is mostly concerned with manufacturers' excise taxes and excise taxes on alcohol, it does contain several important provisions designed to clarify uncertainties existing in the retailer's excise tax law. Chapter 31 (secs. 4001–4057, inclusive) of the Internal Revenue Code. These provisions include clarifying amendments to the retailers' excise tax dealing with section 4001 (jewelry tax); section 4031 (luggage tax) and section 4053 (computation of tax on installment sales).

Particular difficulty has been experienced by retailers in determining the application of section 4031 (luggage tax) because of the present clause in the law which seeks to tax "other cases, bags and kits * * * for use in carrying toilet articles or articles of wearing apparel * * *." This confusing catchall section would be replaced under H. R. 7125 with a specific list of items subject to the tax. We give our heartiest endorsement to this amendment.

While there are many provisions for amendment of the retailers' excise tax which were urged by this association before the House Ways and Means Committee but are not embodied in this bill, we, nevertheless, support this legislation since it is our understanding that subsequent legislation will deal with many of these problems.

We urge the speedy and prompt enactment of H. R. 7125.

THE AMERICAN DISTILLING CO., INC.,
New York, N. Y., July 7, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: As independent distillers, we desire to go on record with you and your committee as strongly advocating passage of the Forand bill (H. R. 7125) in its present form. We believe that the beverage distilling industry will be benefited by the provision allowing the disposal of excess inventories in bond, in an orderly manner. Under present law such inventories will become distressed as they approach 8 years of age and undoubtedly some distillers will find themselves in serious difficulties, if this situation arises.

It is our firm opinion that passage of this bill will result in normalcy in the industry and that all levels of the industry will be benefited.

Very truly yours,

RUSSELL R. BROWN, *President.*

STATEMENT OF HON. JOHN F. BALDWIN, MEMBER OF CONGRESS, SIXTH DISTRICT, CALIFORNIA, ON H. R. 7125

Mr. Chairman, I should like to urge favorable action by your committee on section 132 (c) in H. R. 7125, the Federal excise-tax bill, which you now have under consideration. This section would eliminate the 20-percent Federal excise tax on nonprofit community swimming pools.

My district includes two counties, Contra Costa and Solano. In central Contra Costa County alone, there are 20 community swimming pools serving 4,130 families, or about 17,000 or 18,000 individuals. If section 132 (c) is not enacted, assessment of the 20-percent tax against these swimming pool groups will render most of these pools insolvent and jeopardize their continuation as nonprofit neighborhood groups.

These swimming pool groups are all nonprofit groups, and it seems to me most unjust and inequitable for such a 20-percent dues tax to be levied against them. The application of this 20-percent tax on dues and on initiation fees to this type of nonprofit organization is unjustified and extremely harmful. It seems to me that Congress should stimulate such healthy and worthwhile recreation, rather than penalizing and burdening it with a 20-percent tax.

I should therefore like to urge that your committee take favorable action on section 132 (c) of H. R. 7125, and that you approve this section and enact it into law during the current session of Congress.

STATEMENT FAVORING H. R. 7125 BY BENJAMIN JOSEPHS, EXECUTIVE DIRECTOR, NATIONAL LIQUOR STORES ASSOCIATION, WORCESTER, MASS.

My name is Benjamin Josephs. I am executive director of the National Liquor Stores Association, representing 44,000 package-store owners located in 28 States and the District of Columbia, and have been authorized to make the following statement in their behalf:

We believe the the benefits from the adoption of the changes embodied in this bill will facilitate the conduct of business for retailers and make more effective the supervision by the Treasury Department by eliminating many of the antiquated regulations under which the liquor industry has been operating since the advent of repeal.

We are particularly gratified with the section in the bill which defines a retailer and wholesaler, clearly and practically.

There is another matter of importance to retailers to which we respectfully direct your attention. In the section of the bill dealing with "losses caused by disaster," we request provisions be included to permit retailers, who have no recourse to their suppliers for merchandise destroyed or damaged, to make direct claims for refund of taxes. Based on past experience, we prefer dealing through our suppliers, but in the event the suppliers are unable to replace lost or condemned merchandise, we respectfully request that the disaster refund provision authorizing the filing of claims by any possessor, or by the person replacing the spirits, shall also include the retailer.

HUNTING HILLS SWIMMING CLUB, INC.,
Baltimore, Md., July 7, 1958.

Hon. HARRY F. BYRD,
Chairman, Committee of Finance,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: On May 13, 1958, you very kindly acknowledged our earlier letter of May 7, in which we endorsed section 132 of H. R. 7125 exempting from the 20-percent Federal excise-tax initiation fees and dues of nonprofit community swimming clubs, and requesting that the provision be made effective with respect to the year 1958.

We are aware of the crowded condition of your committee calendar and will not request personal appearance at the hearings we understand you are expecting to hold in the near future. However, we would like to invite your attention to the following further considerations favoring an effective date providing an exemption for the year 1958.

1. An effective date covering the year 1958 provided by your committee would encourage clubs in the throes of organization and plans for construction to proceed without delay. Construction work thus encouraged would be a material factor in providing market for materials and jobs for workmen, and so contributing materially to the fight against recession.

2. Insofar as refunds are concerned, it is our view that clubs claiming amounts already paid in with respect to this year would expect to use any amounts so recovered by making improvements in their facilities, as distinguished from passing along the refunds to the members. It is believed that any needed authority to do so could be readily obtained from the members. Improvements so encouraged would also contribute to the fight against recession.

3. Notwithstanding the foregoing, we have a full appreciation of the reluctance of the Treasury Department to see legislation requiring refunds.

Though it is a decision for the committee to make and, of course, not we, but a way to avoid refunds (at least in any consequential amounts and numbers) would be to make the retroactivity feature of the exemption apply only in the case of facilities first used in 1958 or thereafter. Such a provision would take care of our problem and likewise the problem of any other club trying to get started this year. Since the greatest need for exemption is in the initial year, such a distinction would appear to be justified, especially taking into account the avoidance of refunds.

If the committee should feel that this restricted approach is the proper one, the following language is submitted to accomplish the purpose:

Amend the last sentence of section 132 (d) (2) (p. 39) by striking out the "period" and adding thereto the following: "except that if the facilities as described in such subsection (c) of such section 4243 are not used before the year 1958, such effective date shall be January 1, 1958."

Sincerely yours,

J. RICHARD AWALT, *President.*

SELBY & RAVENEL,
Washington, D. C., July 15, 1958.

Hon. HARRY F. BYRD,
Chairman, Finance Committee,
United States Senate.

MY DEAR SENATOR BYRD: Your attention is respectfully called to the attached signed statement of officers representing Cigar Manufacturers Association of America, Inc., in which they support certain provisions of H. R. 7125, a bill that makes technical changes in the Federal excise tax laws, including the Federal excise tax on cigars and for other purposes.

Should your committee desire a fuller expression of the association's views with respect to this matter I should be pleased to provide it.

Respectfully,

JOHN A. SELBY.

STATEMENT IN SUPPORT OF CERTAIN PROVISIONS OF H. R. 7125, AN ACT TO MAKE TECHNICAL CHANGES IN THE FEDERAL EXCISE TAX LAWS

The Cigar Manufacturers Association of America, Inc., a trade association composed of cigar manufacturers having plants in every cigar-manufacturing center in the United States, whose membership collectively produce in excess of 75 percent of all cigars sold in continental United States, recommends the adoption of all the amendments to chapter 52 of the Internal Revenue Code as proposed in H. R. 7125. This statement, however, shall be limited in particular to three proposed amendments, namely:

(1) Return system, provided for in subdivision (b) of section 5703.
(2) Refund of taxes, provided for in subdivision (c) of section 5705.
(3) Losses caused by disaster, provided for in subdivision (a) of section 5708.

I. RETURN SYSTEM

The cigar industry has been on a daily return system since July 1, 1956. This is a voluntary return system which the cigar industry has found to be of benefit. As a result of the elimination of stamps, the industry has been able to modernize its merchandising program. The proposed amendment would further liberalize the method of payment under the return system by providing for weekly returns instead of daily returns. The cigar industry strongly recommends this liberalization since the daily return system was an expedient pending the adoption of the present bill.

II. REFUND OF TAXES

Under the proposed amendment to section 5705, a claim for refund shall be filed within 6 months after the date of withdrawal from the market, loss or destruction of tobacco products. This revision is necessary under any return system whether daily, weekly or otherwise. Under the present law claims for refund must be made within 3 years from the date of payment of tax (removal from the cigar factory). The present statute leads to confusion and possible injustices since it is not always possible to prove, with accuracy, the date

when cigars may have been removed from the cigar factory. The Internal Revenue Service recognizes that the present law imposes a needless hardship, which is obviated by the proposed amendment.

III. LOSS CAUSED BY DISASTER

Our association recommends adoption of the amendment of subdivision (a) of section 5708 which would authorize the Secretary of the Treasury to refund excise taxes paid on tobacco products lost, rendered unmarketable or condemned by reason of a major disaster as determined by the President. The adoption of this amendment would eliminate the necessity of the adoption from time to time of special legislation, after the event, such as occurred after the rather recent Connecticut flood. The power now resides in the President to determine what constitutes a major disaster, but there is no statutory provision for refund of excise taxes on tobacco products which may have been lost or required condemnation as the result of such major disaster.

Our association recommends the adoption of all the other proposed amendments since they are necessary and desirable for clarification of the present statutes relating to excise taxes on tobacco products.

Respectfully submitted.

CIGAR MANUFACTURERS ASSOCIATION OF AMERICA, INC.,
By CARL J. CARLSON, *President.*
BLUMBERG, SINGER, ROSS & GORDON,
By LEON SINGER, *General Counsel.*

NEW YORK, N. Y.

STATEMENT OF ARTHUR J. PACKARD, PRESIDENT, PACKARD HOTELS CO., MOUNT VERNON, OHIO, RE H. R. 7125

Mr. Chairman and gentlemen of the committee, I am Arthur J. Packard, president, Packard Hotels Co., Mount Vernon, Ohio. I own and operate a chain of small hotels in that State. I also have the privilege of serving as chairman of the governmental affairs committee of the American Hotel Association, and thus speak for that industry.

May we address ourselves to a number of subjects which are dealt with in H. R. 7125, as that measure passed the House. Our industry has long contended that more excise taxes bear directly upon us, as consumers, than upon any other industry. And through the years, numerous administrative practices and rulings have accumulated which make many of these levies almost intolerable. Let me set forth a few of these problem areas.

Cabaret tax on preentertainment and postentertainment receipts

A number of hotels are facing assessments for cabaret tax, allegedly due the Treasury, based upon checks paid by guests prior to the hour in which entertainment begins, or subsequent to the entertainment. The Treasury has ruled that any person who is privileged to witness entertainment or dancing is subject to the 20-percent tax on all food and beverage served him, irrespective of when such food and beverage was consumed. We confess that we do not know how we are supposed to compel this guest to leave our premises, following his payment of his bill, in order to relieve ourselves of a prospective liability. It is true, however, that the language of the statute is not clear, and the Internal Revenue Service officials would have difficulty in granting us the needed latitude of action until or unless the statute itself were clarified. Federal courts have ruled that the tax should not be applicable on food and beverage sold and paid for before entertainment or dancing begins, but the Treasury refuses to recognize this rule, except in one limited area. Congress should meet this problem by correcting the language to make it clear that the establishment is a cabaret only when the entertainment is being furnished. Otherwise, under the Treasury rule, the tax must be collected from dinner guests who have no interest in the entertainment but who pay their checks and remain for even a few minutes after the entertainment starts. Under the same rule, the tax applies to patrons who patronize an adjoining room before dinner and subsequently decide to stay for dinner and the entertainment. The impracticability of this rule is obvious.

A similar problem area occurs for us in the case of a related room, where, through the vagueness of the language, a hotel can unwittingly find itself facing a heavy assessment for food and beverage sold in a room adjoining that room

in which entertainment or dancing occurs. It is imperative that this section of the code be clarified.

Cabaret tax on concessionaires

On page 36 of House Report No. 481, accompanying H. R. 7125, it is recommended that owners of cabarets be required to collect and pay taxes received by concessionaires. The report states that "although the proprietor will not be personally liable for the tax, he will be responsible for the collection and return of the tax in the same manner as a person receiving taxable payments is responsible for collection and return of other collectible taxes." We are fearful that this ambiguous language will not clearly exempt the proprietor from liability if, for some reason, the concessionaire himself does not actually put the tax receipts on the line. Here again, it would appear that the owner is obliged to police the premises, and serve as a collection agency for the Treasury. It should be clear that the proprietor is liable for the tax only if he actually receives it.

Further, the Internal Revenue Service, day by day, is making this whole levy one which is inconceivably difficult for a hotel operator who maintains a room where the tax is applicable. They recently issued a new ruling, establishing liability for the tax covering receipts from the sale of cigarettes and for a check stand. Frequently these hat-check concessionaires may operate just outside the entertainment room. It just isn't possible for anybody to ascertain the percentage of hats or other checked items, which go through such check stand in a day's time, which belong to guests who witness the entertainment, as compared to those guests who are wandering around in other departments of the hotel. The Internal Revenue Service itself has frequently stated that the cabaret tax is the most difficult levy to enforce of any such tax on the books. But they continue to make it even more difficult with fuzzy rulings of this kind. We respectfully appeal for clarification by the Congress, supporting the thesis which has been laid down by Federal courts, that the tax is not applicable to pre- and post-entertainment consumption of food and beverage, and the other related problems.

Admissions Tax on Swimming Pools and Beaches

The House has seen fit, in H. R. 7125, to propose to exempt swimming pools, bathing beaches, and other places providing facilities for physical exercise other than dancing, from the 10 percent admissions tax. This is a desirable change, because in this category also, there has been much uncertainty in past years regarding application of the tax. Many hotels which maintain swimming pools and beaches have been assessed substantial sums, based upon the 10 percent admissions tax to these facilities. We earnestly hope the Senate Finance Committee will also approve this proposal.

Tax on Retail Liquor Dealers

On page 124 of the report, it is proposed that the special tax on retail liquor dealers be increased from $50 to $54 a year, and that a retail liquor dealer would not be required to pay the present tax of $200 a year, which is demanded of the wholesale dealer. Under the present law, a retailer who sells more than 5 gallons to the same person at the same time, is classified as a wholesaler. Because hotels frequently bill large total quantities of liquor to organizations, or groups of persons, for individual drinks at banquets, cocktail parties, etc., we have always been fearful that this might bracket them with wholesalers. So we do earnestly urge that this section also be enacted, so that bona fide retail sales, such as those which a hotel would make, are clearly immune from the wholesaler's tax.

I appreciate the fact that your hearings are not devoted to a discussion of excise tax rates, but rather to administrative problems arising under the imposition of such levies. At the same time, I would like to afford you a quick glimpse of the excises to which hotels are exposed: Admissions and carbaret; alcoholic beverages, beer and wine; billiard and bowling facilities; communications; business and store machines; coin-operated devices; home-type electric, gas, and oil appliances and refrigerators; electric light bulbs, electric signs and electric energy; gasoline and lubricating oil; matches; room-size air-conditioning equipment; and sterling flatware and hollowware. Also, the transportation tax on persons continues a grave impediment upon our business. In many of these levies, hotels are just like any other consumer. We use up electricity, gasoline, sterling flatware and hollowware, and electric, gas, and oil appliances. And we

pay, in the conduct of our business, the tax on telegraph and telephone messages, on alcoholic beverages, beer and wine, etc.

There is another aspect of these taxes which proves truly burdensome to us. I speak of the record-keeping requirements imposed upon a hotel. One hotel in Washington, D. C., ran a test for us several years ago, and discovered that its bookkeeping department ran through 98,653 computations in a calendar year on the communications tax alone. They estimated that more than 40,000 such transactions were involved in maintaining the record of cabaret tax receipts. Without doubt, this total figure for all of the various levies would run into several hundred thousand computations annually. Any unwitting mistake by a bookkeeper or other staff person could conceivably expose the hotel to extensive liability, above and beyond the payroll costs involved in merely keeping such records.

We contend that many of these excises have passed the point of diminishing returns. The Treasury is actually sacrificing revenue each year that the Congress fails to readjust these levies to some realistic level. For instance, 10 years ago, there were more than 700 rooms in the Nation's hotels where entertainment and/or dancing was offered. But the public simply refused to pay this 20 percent tax, and today there are somewhere between 150 and 200 such rooms remaining. Most of them are alleged to be operating at a loss to management because of declining patronage.

In your own State of Virginia, Senator Byrd, no single hotel today affords dancing or entertainment the year around. Just a few resort hotels offer them periodically during the summer months. Surely it ought to be easy to see that the Federal revenues have been sacrificed drastically, where there are no remaining establishments where the tax is applicable. Actually, in Virginia, and in 13 other States where liquor may not legally be sold by the drink, the 20 percent levy comprises a tax on food service proper. We think this is eminently unfair and burdensome, not only to the business establishment, but it deprives the people of Virginia of an opportunity to enjoy entertainment or dancing at a hotel, while they dine.

Your committee has before you today H. R. 17, introduced by Representative Aime J. Forand (D.), Rhode Island, and passed by the House last year. This bill would reduce the cabaret tax from 20 to 10 percent. This marks the third time in the last 5 years when the House has approved a reduction in this levy to 10 percent. Our industry fails to understand why the Senate declines to concur in the wisdom of this move. We respectfully call your attention to the fact that this proposed reduction in the cabaret tax was the only reduction recommended by the House in 1957, in spite of the pressure from other areas of business, dealing with numerous other excises.

Congress could not hope to find any other field where a moderate reduction in excises would yield such great job opportunities throughout the country. A 50-percent cut in the cabaret tax would immediately open the way for tens of thousands of jobs for musicians, entertainers, waiters and waitresses, cooks, etc.

We respectfully urge your committee to give sympathetic attention to this subject once again, and to favorably consider H. R. 17.

STATEMENT OF HERBERT L. BROWN, VICE PRESIDENT AND GENERAL MANAGER OF AMPEX AUDIO, INC., SUNNYVALE, CALIF., ON EXCISE TAX ADJUSTMENT BILL, H. R. 7125

I am Herbert L. Brown, vice president and general manager of Ampex Audio, Inc., Sunnyvale, Calif.

We are a small business employing 189 employees exclusively in the design, manufacture, and distribution of stereophonic magnetic tape recorders and players for use in churches, schools, homes, education of the blind, and entertainment of our troops.

We are presenting this statement to the committee with the request that it eliminate the proposed tax on "tape and wire recorders, players and recorder players." We are not seeking any tax reduction. We ask, rather, that no new taxes be added which will severely cripple or destroy the tape-recorder manufacturers, of whom two-thirds are small businesses like ourselves.

Our company pioneered the development of stereophonic sound for the movie industry and later for the other vital uses summarized above. For 8 years we have been producing stereophonic tape recorders at great expense in order to

foster this significant new medium for reproducing sound. We have sustained large losses and are continuing to sustain such losses in an effort to develop these products for a mass market. Over one-half the tape-recorder manufacturers have lost money and are continuing to lose money on those products sold in the consumer market. Recorder sales have been off 30–75 percent during this last year. As a typical small business manufacturing tape recorders, we have been going backward instead of stabilizing into a profitable industry because of the high development cost of a new, infant industry combined with the general economic situation.

Last month the billion-dollar radio, phonograph, and record industry introduced stereophonic records which are being marketed at 40 percent of the price of stereophonic tapes of the same selection. Consider the tremendous price difference between a phonograph record of any given selection and the same selection recorded on tape. The table below illustrates this wide disparity:

Selection	Recording company	List price monaural disk	List price stereo disk	List price stereo tape
South Pacific	RCA Victor	$3.95	$5.98	$14.95
Symphony Fantastique	do	3.95	5.98	16.95
Handel Faithful Shepherd Suite	Westminster Sonotape	3.95	(1)	17.95
Gaite Parisienne	RCA Victor	3.95	5.95	14.95
Pathetique 6th Symphony, Tchaikovsky.	Columbia	3.95	5.95	15.95
Tchaikovsky's Concerto No. 1	RCA Victor	4.98	5.98	[2] 14.95

[1] Not available.
[2] Reference ad, S. F. Chronicle, July 13, 1958, attached.

Until the release of stereophonic records this June, tape recorders were the only means of reproducing stereophonic sound, and accordingly, consumers who desired stereophonic sound would pay a higher price to obtain it. The advent of stereophonic records has seriously changed the situation. Even without the proposed excise tax it will be virtually impossible for our industry to compete with the phonograph industry.

Clearly, at present prerecorded tapes are not competitive with phonograph disks. For example, last year record sales were $878 million, while sales of prerecorded tapes were a mere $1 million, or only one-fourth of 1 percent of record sales. This year the situation is even worse because of the recent appearance of stereophonic records. In the first half of this year sales of prerecorded tapes are running at the rate of one-tenth of 1 percent of records.

Similarly, tape recorder machines are not competitive with the phonograph because of wide cost and price differentials. Consider the following comparative retail list prices of phonographs verses tape recorders. (Source: Allied Radio Co. Catalog No. 170 of 1958, 62, 63, 64, 68, 69, 70, 78, 88, 89, 90, and 91.)

Phonograph	List price	Tape units	List price
Weboor 1831	$90.55	Ampex A122P	$495.00
Collaro No. RC440	59.91	Ampex A124P	379.95
V-M No. 1200-A	62.05	Magnecord 836BS	385.00
V-M No. 920B	56.92	Magnecord P60BAX	595.00
Thorens CD 43	78.35	Concertone 23	495.00
Garrard RC88-4	62.18	Concertone 31	695.00
Allied 94RZ713	83.50	Pentron NL-35	219.95
Allied 94RZ715	79.50	Pentron NL	

This list could, of course, be continued on and on, and it would become increasingly apparent that a phonograph record player costs much less than an equivalent tape recorder.

We fully understand and concur in the committee's desire not to discriminate among competitive industries. However, we submit that the stereophonic tape-recorder industry is not competitive with the phonograph industry. It is an infant industry, less than 5 years old. Over half its members are still losing money in their earnest efforts to develop a new medium of sound reproduction for enjoyment in the churches, schools, and at home. The price of tape recorders is 300 to 500 percent higher than the price of phonographs; and the price of

stereophonic tape is 150 to 300 percent higher than the price of phonograph records. An infant industry struggling amid such difficulties and hardships is hardly competitive with a billion-dollar industry which has 50 years of growth behind it. Our company alone would suffer very great losses this year if the excise tax on tape recorders became law.

We respectfully request that the proposed excise-tax proposal on tape recorders be eliminated until our industry is profitable and truly competitive with the phonograph industry.

UNITED STATES SENATE,
COMMITTEE ON APPROPRIATIONS,
July 16, 1958.

Senator HARRY F. BYRD,
Chairman, Finance Committee,
Senate Office Building.

DEAR MR. CHAIRMAN: The enclosed correspondence explains technical changes in the Internal Revenue Code which have been requested by Felton & Son, Inc., a rum distillery in South Boston. You and I exchanged correspondence regarding these changes earlier this year as you will see from the enclosures.

At this time I wish you would incorporate in the record of your committee's hearings on H. R. 7125 Mr. Ellis Benjamin's letter to me dated January 15, 1958, together with the statement which he sent me therewith.

I would also very much appreciate it if your committee would consider including the changes requested by this company as as part of H. R. 7125 before reporting it to the Senate. It seems to me that these changes are meritorious and should be made.

Would you be good enough to advise me what action the committee takes on this request so that I may inform Mr. Benjamin.

Best regards.

Sincerely,

LEVERETT SALTONSTALL,
United States Senator.

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
February 11, 1958.

HON. LEVERETT SALTONSTALL,
United States Senate,
Washington, D. C.

DEAR SENATOR SALTONSTALL: I have your referral slip dated January 30 bringing to my attention the attached letter from Mr. Ellis Benjamin, of Felton & Son, Distillers, 516-536 East Second Street, South Boston, Mass., suggesting amendments to the distilled spirits section of the excise tax technical changes bill H. R. 7125.

Until the committee studies the provisions of the bill and the effect of these suggested amendments thereon, I could not comment on their merit or the possibility of their acceptance by the committee. However, I can assure you that should you propose such amendments to the bill they will certainly have the full consideration of the committee when the bill is taken up.

If you should decide that you would like to have Mr. Benjamin's letter incorporated in the record of the hearings which, doubtless, will be held on this bill, please send it up to Mrs. Elizabeth Springer, the committee clerk, who will be pleased to oblige.

With kindest regards, I am

Faithfully yours,

HARRY F. BYRD, *Chairman.*

FELTON & SON, INC., DISTILLERS,
South Boston, Mass., January 15, 1958.

HON. LEVERETT SALTONSTALL,
United States Senator,
Senate Office Building, Washington, D. C.

DEAR SENATOR SALTONSTALL: In the early part of May 1957, Congressman Forand introduced a bill to make technical changes in the Federal tax laws, and for other purposes, more commonly known as the Forand bill, and numbered H. R.

7125. With minor revisions, this bill passed the House and was sent to the Senate sometime in June of 1957. Due to the pressure of other affairs, we did not realize that certain amendments which would be of material help to us were not included. For your further information, we have been informed that neither Congressman Forand or any member of our industry would object to our suggested amendments.

We are enclosing herewith (1) a statement relative to and suggested amendments to H. R. 7125, and (2) sections of H. R. 7125 redrafted as deemed necessary by Felton & Son, Inc., to effect amendment to benefit the remaining members of the beverage rum industry of the continental United States. Our amendments or additions are underlined and stated in quotations. It is our sincere wish and hope that you might enlist the aid of certain members of the Senate Finance Committee, in reviewing House bill 7125, to include our suggested amendments before this bill goes to the floor of the Senate for a final vote.

We have every reasonable assurance that in joint conference between the Senate Finance Committee and the House Ways and Means Committee our suggested amendments will meet with no serious objections, or in fact, might not meet with any objection.

We would like to take the opportunity at this time to acquaint you somewhat with Felton & Son, Inc.

This relatively small company has operated without cessation for 130 years, and has been located on its present premises for some 75 years, and was incorporated under the laws of the Commonwealth of Massachusetts in 1906. Our plant, and its division, A. & G. J. Caldwell Co., of Newburyport, Mass., are the sole remaining New England rum distilleries of a once-flourishing industry and that not more than some 35 years ago included 54 other companies. In addition to the distillation of rum as a beverage, our company produces and sells rum for industrial purposes. For these varied industrial users for which we produce rum there is but one other domestic source in this field, located in Covington, Ky., and many industries would be affected if we were unable to continue operations.

The abandonment of this business, which was historically and exclusively peculiar to New England, by all other distillers in this area, was hastened in no small measure by the beneficial tax relief, advertising allowance, and perfunctory observance and enforcement of regulations for our insular territories, i. e., Puerto Rico and the Virgin Islands. This relief granted to these islands was undoubtedly both necessary and expedient for economic reasons for these areas; however, the result of such favorable legislation has made it almost impossible for fair competition to exist between the companies operating from these islands and a domestic producer. Our company has survived mainly because of its industrial sales, and more recently, our merger with the Caldwell Co. of Newburyport, Mass. However, unless relief, as suggested in our proposed amendments, is granted, our position might well become untenable.

We are so vitally concerned with securing this reasonable measure of relief, that if it is your desire for a member of our firm to visit with you in Washington, or meet with any member of your staff relative to this problem,we shall be most happy to do so.

Thank you for any efforts you will expend in our behalf, and we most anxiously await your advice regarding this matter.

Respectfully yours,

ELLIS BENJAMIN.

STATEMENT RELATIVE TO AND SUGGESTED AMENDMENTS TO H. R. 7125
(FORAND BILL)

Over 20 years ago, when the statutes covering distilled spirits were revised, Congress, at the behest of the brandy industry, recognized that the producers of brandy faced problems which differed from those of the whisky distillers.

Accordingly, certain provisions were incorporated in the law which set brandy apart from other distilled spirits in some respects, and which made it easier for the brandy industry to cope with some of its problems.

Primarily, the differences between whisky and brandy, mentioned above, are in the aging or maturation process which, of course, is an integral and indispensable part of the production process of these types of distilled spirits.

Straight whisky (other than corn whisky) is aged in new, charred-oak barrels. Assuming normal control in the manufacture of these barrels, they will age their contents uniformly and will impart a uniform degree of color

(all color in straight whisky is, of course, derived from the wood—all distilled spirits being colorless as they come from the still).

Brandy, on the other hand, is aged in uncharred or reused oak barrels. Since the aging ability of a barrel, and its ability to impart color gradually diminishes with repeated use, nonuniformity in their finished product is a major problem of the brandy producers.

For this reason, they are permitted to adjust the color of their product with caramel or to blend brandies in bond without being required to pay a rectification tax.

Rum also is aged in reused barrels and we, therefore, have exactly the same problem. Unfortunately, nobody argued our cause over 20 years ago and we were overlooked. We earnestly ask that this omission be rectified at this time, and that the pertinent sections of the statutes be amended to accord rum the same treatment which is being given to brandy.

Excerpts of the affected sections of H. R. 7125, amended as we deemed necessary to accomplish our objectives, are attached hereto.

In addition, we ask for another revision in the statute in order to enable us to meet a problem which is peculiar to the manufacture of rum.

As mentioned previously, rum is aged in barrels which have been used one or more times previously in the aging of spirits. The charcoal in such barrels is deficient in ability to remove an undesirable material: namely, cane wax. Molasses, in recent years, has contained increasing quantities of cane wax, which is not entirely removable by distillation. This may be due to the use of different varieties of sugar cane or newer methods of extracting or processing cane juice. We have found that activated carbon will effectively remove the disagreeable taste and odor caused by the cane wax without materially affecting the normal congenerics and flavor of the rum. As is permitted under present law, we treat some of our rum with carbon in the course of the distillation process, but have found that this does not permit sufficient time of contact to obtain optimum results.

We, therefore, would like to add charcoal or activated carbon to packages of rum at the time of filling in the same manner that toasted oak chips may now be added to any spirits.

A copy of the pertinent sections of the law, revised as we deemed necessary, is attached hereto.

SECTIONS OF H. R. 7125 REDRAFTED AS DEEMED NECESSARY BY FELTON & SON, INC., TO EFFECT AMENDMENT TO ALLEVIATE UNDUE HARDSHIP IMPOSED ON THE MEMBERS OF THE BEVERAGE RUM INDUSTRY OF THE UNITED STATES

(New language in italic)

SEC. 5023. TAX ON BLENDING OF BEVERAGE *RUMS OR* BRANDIES.

In the case of *rums or* fruit brandies mixed or blended pursuant to section 5234 (c), in addition to the tax imposed by this chapter on the production of distilled spirits, there shall, except in the case of such *rums or* brandies which have been aged in wood at least 2 years at the time of their first blending or mixing, be paid a tax of 30¢ as to each proof gallon (and a proportionate tax at a like rate on all fractional parts of such proof gallon) of *rums or* brandies so mixed or blended and withdrawn from bonded premises, except when such *rums or* brandies are withdrawn under section 5214 or section 7510.

* * * * * * *

SEC. 5025. EXEMPTION FROM RECTIFICATION TAX.

(c) Refining Spirits in Course of Original Distillation *and/or Production*

The purifying or refining of distilled spirits, in the course of original and continuous distillation or other original and continuous processing, through any material which will not remain incorporated with such spirits when the production thereof is complete, *or the addition of charcoal or activated carbon to barrels of rum at time of filling*, shall not be held to be rectification within the meaning of sections 5021, 5081, or 5082, nor shall these sections be held to prohibit such purifying or refining.

(e) Mingling of Distilled Spirits.

Sections 5021, 5081 and 5082 shall not apply to—

(4) the blending on bonded premises of beverage brandies *or rums* under the provisions of section 5234 (c).

(f) Blending Straight Whiskies, *Rums*, Fruit Brandies, or Wines.

The taxes imposed by this subpart shall not attach—

(4) to *blends made exclusively of two or more rums aged in wood for a period of not less than 2 years and without the addition of coloring or flavoring matter (other than caramel) or any other substance than pure water and if not reduced below 80 proof.*

Such blended whiskies, *rums* and blended fruit brandies shall be exempt from tax under this subpart only when blended in such tanks and under such conditions and supervision as the Secretary or his delegate may by regulations prescribe.

(g) Addition of Caramel to Brandy or *Rum.*

The addition of caramel to commercial brandy or *rum* on the bonded premises of a distilled spirits plant, pursuant to regulations prescribed by the Secretary or his delegate, shall not be deemed to be rectification within the meaning of sections 5021, 5081, and 5082.

SEC. 5083. EXEMPTIONS.

For exemptions from tax under section 5021 or 5081 in case of—

(9) Blending beverage brandies or *rums* on bonded premises of a distilled spirits plant, see section 5025 (c) (4).

(10) Blending of straight whiskies, fruit brandies, *rums*, or wines, see section 5025 (f).

(11) Addition of caramel to brandy or *rum*, see section 5025 (g).

SEC. 5234. MINGLING AND BLENDING OF DISTILLED SPIRITS.

(c) Blending of Beverage *Rums* or Brandies.

Rums distilled from molasses at not more than 188 proof or fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such *rums* or brandies according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, on bonded premises. Such *rums* or brandies so mixed or blended may be packaged, stored, transported, transferred in bond, withdrawn free of tax, withdrawn upon payment or determination of tax, or be otherwise disposed of, in the same manner as *rums* or brandies not so mixed or blended. The Secretary or his delegate may make such rules or regulations as he may deem necessary to carry this subsection into effect.

(d) Cross Reference.—

For provisions imposing a tax on the blending of *beverage rums* or brandies under subsection (c), see section 5023.

SUNSET HILLS FARM,
Sunset Hills, Va., July 14, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Committee on Finance,
Washington, D. C.

DEAR SENATOR BYRD: I am taking this means of conveying to you and the members of the Finance Committee my views on title II of H. R. 7125, in lieu of requesting time for a personal appearance during the scheduled hearings on the bill. It is requested that this letter be made a part of the printed hearings on the bill.

I write on behalf of the A. Smith Bowman Distillery, Sunset Hills, Va. Our distillery is the only registered grain distillery operating in the State of Virginia and is one of the smallest distilleries in the United States.

It has long been recognized that a modernization of the internal revenue laws relating to distilled spirits is necessary to facilitate a more efficient and economical supervision by the Government, and to afford the industry a modern, businesslike basis of operation.

I would suggest an amendment to only one feature of the bill, that being the extension of the bonding period from 8 to 20 years.

The entire industry recognizes that some relief from the forceout effect of the 8-year bonding period is essential. If such relief is not granted, large quantities of aged whisky must be taxpaid and forced out of bond only to be dumped on the market at distressed prices, or it must be destroyed, redistilled or exported. Either alternative will adversely affect the economic stability of distillers, both large and small, and make it even more difficult for a small distiller to survive.

However, a retroactive extension of the bonding period to 20 years as to whisky distilled and entered into bond 6, 7, or 8 years ago, as now provided by H. R. 7125, would afford a tremendous competitive advantage to those distillers who hold large inventories of aged whisky.

The Distilled Spirits Institute, of which my company is a member, and I a director and an officer, has tried diligently and in good faith for several years to put forth an equitable compromise solution to this problem. The Institute proposal incorporates, as to existing stocks, the commingling provision contained in title II of the bill, coupled with an 8-year regauge provision so as to grant relief to those who cannot, or prefer not to exercise the commingling privilege. As to future production, we favor the 20 year bonding period without restriction. Those provisions taken together will afford complete and adequate relief from the force-out provision as to existing stocks, and will at the same time protect against competitive disadvantage those companies, such as mine, who do not hold large stocks of aged whisky.

The A. Smith Bowman Distillery has studiously avoided overproduction, and we hold a very small quantity of whisky over 4 years old. Manifestly, we could not compete with 10-, 12-, or 15-year-old whiskies which will inevitably be marketed within the next few years if the bonding period is extended to 20 years retroactively so as to apply without restriction to existing stocks. We may never be able to compete in such a market, but if we know that as of a given date all future production can be stored in bond for 20 years, we at least have the same chance that all other companies have to gear for an older age market in the future if we choose to do so. As the bill is now written, our chances for entering such a market are effectively foreclosed retroactively before we start.

I, therefore, urge your favorable consideration of H. R. 7125, modified as suggested above.

Respectfully submitted.

A. SMITH BOWMAN, Jr., *Vice President.*

PITTSBURGH PLATE GLASS CO.,
Pittsburgh, Pa., July 15, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

MY DEAR MR. CHAIRMAN: In relation to the current hearings of your committee on H. R. 7125, there is submitted for the record the enclosed statement on behalf of Pittsburgh Plate Glass Co. in support of that bill and particularly section 115 thereof.

The sympathetic consideration by your committee of this statement will be appreciated.

Sincerely,

H. B. HIGGINS.

STATEMENT ON BEHALF OF PITTSBURGH PLATE GLASS CO., IN SUPPORT OF SECTION 115 OF H. R. 7125, EXCISE TAX TECHNICAL CHANGES ACT OF 1957, RE CONSTRUCTIVE SALE PRICE FOR MANUFACTURERS EXCISE TAX (SALES TO RETAILERS)

Section 115 of H. R. 7125 would correct a severe competitive disparity suffered by Pittsburgh Plate Glass Co. under existing law in the application of the 8-percent manufacturers excise tax to sales of automotive replacement glass.

Solely because Pittsburgh's established distribution method from factory to dealer differs from that of its competitors, Pittsburgh now pays a manufacturer's excise tax upon the same product substantially greater in amount that that paid by any of its competing manufacturers.

This inequity results from the fact that Pittsburgh distributes a large proportion of its own manufactured products. Its competitors do not. Section 115 would eliminate that inequity by equalizing the amount of tax payable without change in rates.

PITTSBURGH'S DISTRIBUTION METHOD PENALIZED

Pittsburgh sells the major portion of its automotive replacement glass through its own distribution outlets. Under existing law it must pay the manufacturers excise tax upon the higher distributor's sales price (on sales to dealers or retail-

ers), rather than upon a lower manufacturer's sales price (on sales to wholesale distributors). All of Pittsburgh's competitors pay the tax at the lower level of the manufacturer's price since they do not maintain their own distribution outlets.

Example: A competitive manufacturer sells an article to an independent distributor (wholesaler) for $10. The manufacturers excise tax payable by the competitor is 80 cents (8 percent of $10). The distributor's cost is then $10.80. If the distributor sells the article for $20 to a retailer or dealer, the manufacturers excise tax is nevertheless limited to 80 cents as determined by the manufacturer's selling price of $10.

If Pittsburgh sells the same article through its own distribution outlet to the same retailer or dealer at the same price of $20, the manufacturers excise tax payable by Pittsburgh would be $1.60 (8 percent of $20), or twice the amount paid by its competitors. The higher price at which Pittsburgh sells at the retail level is offset by warehousing, selling, transportation, and other substantial distribution costs incurred by Pittsburgh.

If all competitors sold at the same distribution level, at least all would bear equal tax burden and competitive inequity would not result. But severe competitive discrimination results where distribution methods vary within the industry and a major part of the trade does not incur the higher excise tax base. Competition at the consumer level will not allow the manufacturer to pass on his higher tax cost in higher price.

SECTION 115 CREATES NO ADMINISTRATIVE DIFFICULTY

Section 115 of H. R. 7125 offers a sound and practicable correction of an existing excise-tax inequity. The relief afforded would be limited to demonstrable competitive disparity within a given industry, conditioned upon objective standards with minimum administrative difficulties in application.

Existing law permits the application of a constructive sale price for manufacturers excise taxes in the case of sales by the manufacturer at retail (but not to retailers); and also to sales on consignment, and to sales not at arm's length at less than the fair market price (such as to the manufacturer's selling subsidiary), IRC, section 4216 (b).

Thus in case of sales at retail, existing law permits a markdown of the selling price upon which the manufacturers excise tax is based. Section 115 of H. R. 7125 would add a new subparagraph (2) to section 4216 (b), one effect of which would be to permit the application of a constructive sale price in sales to retailers (as well as to sales at retail). Under that amendment, in case of sales to retailers, the benefit of constructive sale price adjustment to the level of the particular manufacturer's price to bona fide wholesalers, would be permitted only upon objective showing of substantial competitive disparity resulting from differences in distribution methods within the industry.

CONDITIONS REQUIRED FOR APPLICATION OF SECTION 115

Under the amendment made by section 115, in case of arm's length sales to retailers, the benefit of a constructive sale price, based upon the highest price at which such articles are sold by the particular manufacturer to wholesale distributors, could be obtained only if the following conditions are fulfilled:

(A) The particular manufacturer regularly sells such articles to retailers (as does Pittsburgh).

(B) The particular manufacturer regularly sells such articles to one or more wholesale distributors in arm's length transactions at prices determined without regard to any excise tax benefit (Pittsburgh in addition to sales through its own distribution outlets, also sells to 180 established independent wholesale distributors located throughout the United States, as explained below).

(C) The normal method of sales for such articles within the industry is not to sell at retail, to retailers, or both. The committee report (H. Rept. 481, p. 23) states that such limitation:

"* * * is intended to deny the benefits of this provision where half or more of the volume of sales of the specific category of taxable items * * * is made at retail and to retailers. For this purpose, it is anticipated that the volume of sales at the different distribution levels would usually be determined by the [adjusted] dollar volume of sales within the industry at the various distribution levels. * * * In determining total sales within the industry not only would

sales at retail, to retailers, to jobbers, and to wholesalers, be taken into account, but also sales to other manufacturers as well."

It thus appears that the purpose of the amendment, as illumined by the accompanying House report, is to limit the benefit of the constructive sale price, as applied to sales to retailers, to those industries in which more than half of the volume of sales is made other than at retail or to retailers. Sales to retailers receive no benefit if that is the normal method of distribution in the industry. Actual competitive disparity is a condition to permitting the application of the wholesale price as the base for the manufacturers excise tax on sales to retailers. That condition is demonstrable in the case of sales of automotive replacement glass by Pittsburgh.

APPLICATION OF SECTION 115 TO PITTSBURGH'S SALES OF AUTOMOTIVE REPLACEMENT GLASS THROUGH ITS OWN DISTRIBUTION OUTLETS

Pittsburgh clearly qualifies, upon easily ascertainable facts, for application of the wholesale distributors price level to the manufacturers excise tax, as proposed by section 115, to sales of automotive replacement glass through Pittsburgh's own distribution outlets. While Pittsburgh sells a major portion of its automotive replacement glass through its own distribution outlets, that is not its exclusive distribution method. Its automotive replacement glass is also distributed by approximately 180 independent distributors located throughout the United States who account for approximately 80 percent of replacement sales. Many of those independent distributors have functioned as such since early in the 1920's, when the advent of the closed car initiated the volume distribution of automotive replacement glass, and their number has gradually increased over the years with the expansion of automotive production.

SECTION 115 A WORKABLE SOLUTION OF EXISTING TAX INEQUITY

The objective and specifically defined qualification standards for the application of constructive price provisions (wholesale price) in case of sales to retailers, as proposed by section 115 of H. R. 7215, eliminate administrative difficulties in the application of that section.

The Congress, as early as 1932, when a number of manufacturers excise taxes were introduced, recognized the problem of discrimination in the application of the tax arising from different channels of distribution employed by competing firms in a particular industry. In 1932 the Ways and Means Committee reported its concern, as follows:

"It is of utmost importance that the tax be imposed and administered uniformly and without discrimination. Each member of a competitive group must pay upon substantially the same basis as all his competitors, even though his sales methods may differ. * * * Severe and justified criticism may be expected whenever one manufacturer is permitted to pay a lesser tax than his competitor."

More recently, during the 2 years of public hearings, legislative drafting and consideration by the Ways and Means Committee which preceded House passage of H. R. 7125, extensive attention was given to the same problem before the practical solution of section 115 was finally evolved.

At earlier stages in consideration of H. R. 7125 and its predecessor bills before the Ways and Means Committee, Treasury representatives objected to the use of a "presumptive price" as a base for the manufacturers excise tax, because of the burden of administrative determination and possible controversy involved in the delegation of administrative discretion. That line of objection can have no support if directed against section 115 in its present form, because of its precise language and its clearly objective and readily determinable standards of application.

SECTION 115 ADOPTS EXISTING TREASURY PRACTICE IN APPLICATION TO MANUFACTURERS' SALES SUBSIDIARIES

The downward adjustment of the tax base in case of sales to retailers, to the level of sales price to wholesale distributors, to be permitted by section 115, is merely a two-way street application of present Treasury practice of upward adjustment of the tax base, in sales to selling subsidiaries, to the level of sales price to independent wholesale distributors. The Treasury Department now applies the same standard of bona fide wholesale price for the upward revision of the manufacturers excise tax base in application to sales by the manufacturer

to its own selling subsidiary. The proposed section 115 merely adopts, though with more restrictive conditions, the same formula applied by the Treasury Department in taxing sales to a manufacturer's selling subsidiary at the price level of sales to independent wholesale distributors. The proposed section 116 would apply that corrective action reciprocally, not only to the upward revision at Treasury initiation of the tax base in case of sales to the manufacturer's selling subsidiary, but also to equitable downward revision of the selling price in case of sales to retailers where the normal distribution method within the given industry is to sell to wholesale distributors. The equity of such reciprocal adjustment speaks for itself; it is unlikely that the administrative burden would be greater when the equity lies on the manufacturer's side than when the Treasury initiates the identical administrative remedy for upward revision of the tax base.

It is earnestly hoped that the Senate Finance Committee will give prompt and favorable consideration to the approval of H. R. 7125, and particularly to the relief afforded by section 115 from excise tax inequity.

STATEMENT OF IRVING J. ROTKIN, CHAIRMAN, COMMUNITY POOLS ASSOCIATION OF MONTGOMERY COUNTY, MD.

I am Irving J. Rotkin, of 11417 Monterrey Drive, Silver Spring, Md., chairman of the Community Pools Association of Montgomery County, Md., as well as one community pool in Prince Georges County, Md.

The growth of the Washington suburban areas, apparently typical of a great many suburban areas throughout the country, has been one of the amazing phenomena of our times. For example, in the past 6 years Montgomery County has witnessed a 66-percent increase in population.

The problems created by the surge of population growth are many and complex, not only to governmental agencies on all levels, but also to each family unit constituting the core and basis of our way of life. Of particular concern is the imperative need for wholesome recreation in which all members of the family can jointly participate. Of equal importance is the desperate necessity of providing a healthy and constructive outlet for youthful energies during the summer months while away from the guidance and restraints of school (a most important factor of the juvenile delinquency problem).

The existence and continued growth of an extensive system of Government-owned and operated swimming pools in most urban communities devoid of natural facilities is sufficient proof of the recognized value of this activity in the area of family and juvenile recreation. In suburbs now mushrooming throughout the country, particularly in and around Washington, other and more pressing problems—such as schools, roads, water, sewage, police and fire protection—have completely preempted the time, energy, and financial resources of governmental agencies, thus providing little, if anything, in the way of adequate summer recreation facilities. Recognizing the realities of the situation, groups of citizens have banded together and attempted to work out the problem by means of community nonprofit pools.

Generally, groups of some 200 to 500 families contributing between $150 and $250 per family are needed to make possible the purchase of a pool site and the construction of pool facilities. Subsequent annual maintenance costs are approximately $20 to $30 per family.

The experience of the past 3 years in the Washington area has clearly demonstrated that these costs, with the tax superimposed on them, are a significant burden on the budgets of the families concerned. The families forming the membership of local community pools are drawn from the ranks of Government workers, and equivalent levels of private employment—what has loosely been termed the lower middle income group. Nevertheless, the burden is being shouldered by families organized into more than 14 groups in Montgomery County alone.

Considering the objectives and limited financial resources of these voluntary community groups the additional burden of a 20 percent tax, as now imposed, is believed to be not only harsh and punitive in nature but also an unnecessary roadblock in the path of a desirable community activity.

This appeal is not to be misunderstood as pertaining in any way to the conventional type of country club with its attendant multiple facilities for dining, dancing, drinking, and hunting or golf as well as swimming. The 5,000

families in whose behalf I speak can only hope for vicarious enjoyment of country club luxuries in either the movies or the Sunday supplement. Financially, such pleasures are just out of the question. The community pool facilities are pared down to come within the grasp of a much larger segment of the suburban citizenry. Thus the most that community pools can boast of other than swimming facilities is an occasional tennis, badminton, or handball court and possibly a general purpose room that may lend itself to an occasional social or meeting.

Here is one of the all too rare instances where a group of citizens, having recognized a community need did not raise a clamor for State or Federal funds. On the contrary, they have and will continue to employ self-help in a truly democratic fashion. Speaking for such groups from Montgomery County, I don't feel we are asking too much when we urge you to amend the Federal excise tax laws so as to make possible our continued growth as well as enable others to work out a similar solution to the problem.

Specifically, we ask: First, that section 132 (b) of H. R. 7125 and related sections be favorably received by you and speedily enacted into law; and second, that these particular provisions be made retroactive for the maximum length of time. This would not only afford necessary and desirable encouragement to new community pool groups, but also assist several groups already formed but badly in need of this measure of help to successfully cope with the financial problem membership imposes on many families. Furthermore, a 20-percent decrease in cost would make it possible for even more families to join and participate.

In conclusion, I would like to call to your attention the fact that this tax serves to impede and hamper a socially desirable activity of immeasurable benefit to families of moderate means. Any loss in tax revenues resulting from the elimination of the 20 percent tax on initiation fees and annual dues would be more than offset by the benefits derived not only by the individual families participating but the community as a whole. Any reduction in juvenile delinquency can be measured in dollars and cents saved in the courts, police activity, as well as correctional institutions. But, even more basic, is the benefit to the community flowing from a strengthening of the basic family unit.

HAVERTOWN, PA., *July 15, 1958.*

SENATE FINANCE COMMITTEE,
Washington, D. C.
(Attention: Mrs. Elizabeth B. Springer, chief clerk.)

GENTLEMEN: I wish to speak in favor of sections 131 and 132 of the Excise Tax Administrative Changes bill, H. R. 7125, as passed by the House of Representatives.

These sections specifically exempt nonprofit swim clubs from the 20 percent excise tax on initiation fees and dues and the 10 percent excise tax on admissions under certain provisos.

We must face the fact that, in the heavily populated sections of the East particularly, the days of the old swimming hole are gone—the creek, or pond, which used to serve this function is now either covered over by such things as housing developments or is so badly polluted as to make it unusable for swimming. Children of families in which money is readily at hand have had no difficulty, since they could be sent to mountain camps or seashore resorts, where the healthful recreation of swimming is available, or had swimming facilities available to them at country clubs. The family of moderate or low income, however, has been hard-pressed to find places within their means where their children could learn to swim and enjoy it.

I can recall that, during World War II and the Korean conflict, our armed services deplored the appalling lack of ability to swim which they found among the young men of our country, and, in my opinion, this is directly traceable to lack of swimming facilities for the great bulk of our population.

Recently, in our moderate income communities, public spirited citizens have formed nonprofit swimming clubs to meet this dire need. They have accomplished this objective by selling shares of capital stock to raise the money to operate and build the facilities.

It is my firm belief that these clubs should be encouraged to provide these facilities with their own funds and not seek State and municipal funds therefor; and the present sections of this bill will go far in that encouragement. The small loss of tax revenue which will be incurred will be more than offset by the bene-

ficial effect of providing swimming facilities for a great number of children who might otherwise not have such facilities available.

I therefore urge strongly favorable action on these sections of this bill, both by your committee and by the Senate itself.

Respectfully submitted.

A. NEWTON HUFF.

HOUSE OF REPRESENTATIVES,
Washington, D. C., July 11, 1958.

Hon. HARRY F. BYRD,
The United States Senate, Washington, D. C.

MY DEAR SENATOR: I am taking the liberty of communicating with you in connection with section 5044 of H. R. 7125.

I would greatly appreciate it if the enclosed memorandum could be considered in connection with the hearings on H. R. 7125 which have been scheduled by the Senate Finance Committee for next week. If any further information is required, I trust that you will let me know.

With kind regards, I am

Sincerely yours,

GENE KEOUH.

STATEMENT ON THE VINEYARDISTS CASE

Prior to the enactment of the Internal Revenue Code of 1954, no refund was permissible in respect to the tax paid on unmerchantable wine. For the first time, refund of the tax on such wine was allowed by section 5044 of the Internal Revenue Code of 1954, which was effective respecting tax paid on or after January 1, 1955.

The new refund provision was extended only to champagne or other sparkling wine or artificially carbonated wine. It does not extend to still wines. The proposed new section 5044 contained in the bill, H. R. 7125, now pending for the consideration of the Senate Finance Committee, will extend the refund allowable for unmerchantable effervescent wine to still wine.

At the time the 1954 Internal Revenue Code was under consideration, Vineyardists owned certain unmerchantable effervescent wine, which had become unmerchantable as a result of loss of effervescence and cloudiness. As a result of a policy decision to make the new law prospective, running through the entire new code, effective dates were arranged to exclude vineyardists from the new refund provision incorporated in section 5044 as stated above.

So far as is known, the Vineyardists case is the only case of its kind and revenue loss would be confined to that case. A simple amendment to the proposed new section 5044 of H. R. 7125 would cure the inequity to which Vineyardists is subject. If on page 158, line 25, the word "shall" is stricked out and the language "or any corresponding prior provision of Internal Revenue law shall," is substituted, the refund may be made.

With respect to effervescent wines, it is important to remember that the tax is $3.50 per gallon. On the other hand, the tax on still wine is only 17 cents per gallon. Thus, the bubbles in effervescent wine cause the imposition of a tax 20.6 times higher than that imposed on still wine. Loss of effervescence destroys the market for the wine and should in all cases be grounds for refund of the tax imposed.

Amendment of H. R. 7125, as recommended above, would permit Vineyardists to recover the tax and floor stocks taxes imposed on the unmerchantable champagne, which it held when the 1954 code became effective. It is well to remember that distilled spirits and wines are among the few products subject to tax as they come into being whether or not the manufacturer has a market for the product. This fact, coupled with the fact of the tremendous difference in tax between effervescent and still wines, are pleaded as strong grounds entitling Vineyardists to equity in the form of permission to file for refund.

WILMINGTON, DEL., *July 15, 1958.*

Subject: Excise tax exemption for nonprofit swim clubs (H. R. 7125).

Mrs. ELIZABETH B. SPRINGER,
Chief Clerk, Senate Finance Committee,
Washington, D. C.

DEAR MRS. SPRINGER: We recommend favorable action on excise tax administrative changes bill, H. R. 7125, which bill contains provisions exempting nonprofit swim clubs from the excise tax. Favorable action on this bill will remove the discriminatory taxes on cooperative nonprofit swim clubs.

Under the present law a very wealthy person who is able to build a swimming pool solely from his own funds may do so without paying any excise tax whatsoever. However, the less fortunate person who is unable to finance a pool by himself and who must cooperate with a neighbor willing to pay part of the cost is immediately considered not the owner of the pool but merely a member and is subject to the 20-percent excise tax. Thus, where 2 or more people cooperate to build a pool, the pool costs 20 percent more than if financed by a single person for his own benefit. Since a reasonably sized swimming pool may cost anywhere from about $20,000 to well over $100,000, it is evident that the present excise tax statute favors not only the wealthy but the very, very wealthy and discriminates against those less fortunate.

It is strongly urged that H. R. 7125 receive favorable action not only for the reason that it would remove the present tax discrimination, but also because of its salutary effect upon the building of more and better swimming pools throughout the country, thereby promoting substantially the health and well-being of a substantial proportion of the population, while at the same time aiding in the widespread dissemination of information on water safety, lifesaving, and swimming techniques.

Very truly yours,

RAYMOND E. BLOMSTEDT.

CHICAGO & NORTH WESTERN RAILWAY SYSTEM,
Chicago, July 14, 1958.

Re H. R. 7125

Hon. HARRY F. BYRD,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR BYRD: My attention has been called to the pendency before the Senate Finance Committee of H. R. 7125, which has been enacted by the House for the purpose of making revisions of the excise taxes. I am informed that the proposed amendments to the excise tax laws contained in the highly technical provisions of this bill are helpful from the standpoint both of practical improvements in administration and of the elimination of inequities. It is also my understanding that most, if not all, of the changes proposed are noncontroversial.

Particularly desirable is the proposal to eliminate the present unfair discrimination against nonpar corporate stock. This discrimination can now be readily avoided by the unrealistic device of issuing stock of nominal par value. The excise tax laws should not encourage a fiction that is meaningless for any purpose except that of minimizing taxes. The taxes should be based on the actual value of the issued or transferred shares, as H. R. 7125 provides.

Enactment of this bill is in the public interest, and I hope that your committee will promptly report it favorably, to the end that it may be passed before Congress adjourns.

Sincerely yours,

C. J. FITZPATRICK.

STATEMENT OF TRI-COUNTY FEDERATION OF CLUBS SUBMITTED BY DAVID ARNOLD, PRESIDENT, SHAMOKIN, PA.

I appreciate the opportunity to submit this statement for inclusion in the record of the hearings on the excise tax administrative changes bill.

I am president of Tri-County Federation of Clubs of Northumberland, Montour, Snyder, and Union Counties in central Pennsylvania. Our membership represents about 60,000 members in 100 different clubs. As you may know, these clubs fulfill an important function in the life of the communities in Pennsylvania just as they do in some other parts of the Nation. Not only does a large part of the social life of these communities revolve around them, but a large part of the charitable work in these communities, that is not performed by the churches and community organizations, is either conducted or supported by the clubs. Under local law, these clubs must be operated exclusively for members and guests which is the way the members prefer it. The clubs qualify for income tax exemption although, of course, contributions to the clubs are not deductible unless they are to special funds maintained for support of the charities of the clubs. It is the usual practice for the clubs to use any net income for support of their charitable projects or in the case of volunteer fire departments, to purchase additional equipment. We feel that these clubs fulfill an important function in the life of the community.

The present excise tax structure has created an important problem that is seriously disturbing many of our clubs. Present law does not specifically apply to no-coin-operated devices. In these machines, the player pays the club attendant who activates the machine by remote control rather than placing a coin in it in the way that he would in the old-style slot machines. The major criticism of the old-style machines was that they were sometimes used by minors, although the club rules specifically prohibited this, and the club board of directors made every effort to prevent it. However, with these machines each player must pay the club attendant so that the club has complete control over the use of the machines and we have been able to enforce much more effectively the club rules against use of these machines by minors. Therefore, we approve of the amendment made to section 4462 by section 152 of the House bill to make it clear that these machines are subject to either the $10 or the $250 stamp tax as may be appropriate.

Most of our clubs had assumed that this was the situation under present law since the machines are in all ways like those subject to the $10 and $250 stamp tax except for the fact that the coin is inserted in the club attendant's hand instead of the machine. However, there are at least two other possibilities under present law and the House committee report specifically recognizes that the law is quite uncertain. If it is assumed that the machines are not taxed as coin operated machines, they are either subject to the wagering tax or they are not subject to tax at all.

The proposition that they are completely exempt from tax is based on two points. Section 4421 excludes from the tax, games such as poker, blackjack, and roulette. It was generally felt that this broad exemption limited the wagering tax to the numbers game and similar rackets that Congress was trying to curb through the imposition of the tax. The second reason is that the statute specifically exempts any drawing conducted by an organization exempt under section 501. Since all of the clubs are exempt, it was felt that the use of these machines in fact constituted a drawing.

However, the Internal Revenue Service has ruled to the contrary on both points and has taken the position that the 10-percent tax on wagering applies to the gross amount that the player pays. A revenue agent in the Sunbury area has hit all of the clubs for not only current taxes under this rule but also for back taxes. While the amount of tax in the case of each club is small, the budgets of the clubs are very small so that this has placed our clubs in a very unfavorable position. I might say that from checking with the State federation of clubs, it appears that an effort to collect the 10-percent tax is not being made in any other area in Pennsylvania so that we are the victims of a localized and unfair application of an unrealistic Treasury ruling.

Therefore, we make the following request of the committee:

1. Approve the amendment to section 4462 as contained in the House bill.

2. Amend subchapter C of section 152 to change the reference to "July 1, 1958" in lieu of "July 1, 1957" and "June 30, 1959" in lieu of "June 30, 1958." This is a technical amendment moving the effective date forward because the measure could not be considered by the Senate last year.

3. Add a new paragraph to subsection C providing the following:

(*a*) Making the amendment to section 4462 effective as if part of the 1954 code when enacted in the case of machines on premises of organizations exempt under section 501.

(*b*) No refund should be granted to any organization for any 1 year on account of this amendment in excess of $2,000. The purpose is to provide relief for the small club that is being hit by this inequitable tax. We have no interest in helping places operated for profit or the large organizations.

(*c*) The amount of tax due under section 4401 by virtue of making this retroactive should not be greater than the tax that would be imposed under sections 4401 and 4411. It is possible that clubs in which very few people played the machine might be better off under the wagering tax than under the tax on coin-operated devices. This is to make certain that no one is hurt by retroactive application of the tax.

We feel that these amendments will leave the law about where Congress intended it to be in the first place. The small amount of refunds that will be granted will merely help the small clubs that have been hit by the uneven application of the present Treasury position.

I appreciate the opportunity to be allowed to submit this statement for the record and hope the committee has an opportunity to give this subject very serious consideration. Many of us were beginning to fear that the Senate would not have time to act on the bill in this session, and we are delighted at the prospect that the bill will become law at this session.

SHARON HILL SWIM CLUB,
Sharon Hill, Pa., July 14, 1958.

Re: Excise tax exemption for nonprofit swim club (H. R. 7125, secs. 131–132).

SENATE FINANCE COMMITTEE,
Senate Office Building,
Washington, D. C.

DEAR SIRS: Please be advised of the unanimous support of our 440 member families to the above sections of H. R. 7125.

We believe such legislation is long overdue, especially as it pertains to organizations such as ours which seek no gain or profit other than an environment of good, wholesome, summer recreation for our children and ourselves.

We trust enactment of this legislation will encourage many more civic minded persons in small communities all over the country to proceed with the erection of nonprofit swimming facilities.

Much has been said and done to preserve our "freedom from" in this country, but little has been done it seems to encourage our "freedom to"; thus, an ever-increasing burden has been shifted to government at all levels to provide what rightfully is the responsibility of individual citizens. If we are to maintain, and lend encouragement to our "freedom to," then the present tax system as it applies to nonprofit groups such as ours needs revision.

Our particular club as well as five others located within a radius of 2 square miles of one another, and all adjacent to the city of Philadelphia are testimony of what good and useful purpose can be derived from such nonprofit groups. Specific reference is made to juvenile delinquent crime committed during the summer months which originates within the said community proper—it is practically nil. This has been attested to by the law-enforcement agencies serving these areas.

It is also interesting to note that the latest survey results indicate a mean income of $4,800, annually per family for these communities. This point is made to indicate that we do not consider ourselves privileged, nor do we think tax revision will cater to a privileged few who can accumulate sufficient funds to become members.

We would welcome the opportunity to have you visit our facilities and inspect our operation as we are sure many hundreds of other swim clubs would also.

Respectfully yours,

DAVID D. SHAFFER, *President*
(Representing the Board of Governors).

STATEMENT OF THE UNITED STATES FIGURE SKATING ASSOCIATION AND OTHERS BY HENRY T. REATH, PHILADELPHIA, PA.

My name is Henry T. Reath, Esq., a practicing attorney in Philadelphia. I am the solicitor (serving without compensation) and also a member of the board of governors, and chairman of the ice committee of the Wissahickon Skating Club, a community nonprofit ice-skating club comprising in excess of 500 family members in the greater Philadelphia area.

I am submitting this statement on behalf of my own club, the Wissahickon Skating Club, and on behalf of the United States Figure Skating Association, which comprises in excess of 20,000 registered figure skaters throughout the country and 135 member nonprofit ice-skating clubs. Neither I nor my law firm are receiving any compensation for the services performed in this regard.

OBJECTIVE

Our objective is to secure an amendment to H. R. 7125, page 38, line 9, to include nonprofit skating clubs as well as swimming clubs in the proposed exemption from the 20-percent Federal dues tax.

SUMMARY OF CONSIDERATIONS

Listed below is a brief summary of the considerations which are discussed below which sets forth the basic reasons why favorable consideration should be given to our proposal:

1. Skating clubs, like swimming clubs, serve the primary function of providing a healthy recreation for children. Further, it is a form of recreation in which all families can indulge together.

2. The construction and maintenance of such facilities avoids the need for the use of additional tax money to provide these recreational facilities.

3. An exemption for skating clubs, as well as swimming clubs, need not open to review at this time the question of dues on golf and country clubs for the following reasons:

(a) The skating facilities exist mainly for the children.

(b) Most skating clubs are primarily athletic and recreational, i. e., no "porch membership" for social activities—no liquor, dining, or social dancing facilities.

4. A carefully organized recreational and athletic program of figure skating and ice hockey for children meets the objectives of President Eisenhower's Citizens Advisory Committee on the Physical Fitness of American Youth; and thereby helps develop physical fitness and other qualities such stick-to-it-iveness, self-confidence, a keen competitive sense, pride of accomplishment, teamwork, a sense of fair play and good sportsmanship.

5. It is further in the national interest to develop topnotch amateur champion skaters through nonprofit amateur clubs, who can thereafter represent the United States in Olympic and international competitions. Unlike many other sports, it is extremely costly to maintain a sheet of artificial ice to be used for the developing of such champions which of necessity develop through the carefully organized figure-skating programs of the member clubs of the United States Figure Skating Association.

6. The present 20 percent dues tax discriminates against nonprofit clubs and in favor of commercial skating rinks for profit. A commercial skating rink, charging less than $0.90 admission, is exempt from the Federal admissions tax. Community nonprofit clubs, such as ours, however, are subject to a 20 percent tax on a season skating membership, notwithstanding that the per session charge for such member would be well within the $0.90 exemption. Furthermore, H. R. 7125, if adopted in its present form without amendment, would eliminate entirely the 20 percent admissions tax from all commercial ice-skating rinks.

DISCUSSION

The Ways and Means Committee, in its report accompanying H. R. 7125 (85th Cong., 1st sess., Union Calendar No. 158, H. Rept. 481) at pages 41 and 42 recommends exemption from the tax for nonprofit swimming clubs on the grounds that they "provide a healthy form of recreation for the children of the members and often avoid the need for additional use of tax moneys to provide such recreational facilities."

As is developed at greater length in the paragraphs that follow, all of the committee's arguments that apply to swimming clubs would apply with even more force to skating clubs as well.

The Wissahickon Skating Club, of which I am a member, is not only one of the youngest clubs in operation—but also, we believe we are one of the largest family ice-skating clubs in the country. Our carefully organized program, particularly for the children, is quite typical of the programs similarly in effect throughout the other member clubs of the United States Figure Skating Association.

We have approximately a 6-month season from mid-October through mid-April during which time our children and senior members figure skate, compete in competitions, play ice hockey, and take part in family skating sessions, where children of all ages and their parents skate together.

Our club is strictly an ice-skating club. We do not, as do some many country clubs, have a large "porch" membership who use the club for outside entertainment and other social affairs. If a person is not interested in skating, there would be no reason to join our club. Like most other similar skating clubs, we do not permit alcoholic beverages on the premises. We have no pinball or other amusement machines.

Our only social functions outside of our skating program which includes, of course, dancing on skates, is an occasional tea and exhibition when parents and friends come to see their children perform. We do not serve meals at the club—although we do have dispensing machines for candy, sandwiches, coffee, soup, and hot cocoa, etc., for an occasional snack.

At page 41 of its report, the Ways and Means Committee, in urging a dues tax exemption for swimming clubs, pointed out that they "provide a healthy form of recreation for the children of the members and often avoid the need for additional use of tax moneys to provide such recreational facilities. In view of the recreational value for the children of the members arising from the operation of such facilities, your committee believed that dues and initiation fees to such organizations should be exempt from tax. Provision should be made, however, to limit the exemption to organizations which meet the recreational needs of children."

From the brief description of the activities of our club (which is quite typical of most other skating clubs), I think it is clear that all of the considerations discussed in the Ways and Means Committee report apply as convincingly or more so to the many skating clubs, such as ours, throughout the country.

Ice skating on artificial rinks has, in the past few years, grown in popularity by leaps and bounds. There are now 135 ice-skating clubs throughout the country which have been sanctioned to administer figure-skating tests and competitions by the United States Figure Skating Association. Furthermore, there are many other clubs in formation. New artificial ice rinks are springing up all over the country.

Without doubt, the children are the primary interest of our club, and they comprise the largest proportion of our membership. Our schedule is so arranged that all boys and girls in the club have a minimum of two weekly organized periods of group figure-skating and ice-hockey instruction for the children, intermediate, and junior age groups, plus many other hours to practice and skate with their friends and families during the week and on every Saturday and Sunday throughout the club season.

Our dues, before the 20-percent Federal tax, are very modest. A family membership costs $35. There is an additional skating privilege charge for each member of the family who skates, of $25 per person for the first 2, and $15 for each thereafter.

We are confident that the youth program of clubs such as ours has the wholehearted endorsement of President Eisenhower's Citizen Advisory Committee on the Physical Fitness of American Youth. In this connection, should it not be the policy of the Congress to encourage, rather than discourage (as it now does by the 20-percent dues tax), activities of clubs such as ours that do provide a healthful, recreational, and athletic activity during the winter months for children to participate in?

Through carefully organized athletic programs such as ours, we are contributing to the development in the children of today, those qualities that our citizens of tomorrow must have if our country is to remain strong and respected—

qualities such as strong, healthy bodies, physical stamina, endurance, stick-to-it-iveness, self-confidence, a keen competitive sense, pride of accomplishment, teamwork, a sense of fair play, and good sportsmanship.

Community leaders, educators, public-recreation officials, and leaders from many other fields have commended us for our splendid youth program.

We believe that the 20-percent dues tax on nonprofit skating clubs is manifestly unfair and should be eliminated. The added financial burden imposed does discriminate against a healthy recreational program, because it is carefully organized and administered by a nonprofit club. In this connection, it is significant that public commercial ice skating rinks for profit are currently exempted from the 10-percent admissions tax if they charge, as most do, an admission fee of less than $0.90.

On the other hand, our charge to members, in the form of dues, for a much better organized program is less, on a per session basis, than the fee charged by commercial rinks, yet we pay the 20-percent tax, from which the commercial enterprises are exempt.

By far the large majority of the member clubs of the United States Figure Skating Association must rent their ice time from privately owned or municipally owned rinks. In most cases, these commercially or municipally owned rinks have public sessions at which, as indicated above, no tax is paid.

On the other hand, a figure-skating club which rents the same ice and facilities must pay the 20 percent tax on the money collected from its members for dues, merely because the group of individuals forming the club wishes to contract for certain periods of ice time for the whole season and charge its members for the whole season instead of letting them pay a fee each time they enter the rink.

Finally, we would respectfully point out that under the provisions of H. R. 7125 as presently worded, all commercial rinks would be exempt from any admissions tax irrespective of the charge that is made. We believe it would be manifestly unfair to exempt commercial profit rinks and at the same time charge the 20 percent dues tax against nonprofit clubs.

Attached to this statement is a reprint of an article appearing in the April issue of Skating magazine, an official publication of the United States Figure Skating Association. The undersigned has since received wholehearted endorsement of our efforts from figure skating clubs throughout the country.

(The attachment was made a part of the committee files.)

STATEMENT OF ROWLAND JONES, JR., PRESIDENT, AMERICAN RETAIL FEDERATION, ON H. R. 7125, EXCISE TAX ADMINISTRATIVE CHANGES BILL

The American Retail Federation is a federation of 31 national retail associations and 38 statewide associations of retailers, representing through its combined membership more than 800,000 retail outlets. A list of the association members is attached to this statement. The officers of the federation are located at 1145 19th Street NW., Washington, D. C.

The American Retail Federation generally endorses the provisions of H. R. 7125, the excise tax administrative changes bill which has a direct bearing on the retail industry. It feels that this bill is a step in the right direction toward eliminating many cumbersome provisions of the excise tax laws, and that it will aid both compliance and enforcement of these laws. The bill, which represents many years of hard work, should be enacted into law this year.

In endorsing H. R. 7125, the American Retail Federation wishes to make it absolutely clear that it is not departing from its long-term position of complete opposition to the discriminatory excise taxes. These taxes unduly burden and hamper the free flow of goods and services from producer to consumer and unfairly discriminate between similar classes of goods and services. The discriminatory excise taxes should be repealed as soon as possible. In the meantime, while budgetary conditions make the repeal of these unfair taxes impossible, the administrative burden which these taxes place on business—and on Government too—should be lightened as far as possible.

In offering the following suggestions for amendments to the bill, the federation does so in the belief that these amendments are noncontroversial and that their adoption by the Senate Finance Committee would not endanger the chances for passage of the bill this year.

1. *Language is needed to counteract the effects of the Gellman decision.*—The case of *Nathan Gellman et al. v. United States*, (235 Fed. (2d) 87), involved the meaning of the term "sold at retail" for purposes of the retailers excise tax.

Briefly, the decision held that the sale of certain articles which would be subject to a Federal retail excise tax if sold at retail were not taxable when sold to lodges, churches, clubs, bars, taverns, and cafes to be disposed of by the purchaser as prizes. Similarly, the decision held that purchases of otherwise taxable articles by industrial concerns to be given as premiums in connection with the sale of other merchandise, or given as incentive awards to employees were not subject to the appropriate Federal retail excise tax.

On March 18, 1958, the Internal Revenue Service, in Revenue Ruling 58-125, stated that it had decided to recognize the decision in the Gellman case. On April 21, 1958, a ruling was requested from the Service to make it clear that wherever a sale by a manufacturer or wholesaler would be exempt from excise tax under the principles of the Gellman decision a similar sale by a retailer would be likewise exempt. As of May 20, 1958, the Service issued a telegraphic ruling stating that the Gellman ruling (Rev. Rul. 58-125 above) was not applicable to retailers and that sales of the type described in the Gellman case would be taxable sales if made by retailers.

This ruling by the Internal Revenue Service is unfair and discriminatory to retailers who make sales of the Gellman type. Under this decision, no retailer can afford to bid for such business since the wholesaler or manufacturer can underbid him by the amount of the Federal retail excise tax. Furthermore, since the ruling was issued in March of this year, many wholesalers and manufacturers have been able to make refunds to customers who had previously paid a Federal retail excise tax on a Gellman-type sale. Retailers who made similar sales cannot make such refunds to their customers.

An examination of the decision shows clearly that the court relied upon the type of sale concerned and not the type of business normally conducted by the seller. This has previously been the practice of the Internal Revenue Service in administering the Federal retail excise taxes. If a manufacturer or a wholesaler makes a sale that is definitely a sale at retail, he is taxed accordingly. Why, therefore, should the Service turn around and say, in effect, that when a retailer makes a sale that is definitely not a sale at retail he is, nevertheless, subject to the Federal retail excise tax?

The American Retail Federation, therefore, suggests that the Internal Revenue Code be amended so as to make sure that no Federal retail excise tax applies to articles, otherwise taxable, which are not sold at retail. This could be accomplished by adding a new section to subchapter F to the effect that articles which are purchased for commercial or industrial use, such as for awards, prizes, premiums, etc., shall not be considered as being sold at retail and, hence, not subject to the tax.

2. *Imitation of precious stones should be taxed.*—The present code (sec. 4001) taxes real and imitation precious stones. The bill, H. R. 7125, proposes to change this language and tax real and synthetic precious stones and, thus, by inference leave limitations of precious stones untaxed. This change should not be made for two reasons.

First, because the change will create many administrative difficulties. It is not always easy to determine whether a stone is synthetic or imitation. For example, synthetic corundum, colored like a ruby or sapphire, would be a synthetic stone since rubies and sapphires are natural corundum. However, if this synthetic corundum were colored like an alexandrite, it would become an imitation stone since real alexandrite is not corundum. Problems like this can be multiplied into countless administrative headaches, both for the seller and for the Government.

Second, because the omission of imitation stones will subject retailers, particularly those selling costume jewelry to unfair competition, there are many companies which manufacture do-it-yourself jewelry kits which contain imitation stones and frames for their mounting. The sale of these kits is now subject to the Federal retail excise tax on jewelry. The tax, however, would not apply under the terms of H. R. 7125, and, as a result, unfair competition would result between the sellers of the kits and sellers of costume jewelry.

3. *Pro rata payment of excise taxes on items sold under conditional sales contracts.*—Under present law, when an item subject to a Federal retail excise tax is sold on a conditional sales contract, the retailer is liable for the proportional amount of the tax collected with each installment. Retailers who sell both taxable and nontaxable items on conditional sales contracts wish to be allowed to prorate the amount of the tax due according to the relationship between the dollar value of the taxable and nontaxable sales, in lieu of accounting for each item. It is believed that no revenue would be lost if they were allowed to do so

and that there would be a substantial reduction in administrative and bookkeeping expense.

This is not a matter that lends itself easily to statutory language and properly should be handled by regulation. However, the Internal Revenue Service appears to believe that it does not have the necessary authority to issue general regulations on this subject. Therefore, the Internal Revenue Code should be amended so as to give the Service legal authority to authorize, by regulation, this pro rata payment of excise taxes.

4. *General simplification.*—H. R. 7125 makes a real step forward in its codification of the language of the Federal retail tax on luggage. The other three Federal retail excise taxes, however, are left with wide areas where the language is not clear, making it necessary to seek countless numbers of individual interpretations from the Revenue Service. The type of codification applied to the luggage tax should be extended to the other three Federal retail excise taxes.

Manifestly, it is impossible to accomplish this in H. R. 7125 if the bill is to be enacted into law in this Congress. However, the federation hopes that the Senate Finance Committee will call attention to this lack of clarification in its report on the bill. The mention of this problem would, the federation confidently believes, greatly assist further clarification of these taxes in the coming Congress.

In conclusion, the federation wishes to repeat that it is unqualifiedly opposed to the unfair and discriminatory excise taxes in the present tax structure and urges that these be repealed as soon as possible.

While these taxes are on the books, however, every effort should be made to make them as easy to administer, by business and by Government, as possible. H. R. 7125 is a step toward such better administration.

NATIONAL ASSOCIATIONS

American Retail Coal Association.
Associated Retail Bakers of America.
Association of Family Apparel Stores, Inc.
Institute of Distribution, Inc
Mail Order Association of America.
National Appliance and Radio-TV Dealers Association.
National Association of Chain Drug Stores.
National Association of House to House Installment Companies, Inc.
National Association of Music Merchants, Inc.
National Association of Retail Clothiers & Furnishers.
National Association of Retail Grocers.
National Association of Shoe Chain Stores.
National Council on Business Mail, Inc.
National Foundation for Consumer Credit, Inc.
National Industrial Stores Association.
National Luggage Dealers Association.
National Retail Farm Equipment Association.
National Retail Furniture Association.
National Retail Hardware Association.
National Retail Merchants Association.
National Retail Tea & Coffee Merchants Association.
National Shoe Retailers Association.
National Sporting Goods Association.
National Stationery & Office Equipment Association.
National Tire Dealers & Retreaders Association, Inc.
Retail Jewelers of America.
Retail Paint & Wallpaper Distributors of America, Inc.
Super Market Institute, Inc.
Variety Stores Association, Inc.
Women's Apparel Chains Association, Inc.

STATE ASSOCIATIONS

Alabama Council of Retail Merchants, Inc.
Arizona Federation of Retail Associations.
Arkansas Council of Retail Merchants, Inc.
California Retailers Association.
Colorado Retailers Association.
Delaware Retailers' Council.
Florida State Retailers Association.

Georgia Mercantile Association.
Idaho Council of Retailers.
Illinois Retail Merchants Association.
Associated Retailers of Indiana, Inc.
Iowa Retail Federation, Inc.
Kentucky Merchants Association, Inc.
Louisiana Retailers Association.
Maine Merchants Association, Inc.
Maryland Council of Retail Merchants, Inc.
Massachusetts Council of Retail Merchants.
Michigan Retailers Association.
Minnesota Retail Federation, Inc.
Mississippi Retail Merchants Association.
Missouri Retailers Association.
Nebraska Federation of Retail Associations, Inc.
Nevada Retail Merchants Association.
Retail Merchants' Association of New Jersey.
New York State Council of Retail Merchants, Inc.
North Carolina Merchants Association, Inc.
Ohio State Council of Retail Merchants.
Oklahoma Retail Merchants Association.
Oregon State Retailers' Council.
Pennsylvania Retailers' Association, Inc.
Rhode Island Retail Association.
Retail Merchants Association of South Dakota.
Retail Merchants Association of Tennessee.
Council of Texas Retailers' Association.
Utah Council of Retailers.
Virginia Retail Merchants Association, Inc.
Associated Retailers of Washington.
West Virginia Retailers Association, Inc.

SURREY, KARASIK, GOULD & EWRON,
Washington, D. C., July 15, 1958.

Hon. HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR MR. CHAIRMAN: Senator Martin has introduced an amendment to H. R. 7125 which would have the effect of rescinding the manufacturers excise tax on mechanical lighters for cigarettes, cigars, and pipes now imposed by virtue of section 4201 of the Internal Revenue Code of 1954.

On behalf of Ronson Corp. and Zippo Manufacturing Co., who together produce over 60 percent of United States manufactured lighters, we urge the committee to adopt Senator Martin's amendment:

1. *Adoption of the amendment need not open the door to the acceptance by the committee of other measures for the rescission of existing taxes.*—The relief needed is not ascribable to general economic conditions; it is relief long justified prior to the recession. This is a case in which industrial output has declined from year to year since the imposition of the excise tax. It is a tax applicable to an industry facing extinction not because of the general economic slowdown, but for reasons peculiar to that industry. Our present laws permit the unfair competition of cheaply produced and cheaply marketed Japanese lighters. The maximum aid which might be given by a rise in tariff or the imposition of a quota would not save the industry. Recourse to the courts by private lawsuit (successful in numerous test cases) would involve a tremendous and uneconomic multiplicity of suits. Rescission of the manufacturers excise tax is the only practical help which the industry can seek at this time.

2. *Senator Martin's amendment is consistent with other provisions of H. R. 7125.*—The amendment, which would strike out the language in section 4201 of the Internal Revenue Code dealing with mechanical lighters for cigarettes, cigars, and pipes, is comparable to section 112 of H. R. 7125, which deletes refrigerator components from section 4111 of the code, and section 113 of H. R. 7125 which deletes electric floor polishers and waxers from section 4121 of the code.

3. *The tax is an unfair burden to an industry presently engaged in a desperate struggle for existence.*—In 1951, when the tax was first imposed, the industry consisted of some 55 manufacturers, who produced somewhat over 10 million lighters. Today there are left only about 5 manufacturers who, in 1957, produced only about 3,500,000 lighters. The burden imposed by the excise tax makes it practically impossible for the industry to survive in the face of cheap imported competition.

4. *The amount of revenue produced by the tax is extremely small, and has constantly declined with the decline in productivity of the industry.*—The best estimate of the amount of manufacturers excise taxes collected on United States manufactured cigarette lighters in 1957 is $1,150,000. As industry output has declined, excise-tax collections have declined; the industry shows a steady, year by year diminution of output. Unless relief of some sort is given, this output will decline further, as, obviously, will excise-tax collections based thereon.

5. *Rescission of the excise tax on lighters at this time would be of immediate practical benefit to the industry, and would have the long-term effect of increasing Treasury collections of industry income tax.*—As the committee is no doubt aware, the price to the consumer at retail necessarily includes a factor double the dollar amount of the tax paid by the manufacturer. This is a formidable burden in the marketing of United States cigarette lighters. With this tax removed, the leading manufacturer in the industry estimates that on over 90 percent of the lines it could pass on to the purchaser the benefits of savings of up to 20 percent of the manufacturers net price. In addition, the tax removal would make possible an entirely new line of automatic lighters in a new, lower price range. On the bases of its previous many years of experience and of current market surveys, the company believes that during the year first following the elimination of the excise tax, it would increase total sales by about 1½ million units. Even before such a point were reached, the company is confident that its present losses on its lighter production would be converted to profits, so that total income-tax collections by the Treasury would be increased by (*a*) the amount that those taxes are now diminished by reason of the present continuing loss position, and (*b*) the actual amount of the income tax on earnings. It is believed that the same pattern applies to the remainder of the industry.

Sincerely yours,

RONSON CORP.,
ZIPPO MANUFACTURING CO.,
By WALTER STERLING SURREY.

NORTHERN VIRGINIA SWIMMING LEAGUE,
Falls Church, Va., July 15, 1958.

Re: H. R. 7125.

Mrs. ELIZABETH B. SPRINGER,
Chief Clerk, Committee on Finance,
United States Senate, Washington, D. C.

DEAR MRS. SPRINGER: Enclosed is a statement prepared by the Northern Virginia Swimming League, Inc., setting forth our views on section 132 (b) and section 132 (d) (2) of H. R. 7125.

Mr. Wilbur Sparks, the legal adviser to the NVSL, informed me that he had spoken to you in this regard on July 11, 1958.

We would appreciate it if you would have the enclosed statement inserted into the record of the Committee on Finance which, it is understood, is now meeting on H. R. 7125.

Very truly yours,

J. N. SWARTLEY,
Chairman, NVSL.

The Northern Virginia Swimming League, Inc., favors the enactment of section 132 (d) (2) and section 132 (b) of H. R. 7125 and, with one suggested clarification, urges the passage of these sections of the bill. The league is an incorporated, nonprofit association of nonprofit community swimming clubs, 18 in number, located in Arlington and Fairfax Counties, Va., and in Alexandria, Va., which was organized in 1956 for the purpose of promoting competitive swimming among children who are members of clubs of this type in this area.

During 1957 a total 1,800 boys and girls between the ages of 7 and 17 competed in swimming and diving competitions sponsored by the league and sanctioned by the Amateur Athletic Union, and it is estimated that nearly 2,000 are engaged in these competitions during the current season.

Community swimming clubs are a recent phenomenon of the American scene, being owned and operated by their members, usually organized with much volunteer, civic-minded help, and always dedicated to providing inexpensive recreation for their members. Usually their members are not able or willing to join country clubs, which are in the luxury category. These swimming clubs have provided valued recreation and, incidentally, training in swimming techniques, for thousands of youngsters and adults; the clubs associated with the Northern Virginia Swimming League alone have an estimated total membership of 6,500 families.

While the Northern Virginia Swimming League's member clubs have not been polled on the question, its board of representatives, comprised of an adequate cross section of the membership of these clubs, has authorized the filing of this statement in favor of section 132 (d) (2) and section 132 (b) of H. R. 7125. The reasons for our support of this proposal are several in number:

(1) We believe the tax laws of the United States should encourage the building and enlargement of swimming clubs. Exemption from tax on assessments collected for construction of new clubs would encourage their formation. If an existing club finds it necessary to enlarge or reconstruct some of its facilities, we believe the tax on club dues under section 4242 of the Internal Revenue Code should not apply to the assessments on members which might be necessary for this purpose. Likewise, we think this section should not apply to construction made necessary by reason of losses due to casualty, fire, flood, or other disasters when the insurance proceeds are not sufficient to pay the costs of replacement. For these reasons we favor the passage of section 132 (d) (2) of the bill. We believe that clubs should be exempt from tax on amounts collected from their members for these purposes.

(2) We believe that dues and initiation fees to nonprofit swimming clubs should be completely exempt from tax, as would be provided under section 132 (b) of the bill. We have described the recreational value of such clubs, especially insofar as they provide for the needs of children, to which our league is entirely devoted. We also call attention to the fact that clubs of this character frequently save towns and counties from the necessity of using tax moneys for the construction of swimming facilities in as great amounts as otherwise would be necessary. For these reasons, we believe that dues and initiation fees collected by nonprofit swimming clubs of the character embraced by our membership should be exempt from tax. We favor heartily, therefore, the enactment in principle of section 132 (b) of this bill.

We agree with at least 3 of the 4 conditions attached to the proposed exemption from tax on these organizations, to wit, that such clubs be required to permit the use of their facilities by children on the basis of their own or their families' memberships, that clubs qualifying for the exemption be prohibited from serving or allowing to be consumed on their premises any distilled spirits, wines, or beer, and that such clubs not be allowed dining facilities (except for light refreshment). We are not certain it is wise to prohibit dancing facilities on the premises, at least without further clarification of this phrase. Many nonprofit swimming clubs now have public address systems on their property, to which are attached record players or other means for mechanically reproducing musical selections in the pool area. It is not uncommon for such clubs to sponsor teenage nights at their pools occasionally throughout the summer, and it is usual for the program on such nights to provide for dancing by the youngsters alongside the pool or bath house on concrete sidewalks. Would these constitute "dancing facilities"? We do not think they should be construed as such.

In addition, we know that many nonprofit clubs would like to provide additional recreational facilities for their teen-age members, perhaps in the form of inexpensive shelters and other buildings or halls, embodying modern, basic construction techniques. These buildings would provide closed space in which games could be played and dancing could occur to the accompaniment of phonograph records. Because of the basic philosophy behind the clubs and the economic means available to their members, it is clear that such construction would be plain and minimal in character.

This would be hardly a country club atmosphere, against which the prohibition on dining and dancing facilities probably is intended to militate in clubs qualifying for the tax exemption. Such plans would provide inexpensive, healthy,

wholesome recreation for teen-agers, keeping them off the streets and in their own neighborhoods, forming healthy relationships in keeping with the hopes and desires of their parents. Such facilities should not, in our opinion, disqualify a nonprofit swimming club from the privilege of exemption from tax on its dues and initiation fees.

While the Northern Virginia Swimming League is primarily interested in the promotion of competitive swimming among youngsters who are members of clubs associated with the league, it has an overall interest in all recreation for such children. We urge, therefore, that the prohibition against dancing facilities be rewritten to allow buildings or shelters of the type we have described in the above paragraphs. With this exception, we are in entire agreement with the philosophy of these two sections of H. R. 7125, and we urge their enactment.

THE CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF VIRGINIA,
Richmond, Va., July 14, 1958.

Hon. HARRY FLOOD BYRD,
United States Senate, Washington, D. C.

MY DEAR SENATOR BYRD: I wish to suggest on behalf of the telephone industry that a termination date be placed on the communications excise-tax law.

The only services furnished by regulated utility industries which have been subjected to Federal excise taxes are (1) communications, (2) electrical energy, and (3) transportation of property and transportation of persons. The taxes on these services were imposed to meet the needs of emergency situations, primarily the depression of the early 1930's and World War II.

The taxes on electrical energy and transportation of property have been repealed. This leaves communications services and the nonlocal transportation of persons where the fare exceeds 60 cents as the only services subjected to Federal excise taxes. Incidentally, telephone service is the only household utility service taxed.

The apparent discrimination inherent in the action of Congress in repealing some emergency taxes while continuing others tends to create the impression that the taxes which are left in force are intended to remain permanently in effect.

It is submitted that this is unfair to the 38 million families who are users of a necessary communications service, and Congress should take steps to make it clear that it, the excise tax on communications, is still considered to be a temporary tax. This can be done by providing a future termination date for this tax law.

Sincerely yours,

JOSEPH E. BLACKBURN, *General Attorney.*

INTERARMCO, LTD., *Alexandria, Va., July 15, 1958.*

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: We greatly appreciate your interest in our welfare, as expressed in your kind letter of July 9, 1958. It so happens that we are concerned in a matter which is now under consideration by your committee, and we feel that favorable action would be a definite improvement to the National Firearms Act, by removing some of the irksome restrictions which have plagued honest and law-abiding citizens since the days of Dillinger and other prohibition public enemies of Chicago.

We refer to the bill introduced in the Senate by Senator Dirksen, S. 1047, to amend the Internal Revenue Code of 1954 to remove certain firearms from taxation and registration. It was hoped that this bill would be included as an amendment to H. R. 8381 when it was recently reported by your committee. However, it is understood that your committee is now considering H. R. 7125, and we request that Senator Dirksen's bill be included in this bill.

We understand that the Treasury Department objects to the proposed change in the definition of a firearm. The issue here is clearly whether or not the concealable devices, which at present are classified as "any other weapon," are a national crime problem. We insist that the Dirksen bill, which defines as a "firearm" any rifle or shotgun which has been altered to have an overall length

of less than 26 inches or a barrel length of less than 16 inches, provides ample support to law-enforcement agencies, while, at the same time, permits some freedom for collectors, shooters, hunters, etc., from irritating, useless restrictions.

We trust that your committee will take favorable action on Senator Dirksen's bill so that the many people represented by the National Rifle Association and other organizations will know that their hobbies and interests are given proper consideration by the Congress of the United States.

With best wishes for your continued success.

Very truly yours,

C. L. O. ATKESON, *Vice President.*

LAIRD & CO.,
North Garden, Va., July 14, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Committee on Finance, Washington, D. C.

DEAR SENATOR BYRD: I am writing with reference to H. R. 7125 which is now before your committee, and on which hearings have been scheduled for July 15 and 16, 1958. In the interest of saving the committee's time, I am taking this means of making known to you my comments on the bill in lieu of asking time for a personal appearance before the committee. It is requested that this letter be made a part of the printed hearings on the bill.

Laird & Co., is a small producer of distilled spirits. We have a plant at North Garden, Va., and one at Scobeyville, N. J. Our production is exclusively apple brandy, and while we supply most of the domestic demand for apple brandy, the market is a very limited one.

As a small company, with limited working capital, we find it increasingly difficult and almost impossible to successfully compete in the beverage alcohol field with the larger, more diversified companies. In fact, almost a hundred other apple brandy distillers have had to discontinue operations.

The passage of title II of the Forand bill will decrease the cost of liquor tax administration to the Government, and the cost of doing business to the industry. It will be particularly helpful to small distillers such as Laird & Co., at a time when small business in general is in need of some remedial action which will make somewhat more likely its survival in the business world.

With reference to the provisions of the bill which would extend the present 8-year bonding period for distilled spirits to 20 years, I fully support the position of the Distilled Spirits Institute, of which I am a member and a director.

Because of the nature of Laird's operation, we do not find ourselves faced with an excess of aged apple brandy, but the existence of large quantities of aged whisky now approaching 8 years of age and for which there is no market, would nonetheless have a vital and direct adverse effect on Laird & Co., and, in my opinion, on practically all distillers, large and small. I therefore support the proposition that spirits in bond at the time of the enactment of the Forand bill should be relieved of the necessity of being taxpaid and withdrawn from bond at the end of 8 years, but feel that this should be accomplished in such manner as to prevent the holders of large stocks of aged whiskies from gaining a tremendous competitive advantage over the rest of the industry. The bill as now written, by virtue of the retroactive feature of the bonding period extension, would grant that competitive advantage to a few companies.

The equities of the situation require an amendment which will permit the orderly marketing of present stocks of distilled spirits, but without granting to the holders of such stock a retroactive competitive advantage, and at the same time remove the 8-year limitation as to stocks produced in the future. This would assure all distillers of the opportunity of starting off on an equal footing and prevent the present holders of large stocks of aged whiskies to capture the over-8-year-old market before others would have any reasonable opportunity to catch up.

Laird & Co., therefore, urges you and your committee to favorably report title II of H. R. 7125 at the earliest practicable date, but with the change suggested above to eliminate the retroactive feature of the bonding period.

Yours very truly,

JOHN E. LAIRD, JR., *President.*

(Whereupon, at 11:30 a. m., the committee recessed to reconvene at 10 a. m., tomorrow, Wednesday, July 16, 1958.)

EXCISE TAX TECHNICAL CHANGES ACT

WEDNESDAY, JULY 16, 1958

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

The committee met, pursuant to recess, at 10 a. m., in room 312, Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd (chairman), Kerr, Frear, Long, Anderson, Douglas, Martin, Williams, Flanders, Malone, Bennett, Carlson, and Jenner.

Also present: Senator Morton; Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The committee will please come to order.

The first witness is Mr. Bernard N. Burnstine, executive vice chairman, Jewelry Industry Tax Committee, Inc.

STATEMENT OF BERNARD N. BURNSTINE, EXECUTIVE VICE CHAIRMAN, JEWELRY INDUSTRY TAX COMMITTEE, INC.

Mr. BURNSTINE. My name is Bernard N. Burnstine. I am executive vice chairman of the Jewelry Industry Tax Committee, Inc., an association representative of all segments of the jewelry industry, including retailing, wholesaling, manufacturing and labor.

This statement is made on behalf of the Jewelry Industry Tax Committee, Inc.

This statement has to do with the proposed changes of section 4001, the retail excise tax on jewelry.

This section of the bill proposes to eliminate from the code the present excise tax on imitation stones. It is our considered opinion that such elimination of the tax on imitation stones will serve no useful purpose, but that such action will create a great many administrative problems and, additionally and more importantly, will foster serious and inequitable competitive situations.

Approximately 85 percent of all colored stones used in jewelry are made from synthetic corundum. These stones are colored in the process of manufacture to imitate a wide range of precious and semiprecious stones. Under the proposals of this bill, synthetic corundum, if the color of ruby or sapphire, would be taxable. If the color is made to duplicate the color of other precious or semiprecious stones, it then becomes an imitation of these stones and is not taxable. Thus you have a situation where the color of a stone determines whether or not it is taxable.

Avoidance of a substantial amount of the tax on individual sales could be accomplished by selling the stones and mountings separately and then setting the stones. If just one seller in a community adopts

such a selling procedure, others will have to follow. While the savings may be relatively small, tax savings are always persuasive arguments to the public. A great and unwanted burden will be placed on the industry and such a loophole will certainly occasion serious administrative problems.

Additionally, the removal of the tax on imitation stones would free from tax stones sold in hobby kits and as do-it-yourself components for assembly into articles of jewelry by consumers. The sale of such kits and components has become a substantial business.

In the city of Washington alone, there are two stores devoted exclusively to the sale of such items and a great many other stores in which they are sold. Such items are in direct competition with retailers selling the finished items and on which the tax is applicable.

The advertising and sale of imitation stones, without tax, for the use of hobbyists and others, would work to the great disadvantage of the regular retail jewelry business and would create a serious and discriminatory competitive situation between sellers and components and finished products.

We sincerely urge that this bill be amended to maintain the present tax on imitation stones.

We would also like to point out the fact that precious and semiprecious stones are very widely used as abrasives in industry. There is no provision in this bill or in the code for industrial exemption.

Also, we raise a question on the inclusion of coral, in this bill, as a taxable stone. About the only loose coral sold in this country is for use in fish bowls. We do not believe that it is the purpose of this section to tax fish bowl ornaments.

Thank you.

The CHAIRMAN. Thank you very much.

The next witness is Mr. Mark Mooney, Jr., of the Magnetic Recording Industry Association.

STATEMENT OF MARK MOONEY, JR., REPRESENTING THE MAGNETIC RECORDING INDUSTRY ASSOCIATION, SEVERNA PARK, MD.

Mr. MOONEY. My name is Mark Mooney, Jr., and I am from Severna Park, Md. I am here today as official representative of the Magnetic Recording Industry Association and as publisher of the only magazine devoted to the industry.

No one, in his right mind, would give a baby a razor blade.

Yet, in essence, that is what the Internal Revenue Service proposes to do to our baby and we are asking you gentlemen to put a stop to it.

Our baby is the magnetic recording industry. Now about 5 years old, we had confidently expected that it would be a sturdy and self-sufficient infant. Unfortunately it has not done well, it is still in the crib, it has not grown normally. Lately it has become very ill and its larger brother has taken to kicking it and knocking its head against the wall every time our back is turned.

Now its uncle wants to give it a razor blade.

We, too, have a hard-luck story. We can tell you that the normal seasonal decline in the sale of tape recorders last year was 10 percent. This year it is 50 percent. We can tell you that the makers of re-

corded tape have gone from no seasonal drop last year to a loss of 75 percent or more of this business this year.

For every example that we cite, we are told that this committee can probably match us story for story with the plights of other industries.

To this we can only say that if the other industries are in the same condition as the magnetic recording industry, then may God help this Nation.

You see, our baby industry has suffered this ill health, while trying to grow over the last 5 years, without an excise tax on its products, although it did pay the corporation taxes, personal taxes, and other taxes that apply to every business.

We are not asking for the removal of an existing tax.

We are asking only that the proposed tax be deferred until the infant industry is able to bear it.

The tax is found in section 114 of H. R. 7125, page 10, code section 4141, of the bill now under consideration. We understood that this bill was supposed to be a technical adjustment bill. To quote from the bill title, "To make technical changes in Federal excise-tax laws, and for other purposes."

By and large it was not the intent to levy new taxes with this measure nor to alter drastically any existing taxes.

But the tax on recorders is a new tax. This, we feel, is not within the spirit and intent of the bill.

The Internal Revenue Service has alleged that tape recorders should be taxed because they are in competition with phonographs. We have never seen one shred of proof that this is so.

Last year, according to figures we have obtained from the Record Industry Association of America, $378 million of disk records were sold by our big brother industry. Tape sales of music were approximately $1 million.

Thus the share of the market for tape, as against disk, was only one-fourth of 1 percent. This was last year, a year that began to raise our hopes that tape would get "off the ground." This year, due to the excessive drop in the recorded tape business, this accounts now for only one-tenth of 1 percent of the market.

This can hardly be called competition. In fact, in testimony taken last year the record industry spokesman publicly stated that the only competition they had was from books and magazines.

The ability of both the tape recorder and the phonograph to play back music is the only area where competition could exist. The tape recorder primarily is an educational tool. Its greatest use is in the schools and churches where it is employed to bring church services to the blind, to instruct in languages, to correct speech defects, and so forth. It is an integral part of the administration's people-to-people program where folks in more than 60 countries talk to each other on tape. Senator Yarborough recently had printed in the Congressional Record appendix, 1958, page A5156, the story of how this program on tape is helping international understanding.

Just this spring, big brother kicked our baby in the head. Up to that time music on tape was stereophonic music and tape was the only way it could be had. Our baby's future looked bright.

Senator KERR. What is stereophonic?

Mr. MOONEY. Stereophonic is two-eared music. The pickup is made with 2 microphones, 1 on the left side of the sound source and 1 on the right side of the sound source. This is recorded on two tracks on the magnetic tape. One on the top and one on the bottom—kept separate.

Then these in turn are played back through 2 amplifiers and speakers, 1 on the left and 1 on the right.

Senator KERR. Simultaneously?

Mr. MOONEY. Simultaneously, so that you are actually there. In other words, you can say that the cornets are here and the drums are here, you can hear the difference. That was the one thing that tape had.

Senator KERR. Thank you.

Mr. MOONEY. This year, stereo music on disks was introduced. As an example of what this will mean, and has already meant, the tape version of Tchaikovsky's Symphony No. 6 is listed for $18.95. The company which issues the tape now has a disk version of the same thing for $5.98.

As the bill now stands, the proposed tax only falls on the consumer type machine, exempted are military recorders, data recorders, instrumentation recorders, and the like. Without going into detail, we figure that after these deductions are made, there will remain $35 million of records to be taxed at manufacturers' level. Half of these will be tax exempt by reason of their purchase by tax-exempt institutions, schools, and so forth.

This will mean that $17,500,000 can be taxed at 10 percent, yielding $1,750,000. This amount, as taxes go, is small. Deduct from this the administrative costs and there is still less.

We feel that we should point out to the committee that the imposition of this tax might actually cost the Treasury money. This would come about by a further decrease in the industry's sales because of higher prices. This in turn would reduce the amount of corporation and personal taxes collected from the firms involved. In the recorded tape section of the business, most of the smaller independent companies already have their backs to the wall. People are being laid off and production has virtually ceased.

One further point. This industry is made up almost exclusively of small businesses. To impose this tax when they already have more burdens and obstacles than they can handle would be to crucify them.

Much has been said, in Congress and out, about helping small business. Here is an entire industry of small business. Here is an opportunity to do something concrete.

Remember, gentlemen, we are not asking for the removal of an existing tax, but for the deferment of a tax not now on the books. A tax which is being justified by false reasoning, a tax which can result in a possible net loss to the Treasury.

Gentlemen, please do not give this weak baby industry a razor until it is old enough to shave. Given the proper environment for growth, this could happen in a year.

Thank you.

Senator ANDERSON. In your statement you say that "most of the smaller independent companies already have their backs to the wall."

Mr. MOONEY. Right.

Senator ANDERSON. Do I understand, then, that you want the remedy for the larger companies that remain?

Mr. MOONEY. No.

Senator ANDERSON. They are with their backs to the wall now—they can't pick it up.

Mr. MOONEY. The point is this, sir; the sale of recorded tape as music, that is, music on tape, depends upon machines being out in the field who use this tape just as the disk depends upon a phonograph being present. If we put a tax on tape recorders, and further depreciate the sale of them, that means there will be less market for the people who make this material.

Senator ANDERSON. Can you tell me what relationship this has to the television industry? There was a time when the program that you didn't carry simultaneously had to wait and you would get it on a film. Now they put it on tape and run it off 15 minutes or 30 minutes later. Is that what you are talking about? Is that wholly separate?

Mr. MOONEY. The sound track; no. It is exactly the same principle.

Senator ANDERSON. Is that what they are trying to put the tax on?

Mr. MOONEY. They are trying to put the tax on the home machine.

Senator ANDERSON. Are they trying to put it on the television machines?

Mr. MOONEY. No; they are exempt because they are professional. But here is the funny thing: Those machines cost $4,500 apiece—they are professionals—they do not come under the tax, yet the company that makes them has orders on hand from 3 individuals to put them in their homes, 3 of them. If the Internal Revenue Code starts to write the code on this, you will have to have an office full of people to decide which way goes what.

The CHAIRMAN. Thank you very much.

Mr. MOONEY. Thank you.

The CHAIRMAN. The next witness is Mr. George Burger, National Federation of Independent Business.

STATEMENT OF GEORGE J. BURGER, VICE PRESIDENT, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. BURGER. I am George J. Burger, vice president and Washington representative of the National Federation of Independent Business. I am appearing here solely for the membership of the federation.

We represent independent business and professional people in all vocations from all parts of the country. We have the largest directly supporting membership of any business organization in the country.

First of all, Mr. Chairman, I want to thank you and your committee for the opportunity of testifying on the subject matter before your committee, and this confirms your letter to me on June 27, 1957.

Mr. Chairman, if time permitted I could build a case on the facts that would disclose rank discrimination in the excise tax levy presently imposed on the stocks and tires and tubes in the hands of independent retailers that smells to the high heavens.

In my private capacity, and then again in my official capacity with the Federation this past decade, we have appeared before committees

requesting correction, beginning with February 6, 1942, before the House Small Business Committee. Then again, before the Committee of Ways and Means, June 1947, February 20, 1951, October 1955, January 1956, November-December 1956, and January 7, 1958. Before the Senate Finance Committee, July 6, 1950, March 1957, and the record will also disclose filed statements on this subject matter before the Senate Finance Committee; November 1957, before the Senate Small Business Committee.

It might be of interest to you, Mr. Chairman and members of the committee, for me to quote the colloquy that took place before the Senate Banking Committee on June 18, 1957, between Senator Homer Capehart and Mr. Dan Throop Smith of the Treasury Department. Now bear in mind, Mr. Chairman, that this subject matter was not before the Senate Banking Committee at the time, but hearings were being held on the Small Business Administration Act.

Senator CAPEHART. Yes. I would like to ask Mr. Smith this question. It is a problem here that I wish you would also get an answer for us. This has to do with small business, and particularly with the tire retailers of the United States. As you know, when they ship tires they have to pay the excise tax on it, but when the manufacturer who owns his own retail stores sells it, he can put all of the tires he wishes to in the retail stores without paying tax on them. That seems to be unfair to me, and it seems to be placing a burden on the independent tire retailer which is not placed on the manufacturer who owns retail stores.

Of course, you understand this not only applies to tires and tire manufacturers, but any manufacturer where it is a product subject to excise tax.

Mr. SMITH. Surely.

Senator CAPEHART. Where he has retail stores, you see.

Mr. SMITH. Yes.

Senator CAPEHART. It applies to many other items in addition to tires?

Mr. SMITH. Yes.

Senator CAPEHART. It is in the law and your position is that what I consider to be a discrimination is a part of the law?

Mr. SMITH. That I am quite sure of.

Senator CAPEHART. And the only way to correct it is to correct the law?

Mr. SMITH. That I am quite certain of.

Senator CAPEHART. Thank you very much.

Mr. Chairman, I would like to ask that the Secretary of the Treasury, or the Internal Revenue Department, I presume it is, give us a ruling that can be made a part of this record as to why the independent retailer of tires must pay the tax when he receives the tires, whereas the manufacturer can send all of the tires he wishes out of his retail stores scattered all over the United States, with many of them next door to the independent, and he does not have to pay the tax until he disposes of them. I would like to know whether or not it is an interpretation of the Internal Revenue Department that these independents must pay the tax, or whether it is a part of the law. At the moment I do not know.

Mr. SMITH. I will be glad to comment on that now, because I do happen to be familiar with it.

Senator CAPEHART. If you are familiar with it and care to answer, fine.

Mr. SMITH. I think it is a completely unambiguous interpretation of the law, because the law is imposed on sales.

Senator CAPEHART. In other words, you are following the law?

Mr. SMITH. Yes. There is nothing in the excise tax law which imposes a tax other than at the time of the sale. This was a subject which was considered in the Ways and Means Committee in the bill which was reported out by the Ways and Means Committee a matter of a few weeks ago now, when considerable consideration was given to this. I do not recall exactly how it was finally handled in the bill, but I remember one point that came up in our analysis of it in the Treasury Department was to the effect that credit terms typically given by the manufacturers to retailers were such that in point of fact the tax was due at least in many instances on the sales by the manufacturers through their own retail stores quicker than the tax was due from

the independent retailers under the terms of credit that were offered; but I will be glad to get additional information for you.

So it is self-apparent that this discrimination has been a matter of record with many Members of the Congress, and no correction forthcoming.

In the report of the Subcommittee on Excise Taxes of the Committee on Ways and Means, December 31, 1956, on page 6, the report states:

> However, it is understood that only 3 tire manufacturers currently operate company-owned retail stores, and that quantities of tires marketed through these outlets represent only a very small percentage of the total volume.

Of course, I have personal knowledge of the rubber tire industry, being an independent member of that industry for close to 50 years, and I know that the findings as reported above do not check with the record.

Early in 1957 the Public Relations Department of Fuller, Smith & Ross, Inc., of Cleveland, Ohio, whose client was the Pennsylvania Tire Co., held a contest through Nation's independent tire dealers, and put the question: "What's wrong with the tire business?" Their report discloses: "Dealers cite company-owned stores as greatest evil in tire business."

We had no part, direct or indirect, in developing this contest, and I might say that with the reports coming in from independent tire retailers in metropolitan areas throughout this Nation, with no exceptions or omissions, they cite this as the ever-increasing peril to their business future. Why? Because of the expanded operation of these manufacturers retail stores throughout the Nation. In fact, it was stated very recently at an annual meeting of the United States Rubber Co., in answer to a question from one of their stockholders as to whether they planned to go into the company-owned store field, they answered that they are giving consideration to the proposition.

The National Independent, a publication devoted to the interests of independent tire sales and servicing dealers throughout the Nation recently made a survey on this discrimination, requesting their readers to advise them as to what, if any, injury was accruing to them as a result of the discrimination in the imposition of the excise tax on their stocks of tires and tubes, and that of their main competitor—the manufacturers' retail stores. The result of this national survey as disclosed by the National Independent, May 29, 1958, was, and I quote: "$4,500 frozen assets—that's the meaning of Federal excise tax collection method to average dealer who replied to our recent survey. It's a measure of the advantage this law gives to company stores. Our hope for correction is now with Senator Byrd, Virginia, and his Senate finance group."

With the recent highway construction bill and the added taxes on tires and tubes this developed an even greater financial liability on the independent retailer from which the manufacturers' retail stores are exempt.

Mr. Chairman, we are not asking for any reduction of taxes, but in view of the fact that the Government is primarily interested in the greatest tax income of all descriptions why does the Government close their eyes on this gravy train of additional taxes?

Finally, Mr. Chairman, these major companies owning and operating retail stores are in a far better financial position to carry the advance payment in excise tax than are the run-of-the-mill of independent retailers. It's beyond us to understand why the Government continues to play Lady Bountiful on such a deplorable situation and it is our hope and plea that your committee will recommend that adjustment be made on this tax levy discrimination.

It should be so ordered that wherever tires and tubes are sold to the consuming public the stocks of tires and tubes carried by that establishment should carry the tax levy in the same manner as applies to independent tire retailers.

Surely, after 16 years, let this plea in behalf of small business be finally resolved in correction.

The CHAIRMAN. Thank you, Mr. Burger.

Senator KERR. Do you propose a specific amendment to the bill, Mr. Burger?

Mr. BURGER. Senator Kerr, by all means; in other words, there should be some——

Senator KERR. Where and in what language?

Mr. BURGER. Well, as I summarized at the end then it ought to be levied on the sale, no matter where it comes from.

Senator KERR. I understood what you said. I read it along with you as I listened to your reading it.

Has your counsel or your group prepared a specific amendment which you urge consideration of by the committee?

Mr. BURGER. Well, I think Senator Kerr, I have been an independent member of the rubber-tire industry, independent retailer from 1909 up to—well, I still keep an interest in it, and I would say that the only amendment that I would suggest, answering your question, would be the stocks in the manufacturers' retail stores to be taxed in the same manner as the tire dealers' stocks. That would solve the problem.

You take in Oklahoma City, check that city and find out the discrimination that the dealers in that city or any other city, such as Tulsa, have to pay out and on these truck and bus tires—I am glad Senator Douglas is here, because in a discussion on May 1, 1958, Mr. Newsom brought to your attention the tax of $25 per tire on an off-the-road farm tractor tire. You remember that question. And the dealer, whether he is in Chicago, or Richmond, Va., has to pay that tax. And the argument is, Senator Kerr, that they make the recovery quicker than the company-owned stores. That is just plain nonsense. The tire bought in the latter part of the month of July is paid, on the 10th of August, 2 percent, or he is out of luck.

Senator KERR. I asked you that because I want to help you. Do you want to put me to the job of finding out how to help you or will you have your counsel make a specific suggestion on it? When I go around and find some fellow trying to help me, I try to help him help me.

Mr. BURGER. By all means. I say——

Senator KERR. You throw it back at me and say eliminate discrimination, that is not being very helpful.

Mr. BURGER. Well, Senator Kerr——

Senator Kerr. If you haven't got anybody to undertake the burden of phrasing an amendment and indicating what it should be, I will see if I can do that, too.

Mr. Burger. Thank you very much for your help. I am glad to see Mr. Stam is here. He knows our opinion on that, that it would be very simple.

Senator Kerr. Mr. Stam is an adviser to the committee, Mr. Burger, not a technician for the applicant.

Mr. Burger. I have discussed this matter with him, and I will say——

Senator Kerr. It is all right if you can enlist his services for 3 or 4 hours out of 24 that he can claim as his own.

Mr. Burger. Right you are.

Senator Kerr. If you can do that, maybe that would solve the matter, but you said you represent——

Mr. Burger. The National Federation of Independent Business.

Senator Kerr. You said the largest directly supported membership of business organizations in the country?

Mr. Burger. Correct, yes, sir.

Senator Kerr. I would venture the assumption that they have counsel that might make a specific suggestion. I know it will be a burden on you. You are an executive. You are like I am. You figure things out and then delegate the job to somebody else. I know in the broad expanse of your experience in this great organization there is somebody outside of the staff of this committee that you can delegate the assignment to, to make a specific suggestion.

Mr. Burger. I will answer your question, Senator Kerr, and take up your suggestion. We will turn over to Senator Byrd within the next 48 hours an amendment that we ask and we will have it from a practical standpoint.

Senator Kerr. Then you will help us help you.

Mr. Burger. Yes, sir.

(Mr. Burger subsequently submitted the following for the record:)

PROPOSED AMENDMENT, AT SUGGESTION OF SENATOR KERR DURING SENATE FINANCE COMMITTEE HEARINGS, JULY 16, 1958

Submitted by George J. Burger, vice president, National Federation of Independent Business, Washington, D. C.

A BILL To amend section — of the Internal Revenue Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That ( ) section — of the Internal Revenue Code (relating to tax on tires and inner tubes) is hereby amended by adding at the end thereof the following new subsections:

( ) DEFINITIONS OF SALE.—Under regulations prescribed by the Commissioner, with the approval of the Secretary, tires and inner tubes delivered by the manufacturer, producer, or importer thereof to a retail store or outlet of the manufacturer, producer, or importer for the purpose of being sold by him at retail shall be deemed to be sold by him, for the purposes of this chapter, at the time of such delivery.

( ) FLOOR STOCKS TAX.—Upon tires and inner tubes subject to tax under subsection ( ) which, on the first day of the first month which begins more than twenty days after the date of the enactment of this subsection, are held for sale at retail by the manufacturer, producer, or importer of such tires and inner tubes, there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of — cents per pound in the case of tires and — cents per pound in the

case of inner tubes. The tax shall apply only to tires and inner tubes held for such sale in a retail store or outlet of such manufacturer, producer, or importer.

( ) The amendment made by this section shall be effective on and after the first day of the first month which begins more than twenty days after the date of the enactment of this Act.

[H. R. 7125, 85th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. SPARKMAN to the bill (H. R. 7125) to make technical changes in the Federal excise tax laws, and for other purposes, viz: At the proper place, insert a new section as follows:

SEC. . TAX ON TIRES AND TUBES.

Part II of subchapter A of chapter 32 (tax on tires, tubes, and tread rubber) is amended by striking out "sold by the manufacturer, producer, or importer", each place it appears therein, and inserting in lieu thereof "sold by the retailer".

Senator DOUGLAS. I want to understand the present situation. Do I understand that the independent retailer pays the tax when he purchases the tire from the manufacturer?

Mr. BURGER. Right, exactly; it is right on his invoice.

Senator DOUGLAS. And the manufacturer who owns retail stores pays the tax when the tire is sold to the ultimate purchaser?

Mr. BURGER. Exactly.

Senator KERR. To the consumer?

Senator DOUGLAS. Yes. Is the disadvantage, therefore, that the independent retailer has to finance the cost?

Mr. BURGER. Exactly; he has to finance the total buying price of his tire.

Senator DOUGLAS. Is there a difference between the amount of the tax?

Mr. BURGER. No; the tax is the same on one or the other.

Senator DOUGLAS. But the problem of financing arises and the carrying charges?

Mr. BURGER. Exactly

Senator DOUGLAS. And the independent retailer would be required to borrow from the bank and pay interest?

Mr. BURGER. Exactly.

Senator DOUGLAS. And have any losses which might come from failure to sell; is that right?

Mr. BURGER. Well, there is greater loss. In the commercial and truck bus tire dealer business, the average dealer in selling that class of business has to hope and pray they come through and pay it, because if he does not he loses it. He has a double loss with the money that he has to pay the Government.

Senator KERR. What does your independent dealer pay?

Mr. BURGER. What he buys today he pays on the tenth of next month, except once a year when the manufacturer, to increase volume during the year and to keep the mills going during the lull period, will give him a deferred payment date and the November or December might be payable in January, February, or March.

Senator KERR. The deferred payment or regular payment on the tenth of the month is the regular?

Mr. BURGER. Exactly.

Senator KERR. With reference not only to the cost of the tire but, also——

Mr. BURGER. The tax is immediately charged on the bill when that tire is shipped to him, whether 1 or 100 tires.

Senator KERR. He does not pay the tax until he pays the bill?

Mr. BURGER. Exactly, the following month.

Senator KERR. Has the manfacturer in the meantime paid the tax?

Mr. BURGER. He does not pay the tax until the tire is actually sold.

Senator KERR. The manufacturer does not?

Mr. BURGER. I don't know whether he pays it 30 or 60 or 90 days after it is sold. It is how the Government handles that thing.

Senator MALONE. I want to compliment Mr. Burger on the job that he has been doing here for small business for a considerable time. And I think you should submit an amendment to fix the situation, which I will support. What we have been doing is giving small business lip service and destroying them through imports and taxes. It is about time that we did something.

Mr. BURGER. Thank you, Senator Malone.

The CHAIRMAN. Thank you, Mr. Burger.

Mr. BURGER. Thank you.

The CHAIRMAN. The next witness is the Honorable Scott W. Lucas, representing the Joseph E. Seagram & Sons, Inc., company.

We are always pleased to have you before the committee of which you were a member so long.

You may proceed.

STATEMENT OF SCOTT W. LUCAS, REPRESENTING JOSEPH E. SEAGRAM & SONS, INC., ACCOMPANIED BY FREDERICK J. LIND, NEW YORK, N. Y.

Mr. LUCAS. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Scott W. Lucas. I am an attorney at law, with offices at 1025 Connecticut Avenue NW., Washington, D. C.

I am appearing here today as Washington counsel for Joseph E. Seagram & Sons, Inc., an Indiana corporation, which directly and through subsidiaries operates distilleries and rectifying plants in Kentucky, Indiana, Maryland, and Pennsylvania. Although the company is a subsidiary of Distillers Corporation-Seagrams, Ltd., a publicly owned Canadian corporation, the committee's attention is invited to the facts that some 4,000 United States citizens are stockholders of the Canadian company and that approximately 90 percent of the total operations of the Seagram organization are in the United States.

Since I have mentioned Canada, this is probably as good a time as any to get one matter straight. All Canadian whisky, Seagram, Schenley, Hiram Walker, and others, account for only 4.7 percent of the United States consumption of distilled spirits.

The issue before this committee is not the Canadian invasion of the United States market, nor should any amount of distortion by any distiller who has large Canadian interests be permitted to sidetrack the real point involved in this hearing.

The primary purpose of the new section, 5006, of the Internal Revenue Code of 1954, as set out in title II of the measure before the committee, is to extend the bonding period on the force-out of whisky from 8 to 20 years. As I understand the situation, there is no one in the distilling industry who objects to this provision.

The conflict arises because, as section 5006 is worded, the bonding period would be extended from 8 to 20 years for existing stocks as well

as future production. Joseph E. Seagram & Sons, Inc., as is the overwhelming portion of the industry, is lined up with the Distilled Spirits Institute in vigorously opposing this retroactive provison of the measure for the following reasons:

As I understand it, Schenley Distillers, Inc., is the principal distiller advocating the passage of the retroactive feature. Schenley claims that an emergency faces the industry in that there are tremendous stocks of whisky on hand which are going to be forced out of bond soon as a result of the 8-year law.

This, they claim, will result in extreme hardships to those who would be forced to pay such large amounts of taxes at one time, and would result in chaos in the industry, since so much whisky would be forced on the market at one time.

The position of the majority of distillers in the industry is that there is no such emergency as is claimed by Schenley, and that for most of the distillers there is no desire for retroactive benefits; that Schenley and certain others, who have the tremendous surplus, deliberately preserved their aged whiskies with a view toward a competitive advantage; that the so-called emergency, claimed by Schenley to exist, is a smokescreen myth created by Schenley to gain an advantage for themselves.

Other prudent distillers, including my client, in recognition of the 8-year law, have always operated in such a manner as to avoid excessive, aged inventories. Should title II of this bill pass without amendment, it would give to Schenley, which has kept its inventory without any attempt to adjust it, a tremendous competitive advantage, in that it would be putting on the market next year 9-year-old whisky; in 1960, 10-year-old whisky; in 1961, 11-year-old whisky; and in 1962, 12-year-old whisky, and so forth, when others would not have such whisky available. It would start a "battle of ages," which could well result in the destruction of the small distiller.

Here is what the Tariff Commission said on this subject in its recent whisky report:

> The excessive stocks remaining from fiscal 1951 production are not evenly distributed throughout the industry, and the disposal problem, therefore, is more serious for some firms than for others. In fact, in terms of individual company's stocks, the problem is one faced principally by the large firms.

The testimony at the hearings and the briefs filed prove conclusively that one company, Schenley, holds the preponderance of stocks of older whiskies, and has been adding to its inventory of older whiskies, both by manufacture and acquisition of inventories of other companies, in the expectation of great commercial advantages to be obtained if the bonding period is extended retroactively.

Schenley is not only attempting to get bailed out through congressional action, but Schenley has also been seeking relief in the courts of this country. I refer to a decision in the United States Court of Appeals for the Third Circuit, which was handed down May 15, 1958, in the case of Schenley Distillers, Inc., and Joseph S. Finch and Company, Appellants, v. United States of America.

Plaintiffs were denied the relief sought, and the court said, among other things:

> However, the plaintiffs' real trouble comes not from that clause, but what is for them an unfortunate business situation. Their complaint states the reason for the unusual supply of whisky in warehouses. Prior to or at about the time

of the Korean trouble the distillers began making up extraordinary large quantities of whisky. There were two reasons for this. One was that they feared restrictions upon manufacturers of the type experienced in World War II. The other was the expectation that excise taxes would be reduced and the possibility of a cheaper product would also tend to increase consumption. Both of these expectations proved to be untrue. There was no reduction in taxes, instead there was an increase. There were no restrictions placed upon manufacturers.

So the quantity of material manufactured and stored was unusually high. In the meantime, public taste has, temporarily at any rate, changed. Much of the whisky which these plaintiffs have on hand is of a type suitable for blending with neutral spirits and unfit for use without that. And it just so happens that this blended whisky has experienced, according to the plaintiffs who should know, a diminishing demand on the part of consumers who want something else. The consequences are an oversupply and an underdemand. The Government says that the plaintiffs "gambled and lost." We would not put it that way except in the sense that every business venture may be a "gamble." Our point is that the situation is one of economic conditions, not unconstitutional tax law.

If the demand for the plaintiffs' products had kept up and they could have sold this whisky as they took it out of the bonded warehouses within the time required there would be no complaint. The fact that they have had to pay a tax because they have manufactured a presently unmerchantable article cannot, we think, render unconstitutional a tax which was perfectly valid before the market changed.

The retroactive feature of this bill would permit Schenley to bring out of the warehouse 9, 10, 11, and 12 year old whiskies within a few years, when others, who had geared their operations to the law, would not have them available. And in that set of circumstances lies the competitive disadvantage to most of the distillers of America.

Mr. Chairman, I was a member of the Finance Committee in 1943. In December of that year, one Mr. George Beneman, who had been Schenley's lawyer and spokesman for years, appeared before the Finance Committee on a bill which subsequently became the Revenue Act of 1943. Speaking about a proposal that was before the committee on the subject of liquor and liquor taxes, Mr. Beneman made the following statement:

Now this proposal that Senator Overton has introduced which will graduate the tax based on age seems to me not only to be entirely unfair and of questionable legality. I think it is probably true, but frankly I have not had a chance to run down the cases or make a study of the legal question, but I think it is true that Congress can impose a retroactive excise tax on the privilege of producing whisky though I doubt very much is Congress can set a new rule for the classification of the taxable operation retroactively after the product has been produced.

What an ironic position for Schenley to take at this time. Here was Schenley then objecting to retroactive legislation, and here is Schenley now insisting upon retroactive legislation.

It is proper to point out a brief history of this measure in the House of Representatives. In 1956, Congressman Forand, heading a subcommittee of the Ways and Means Committee, had started hearings on an omnibus bill to revise some of the tax laws.

Included for such consideration was the Eberharter bill, H. R. 5637, which would extend the bonding period on a retroactive basis. In a report to the chairman of the Committee on Ways and Means, dated December 31, 1956, the Honorable Aime J. Forand, chairman of the Subcommittee on Excise Taxes, had this to say among other things in his report to the full committee:

However, as a result of evidence adduced during public hearings, the subcommittee feels that it is necessary to call the attention of the committee to the fact that a substantial segment of the industry is not satisfied with the

bonding period provisions of H. R. 12208. This segment of industry feels that enactment of the presently proposed solution to the bonding period for 20 years for existing stocks and future production as well, and at the same time for the mingling of older whiskies with younger whiskies to obtain relief from the bonding limitation will result in a serious competitive disadvantage for persons who do not hold large stocks of distilled spirits which are nearing 8 years of age.

The segment of the industry not satisfied with the bonding period provision in the bill proposes as an alternate solution that (*a*) the commingling of older whiskies with younger whiskies be permitted, with the older whiskies taking the age of the younger for bonding limitation and labeling purposes, (*b*) as an alternative to the commingling treatment, but as to existing stocks only, the retention of the distilled spirits in bond beyond the present 8-year period be allowed with a gage at the end of the 8 years and taxpayment at the time of withdrawal on the basis of the 8-year gage, and (*c*) as to future stocks only, the principle of unlimited bonding be adopted.

Notwithstanding this report, the Ways and Means Committee, without further hearings, and very probably in the belief that both sides of this controversy would be satisfied, disregarded the recommendation of the Forand committee and stated in its report:

(3) *Bonding period.*—The bill provides for the extension of the bonding period for distilled spirits from the present 8 years to 20 years, and for limited commingling in an internal-revenue bonded warehouse of distilled spirits of different ages, with the product taking the age of the youngest spirits mingled, for purposes of determining the expiration of the bonding period.

We submit that this is retroactive legislation at its worst. It simply means that Seagram and most other distillers, who have manufactured their products under the present law, will be discriminated against because they do not have large stocks of spirits approaching 8 years of age.

Even if Seagram had a tremendous surplus of older whiskies on hand, it would be definitely opposed to this retroactive provision, because we feel it would mean the ultimate destruction of many a small distilling company. We contend that fair competition is the staff of life in this industry, and we do not, under any circumstances, want to reach a point where the Government could contend that a monopoly exists in the whisky industry.

I am sure that members of this committee are thoroughly familiar with the longstanding policy of the Congress in amending laws and the Treasury Department in promulgating regulations.

A careful analysis of the laws and regulations shows without question that at all time Congress and the Treasury have sought to avoid any retroactive effects which would create competitive advantages. Illustrative of congressional policy in this respect is the legislative history of the bonding period, which has been amended twice since its enactment in 1868. The amendments adopted in 1878 and 1894 provided for temporary compensatory penalties on existing stocks held in bond for a period longer than the previously existing bonding period. In taking such action, Congress deliberately avoided the retoactive competitive advantages which are inherent in title II of this bill.

I am certain that this committee and the Congress will follow precedent and strike the retroactive factors involved in this legislation.

Mr. Chairman and members of the committee, within recent weeks Schenley has bombarded the industry with a release which emphasizes the need for extension of the bonding period and which concludes, "Urge industry support of H. R. 7125 for benefit of all."

Nowhere in this release is there any mention of the retroactive feature. This gives rise to an altogether legitimate question: Does Schenley now favor H. R. 7125 if the retroactive feature is deleted?

If not, not only is this Schenley release deceptive, but the language in H. R. 7125 which it is supporting is nothing more than a private bill for the relief of Schenley. To relieve Schenley of its economic folly is to disregard sound precedent and to open the door to the destruction of small distillers, contrary to the free enterprise system upon which this Nation has thrived.

Mr. Chairman and members of the committee, there has been considerable talk about the fact that in the United Kingdom and Canada there is no storage period for whisky before payment of the excise tax. Although this is an irrelevant factor so far as the issue before the committee is concerned, let me again invite your attention to the Tariff Commission whisky report, which said:

> It is significant, however, that although distillers of both Scotch and Canadian whiskies, have for many years, been in a position to market whisky over 8 years old, only extremely small quantities of such whisky have been sold.

This fact, considered together with the actual inventory position of the Scotch and Canadian whisky industries, shows that United States industry need not fear any influx of aged whisky imports and negates any idea that bond extension on a retroactive basis is justified.

Mr. Chairman, and members of the committee, lest there be any misunderstanding, we must reiterate that we are in favor of the extension of the bonding period and wholeheartedly support the extension. But we support it on condition that all distillers be treated alike.

To treat all distillers alike means that the legislation must apply only to future production and that every distiller in the country should start from scratch insofar as the extension of the bonding period is concerned.

Mr. Chairman and members of the committee, I do not want to conclude without complimenting the House and Senate committees, and their staffs, the Treasury Department, the Joint Committee on Internal Revenue Taxation, and the Internal Revenue Service on the other portions of the bill. The rest of the bill is a good and needed measure, and merits enthusiastic support. The entire title II would deserve full and unqualified support if the retroactive feature were deleted.

I would like to ask at this time to place in the record a longer statement than I have made here. I tried to comply with the chairman's request to be limited to 10 or 12 minutes, but I have a somewhat longer statement that I would like to have incorporated in the record.

The CHAIRMAN. Have you got any figures of the stocks on hand of Schenley?

Mr. LUCAS. I think that we can produce those figures, Mr. Chairman. I thought perhaps that would be a question that Mr. Schenley's representative should answer, as to how many gallons of whisky they have on hand. However, we can present that.

Senator JENNER. Show what Seagram has on hand, too.

The CHAIRMAN. You make a statement that it is for the relief of Schenley. I thought, perhaps, you had the figures to show how much stock there was on hand.

Mr. LUCAS. In the recent hearings before the Tariff Commission in its examination of problems involving whisky, as I recall it, my client presented a brief on the total whisky inventory as of June 30, 1957, and I think I am correct in saying that that brief shows that the total whiskies produced in the fall of 1949 and throughout the year of 1950 was approximately 84 million gallons and that Schenley produced approximately 40 million gallons of that total while all others produced approximately 44 million gallons. These figures were never refuted.

The CHAIRMAN. What about Seagram?

Mr. LUCAS. Mr. Chairman, we have no surplus according to Mr. Lind, one of the counsel here for Seagram; at least we don't regard it as surplus. Perhaps I should qualify that by saying that my best guess is that we have approximately 12 to 15 million gallons of 7- and 8-year-old whisky in the warehouse. Obviously, we will be glad to supply to the committee in confidence the accurate figures brought up to date.

Mr. Chairman, the statement I am about to make now becomes exceedingly important. When the 8-year period expires, or immediately before, Seagram's 8-year-old whiskies will be taken from the warehouse, the tax paid, and that whisky is used primarily for blending purposes. If there is any surplus because of the grade in quality or otherwise, such whisky is redistilled. So, in truth and fact, there is no surplus. When the 7-year-old whisky reaches the 8-year-old force-out period, it receives the same treatment. In other words, it has been the policy of Seagram to produce each year only the amount of whisky which it believed the consuming public would demand. This, by the way, is wherein the trouble lies with Schenley, as during the Korean crisis Schenley produced an oversupply of 7- and 8-year-old whisky that it now has on hand and this is without regard to the millions of gallons Schenley has acquired by purchase since 1949. The truth of the matter is that Schenley gambled and lost and now seeks to be bailed out by congressional action.

The CHAIRMAN. Forty million gallons. What is the age of that?

Mr. LUCAS. My understanding is that it is approximately 7 and 8 years old.

The CHAIRMAN. Those are the figures that you gave?

Mr. LUCAS. That is right.

The CHAIRMAN. What percentage of that total amount is on hand?

Mr. LUCAS. I didn't quite get that question.

The CHAIRMAN. As to Schenley, what percent do they have of the total amount of liquor on hand between 7 and 8 years old?

Mr. LUCAS. I think that 40 million gallons——

The CHAIRMAN. What is the total of it, what percent of the total of it is——

Mr. LUCAS. I understand the figures are confidential, but our best estimate is 40 percent.

The CHAIRMAN. The figures are confidential? I do not understand. What figures are confidential?

Mr. LUCAS. The inventory figures, no company likes to supply that.

The CHAIRMAN. I understand that, but you have made a statement—we want to get the facts because you say they have a much larger supply of liquor 7 and 8 years old than any other company.

Mr. LUCAS. That is right.

The CHAIRMAN. What do you base that on? You must have some facts to base that statement upon.

Mr. LUCAS. Only from the evidence and briefs filed with the Tariff Commission.

Senator FREAR. Forty million gallons is what percentage of the total liquor on hand 7 and 8 years old?

Mr. LIND. I imagine it would run 40 percent.

The CHAIRMAN. Senator Jenner wants to know who has the other 60 percent.

Mr. LUCAS. It is throughout the industry.

The CHAIRMAN. What has Seagram got?

Mr. LUCAS. Mr. Lind, who is the New York counsel for Seagram makes an estimate of approximately 15 percent. We will attempt to supply to the chairman confidential and accurate figures hereafter.

The CHAIRMAN. Fifteen percent?

Mr. LUCAS. Yes.

Senator KERR. What is that in terms of gallons?

Senator FREAR. According to this other, it would be 15 million. If 40 million gallons is 40 percent of the total.

Senator KERR. That is what I am trying to find out.

Senator JENNER. Does this include the stocks in this country or does it include the Canadian reserves?

Mr. LUCAS. It has nothing to do with Canadian reserves at all. It is stocks in this country.

Senator JENNER. Just stocks in this country?

Mr. LUCAS. That is right.

The CHAIRMAN. What is it in gallons, 15 percent of what?

Mr. LUCAS. Somewhere between 12 to 15 million gallons.

The CHAIRMAN. Twelve to fifteen million gallons?

Mr. LUCAS. Yes.

The CHAIRMAN. Compared to the 40 million?

Mr. LUCAS. Yes.

The CHAIRMAN. Seagram is the next largest, or is that the second largest. What other companies are there?

I am seeking information.

Mr. LUCAS. I understand.

The CHAIRMAN. Does Seagram come second?

Mr. LUCAS. Publicker probably comes second and Seagram third, and Hiram Walker fourth.

The CHAIRMAN. Did the Tariff Commission goes into those figures?

Mr. LIND. Those figures were supplied in confidence to the Tariff Commission.

The CHAIRMAN. In confidence?

Mr. LIND. Yes.

The CHAIRMAN. They are available to the committee?

Mr. LUCAS. Yes.

Mr. LIND. Yes.

Mr. LUCAS. If they are good for the Tariff Commission they certainly should be given to the committee.

The CHAIRMAN. The figures have been compiled?

Mr. LUCAS. That is right. We will be glad to submit them to the committee.

The CHAIRMAN. The Tariff Commission has them?

Mr. LUCAS. It was supplied to them in the recent investigation.

The CHAIRMAN. They were confidential?

Mr. LUCAS. That is right.

The CHAIRMAN. They have not been made public?

Mr. LUCAS. I don't think so.

The CHAIRMAN. A lot of confidential things are frequently made public.

Mr. LUCAS. I occasionally read in the newspapers that some of columnists get information that is supposed to be in confidence.

The CHAIRMAN. Mr. Stam, will you get those figures for the executive session?

Senator KERR. I am trying to understand your position, Mr. Lucas.

Mr. LUCAS. I want to say it wouldn't make any difference if we had 40 million gallons in surplus insofar as Seagram's is concerned—we are definitely opposed to the retroactive position.

Senator KERR. I am trying to figure out as to this retroactive feature. At this time, the law allows a period of 8 years for the distiller to hold whisky in a bonded warehouse without paying the tax, is that correct?

Mr. LUCAS. That is correct. At the end of 8 years he pays the tax $10.50 a gallon.

Senator KERR. Whether he takes it out or leaves it in, he pays the tax?

Mr. LUCAS. That is correct.

Senator KERR. How long has that been the law?

Mr. LIND. Since 1894.

Mr. LUCAS. Since the last amendment was made—it was in 1894.

Senator KERR. I understood that the last amendment was before 1900, but I was just trying to be certain that it applied to the period of holdover and the force out.

Mr. LUCAS. That is right. Force out after the eighth year.

Senator KERR. But that period has been 8 years now for 164 years; is that correct?

Mr. LIND. 64 years.

Senator KERR. Since 1894?

Mr. LIND. 1894.

Senator KERR. 64 years.

Mr. LUCAS. That is right.

Senator KERR. If it were extended it would be extended to everybody, would it not?

Mr. LUCAS. It would be extended to everybody, that is true. But what we are talking about, Senator, is the surplus that is on hand. In other words, the surplus whisky that is on hand at the present time gets a tremendous competitive advantage if this retroactive provision is not eliminated. For instance, anybody who has this extra surplus whisky that is approximately now 7 or 8 years old, next year they will come out with 9-year-old whisky. Whether 9-year-old whisky is better than 8- or 6-year-old whisky there is considerable difference of opinion about.

Senator KERR. I wanted to say that I could make no contribution to that discussion.

Mr. LUCAS. I certainly understand the Senator's position on that. But the consuming public believes that 9-year-old whisky and 10-

year-old-whisky is better than 8-year-old whisky or 7-year-old whisky or 6-year-old whisky, and so forth.

Senator KERR. What I am trying to get into my mind is the basis for the statement that it would be retroactive. Let me see if this is a contribution resolving that question.

Is it your position that when the whisky was put in storage, and as of today it must be forced out, or have the taxes paid on it at the end of 8 years, if now that period of time is extended by law and applied to whisky in storage as well as that which goes in storage after the enactment of such a law, if enacted, that it would be retroactive in that when the whisky went in the law provided it could stay in only 8 years until it had to have the taxes paid on it, and now to extend that period with reference to whisky put in under the law, as it now exists, would have a benefit given to it retroactively? Is that the basis?

Mr. LUCAS. The Senator states it better than I can.

Senator KERR. The law does not say anything about this if it goes into effect as of December 31, 1948, or 1950, but by reason of the application of it and creating a difference in the situation from the one which existed when the whisky went into storage and during the period from then to now, that of itself would create the retroactive effect of which you complain; is that it?

Mr. LUCAS. The Senator is correct. That is correct.

Senator KERR. Thank you.

Senator WILLIAMS. Do I understand that you would prefer the existing law as it is rather than have it changed?

Mr. LUCAS. We would like to see the bonding period extended, and every distiller start from scratch in the production of whisky.

Senator KERR. You mean by extending the bonding period you mean the longer period available only to whisky which goes into bonding after the law is enacted?

Mr. LUCAS. That is correct.

Senator WILLIAMS. I understood that was your preference but in the event that the choice was between the existing law and the committee bill as reported by the House, what is your view?

Mr. LUCAS. I still say we are for the extension of the bonding period. However, we would prefer to leave it just where it is, to answer your question categorically, rather than leave the retroactive part of the bill remain.

Senator LONG. Does your company have any whisky in Canada over 8 years old?

Mr. LIND. Very little.

Senator LONG. Very little?

Mr. LIND. Very little.

Senator LONG. You do not think that it would be particularly an advantage to have whisky over 8 years of age, that is, an advantage to Seagram?

Mr. LIND. In Canada or here?

Senator LONG. Anywhere, here or in Canada.

Mr. LIND. We are not interested in whisky of older ages. But you are there getting into the question of the proper age for the maturization of whisky, the proper maturity.

Senator KERR. There may be members on this committee that do not know what that means.

Mr. LIND. Sir, all whisky must be aged. It is a question of how long you are going to age it.

Senator KERR. You mean maturization is a process of becoming mature?

Mr. LIND. Yes, sir.

Senator FLANDERS. In view of the importance of that definition, I think the witness should identify himself.

The CHAIRMAN. Identify yourself.

Mr. LIND. I am Frederick J. Lind, vice president and counsel of Joseph E. Seagram & Sons, Inc.

Senator LONG. Here is what I cannot understand. This amendment which I read and heard presented here, you can hold all of your whisky in Canada as long as you want and bring it out any time you want to.

Senator KERR. You have to pay taxes on it up there.

Senator LONG. When do you pay the taxes?

Mr. LIND. When you withdraw it.

Senator LONG. So there you would have more than a 20-year bonding period in Canada, would you not?

Mr. LIND. If we so desire, but that is the Canadian whisky that has nothing to do with the facts that we have in this country.

Senator LONG. Well, if you hold bourbon whisky, could you do the same thing with it?

Mr. LIND. You can't bring it in. And you can bring it in as straight bourbon, distilled in Canada. You can't bring it in as Canadian whisky because bourbon up there is not called Canadian whisky and it does not have a ready market in this country.

Senator LONG. Bourbon whisky made in Canada?

Mr. LIND. That is correct. On top of that you will pay a dollar and a quarter import tax.

Senator LONG. The question in my mind is that you have told us here that it is of no particular advantage to you, that you can keep your whisky in bond as long as you want to, and that the court said that it does not make any difference, whether you hold it for 8 years, and apparently you say it is of no important advantage to you, and yet you say that to Schenley it would be of tremendous advantage to them—a great windfall to them. It is of no advantage to you to have an unlimited bonding period at the Canadian company. And for the American company, you say he would have an enormous advantage, to get the same advantage that you now have.

Mr. LIND. You are forgetting one thing. I am not talking as a Canadian. This company, Joseph E. Seagram & Sons, Inc., represents 90 percent of the entire business of the distiller corporation of Seagrams. Ninety percent of our assets are in the United States—90 percent of our inventory is American whisky, distilled in this country. I am not interested in the Canadian. I am comparing the United States company with Schenley. I say that Schenley, with the preponderance of the aged whisky, has a distinct advantage over other distillers who do not have that supply of aged whisky and who operate under the 8-year clause—who reduced his inventory, stopped his production, in order to live within the rules of the game—I say that Schenley by accumulating their stocks took a chance, they defied the rules of the game. They want the rules changed now to give them a competitive advantage which their tremendous supply will give them.

Senator LONG. Are we to understand that you find the fact that you can hold whisky in Canada more than 8 years of no particular advantage to your company?

Mr. LIND. We put out Seagrams VO, which is imported into this country. It comes in—that is 6 years old. We send no whisky—we import from Canada no whisky that is over 6 years old. So what difference dos it make to us up there what the bonding period is? It is true that in Canada our Canadian affiliates sell a small quantity of whisky over 6 years old, but that is in Canada—that is not here. We are not in the position to ship whisky into this country over 6 years old in any quantity. As a matter of fact, Schenley does. We don't.

Mr. LUCAS. Right along that line, Mr. Chairman, if I may be so bold as to introduce into this record some exhibits that Mr. Schenley has put out with respect to his Canadian interests, I have got five exhibits here that I would like to have the committee look at, and one especially, here, an advertisement they have in 1956, says:

Canadian whisky, Canadian Schenley, Ltd., had a most satisfactory year—

this is in Canada—

sales to all markets increased and in the Canadian market such gain was especially noteworthy. Imported OFC Canada whisky introduced by Canada in the United States, in 1955, continued its growth. The gain shows a well-founded consumer acceptance, the light elegance of its smoothness and flavor is winning more customers every day.

Senator KERR. Speaking of what?

Mr. LUCAS. Whisky.

I would like to have those exhibits passed around, because Schenley is in the game pretty deep in Canada and seeks a worldwide position in connection with this situation.

The CHAIRMAN. The ads will be passed around?

Senator KERR. For what?

For information or education or edification?

Mr. LUCAS. I don't know whether edification is necessary, but the information is.

Senator WILLIAMS. You mentioned the fact that this bonding period had been in effect since 1894.

Mr. LUCAS. Yes.

Senator WILLIAMS. What happened in the prohibition era?

Mr. LUCAS. I don't know what happened. The whole thing went out of the window, I suppose.

Senator WILLIAMS. That is what I thought. Was it not reenacted?

Mr. LUCAS. I think it was all suspended.

Mr. LIND. It was suspended.

Senator WILLIAMS. Just temporarily held in abeyance, and suspended?

Mr. LUCAS. I think that is correct. I would have to check that.

Mr. LIND. As a matter of fact, there was complete suspension of it.

Senator BENNETT. What happened to the whisky that was in bond prior to the suspension?

Senator KERR. And during the period of prohibition?

Senator WILLIAMS. During that period.

Senator ANDERSON. A lot of it was used for so-called medicinal purposes, and in certain States production was forbidden.

Senator WILLIAMS. Did they feel any better?
Senator ANDERSON. Personally, do you mean?
The CHAIRMAN. Any further questions?
Senator MALONE. I would like to ask a question.
You have my curiosity aroused. It is more or less academic since I quit drinking that kind of whisky. What does aging do to whisky?
Mr. LUCAS. I am not an expert on the aging of whisky or the drinking of whisky. I do take a drink once in awhile. I think the aging of whisky can best be explained, perhaps, by the gentleman here by my side, or perhaps, if you wanted to listen to Mr. Street, who is going to testify next, and who is head of the Distilled Spirits Institute.
Senator MALONE. What is his name? I am very much interested.
Mr. LIND. My name is Lind.
Senator KERR. Those two gentlemen are lawyers. The next man that comes before us is a distiller.
Mr. LUCAS. That is right.
Senator MALONE. I have a few more questions to ask.
You said you had a small amount of reserve in Canada that was over 8 years old. Was that what you said?
Mr. LIND. We have some that is 8 years old, yes.
Senator MALONE. How much?
Mr. LIND. I could not give you those figures. I am not too familiar with the Canadian operation.
Senator MALONE. Can you get them for the record?
Mr. LIND. We did supply them to the Tariff Commission.
Senator MALONE. Can you get them for our record?
Mr. LIND. I am sure I can.
Mr. LUCAS. Yes.
Senator MALONE. Will you do that?
Mr. LUCAS. Yes.
(The information requested could not be obtained in time to be included in the printed record. When received it will be made a part of the official file.)
Senator MALONE. When you want to bring whiskey in from Canada is there any other formality except paying the tariff of a dollar and a quarter?
Mr. LIND. I am not sure I understand your question, sir. Naturally, it must be imported by a company with an importer permit. You have to have label approval issued by the Alcohol and Tobacco Tax Division and you have to pay the tax.
Senator MALONE. Do we have an import permit system in this country on whisky?
Mr. LIND. Every person, firm, or corporation that imports must have an import permit issued by the Alcohol and Tobacco Division of the Bureau of Internal Revenue.
Senator MALONE. That is simply to keep tract of it. It is not a matter of an import permit to prevent it from coming in. That is to keep track of it.
Mr. LIND. Yes, sir.
Senator MALONE. Most countries have import permits that certain sections of the government bureaus can refuse to allow imports to come in. That is not that kind of permit?
Mr. LIND. It is not that kind of permit.

Senator MALONE. That is not a hard permit to get. You have one, do you not, your company?

Mr. LIND. Surely, we have one.

Senator MALONE. The formality, I asked you about—is there any other formality then after you have the permit except to pay the tax?

Mr. LIND. You always have—as I say you have a lable approval that is issued by the Bureau of Internal Revenue—you have your customs people who always take samples of your shipments. Other than that, no.

Senator MALONE. Just bring it in whenever you want to on your permit?

Mr. LIND. Virtually, that is so. That is virtually correct.

Senator MALONE. Then after you get it in you pay the $10.50 tax, do you not?

Mr. LIND. Plus the tariff.

Senator MALONE. You have already paid the tariff when you bring it in. Then you pay the $10.50.

Mr. LIND. Yes, sir.

Senator MALONE. What amount of whisky is there imported into the United States annually?

Mr. LIND. The amount imported annually of whisky last year ran 11 percent of the total consumption of the distilled spirits in this country.

Senator MALONE. How much is that?

Mr. LUCAS. About two hundred and thirty odd million.

Mr. LIND. Two hundred and thirty-odd million.

Senator KERR. The whole or the imports?

Mr. LIND. That is the total imports. Two hundred and thirty-odd million gallons.

Senator MALONE. Eleven percent of the consumption?

Mr. LIND. Eleven percent of that figure was imported.

Senator MALONE. Let us get the record straight. Eleven percent of the consumption was imported and that 11 percent amounts to two hundred and thiry-odd million?

Mr. LIND. The total consumption—the total amount of the distilled spirits that entered trade channels of this country in 1957 was approximately 233 million gallons.

Mr. LUCAS. Domestic and foreign.

Senator MALONE. That even includes what is made here?

Mr. LIND. Domestic production plus the importation.

Senator MALONE. Eleven percent of that is imported from foreign countries?

Mr. LIND. That is correct, 4.7 from Canada and 6 percent from Great Britain, and there may be a minor percent from some other places.

Senator MALONE. Now, do any of these nations import whisky into this country—that is from which it is imported—do any of them have a limit of time in the bonding period?

Mr. LIND. Great Britain and Canada do not, sir.

Senator MALONE. Do any of these nations from which whisky is imported have such?

Mr. LIND. I do not believe so.

Senator MALONE. Don't you know that they don't?

Mr. LIND. I am familiar with Great Britain and Canada, but I don't know about the others.

Senator MALONE. Can you find out for the record?

Mr. LIND. Yes.

Senator MALONE. Will you make that available for the record?

Mr. LIND. Certainly.

(The information requested will be made a part of the official file.)

Senator MALONE. What is the average age of whisky on the market now being sold in this country?

Mr. LIND. That is a very difficult question to answer, unless you want to confine it to straight whisky, and even there I would have to guess.

Senator MALONE. Give me a general picture or furnish it for the record.

Mr. LIND. I would say the average age of whisky sold in the country was between 5 and 6 years old.

Senator MALONE. That is common run bar whisky?

Mr. LIND. I would say so.

Senator ANDERSON. Could we have a statement furnished on that? I would doubt very much that that figure given is correct. Could we have him furnish it for the record?

Senator MALONE. I very much would like to have that.

The CHAIRMAN. Furnish that for the record.

Senator ANDERSON. I have seen a great deal of immature whisky being sold in this country.

(The information requested could not be obtained in time to be included in the printed record. When received it will be made a part of the official file.)

Senator MALONE. I presume that you are an expert?

Mr. LIND. I must decline that statement.

Senator MALONE. On this committee some time ago we raised the tax from $9.50, and I predicted that would open half of the stills in this country.

Mr. LIND. You have me there. I was talking about——

Senator MALONE. Don't you think there is quite a bit of whisky being made and finding its way into the channels by virtue of that increased tax?

Mr. LIND. I am quite sure there is, but those figures are very difficult to get.

Senator MALONE. I presume they are difficult to get but you are in the business. I don't even drink it, any more. We are not in the business. I am a little behind in my information.

Senator KERR. Is there any evidence that the witness is in that business?

Mr. LIND. I hope not.

Senator MALONE. I have a high regard for the gentleman from Oklahoma. His lightness at times relieves the seriousness of what is before us.

There may be a reason, or is there a reason for a surplus in this country? During the war, war II, and war III that we had, a police action, a good many people thought that we quit producing whisky during that period. There is some evidence that the increased supply was held over for that reason. Then they continued to make it without very much letup, I understand. Is that true?

Mr. LIND. That is correct, sir. During the Korean crisis there was a great overproduction of whisky predicated upon the belief that whisky distilling would cease if the so-called police action continued to worsen.

Senator MALONE. Did it cease?

Mr. LIND. It eventually ceased, yes; but it never got serious enough to warrant the cessation of the distillation.

Mr. LUCAS. The Government never took possession of the plants at any time but some distillers thought it would. That is one of the reasons why so much was produced at that time. On the theory that the Korean war would be extended and certain distillers produced a tremendous amount of surplus whisky to have on hand when the whisky drought would appear. These plants ran day and night.

Senator MALONE. That has something to do with that amount in the warehouses?

Mr. LUCAS. That is right. It is now 7 to 8 years old, this surplus whisky we are talking about, and it was produced back in 1949 and 1950 during the Korean period.

Senator MALONE. I just wondered as to the ageing of whisky, customers would be entitled to get some older whisky. If we just started now, you could not sell the 9-year-old whisky, could you, the 10-year-old whisky?

Mr. LIND. You could. As a practical matter, you would not.

Senator MALONE. If you let it be retroactive you could sell the 12-year-old whisky, couldn't you?

Mr. LIND. The quality in whisky is not one of age.

Senator MALONE. That is what I asked you a while ago. You said you didn't know.

Mr. LIND. I said I am not an expert on it. I do know one thing——

Senator MALONE. Give me an answer now that you started to answer.

Mr. LIND. I say that the criterion of whisky in whisky is not definitely that of age.

Senator MALONE. What is it?

Mr. LIND. It is the quality of the whisky.

Senator MALONE. What is that?

Mr. LIND. The number of years that you age the whisky depends on what you start with, what you are driving at.

Senator MALONE. What do you start with, and what does Schenley start with—let us get at it.

Mr. LIND. We make over a thousand different kinds of whisky, Senator. And every one of them requires a different date of proper maturization.

Senator MALONE. You don't make a thousand different kinds and sell them differently down here?

Mr. LIND. No, we believe in blending. We are a great blending house.

Senator MALONE. If the customer wanted to pay a couple of dollars more, would it be worth it if it was properly fixed up?

Mr. LIND. No, sir.

Senator MALONE. You don't think it would be?

Mr. LIND. No.

Senator MALONE. Well now, if a customer thought it was and he wanted it, would he be entitled to buy it?

Mr. LUCAS. Certainly.

Mr. LAND. Yes.

Senator MALONE. It would not be on the market, according to your testimony unless this is retroactive?

Mr. LAND. I can still have that in a few years.

Senator MALONE. That is all.

I can't get anywhere on this business.

Senator KERR. I want to say to the witness that you are talking to a man that has already quit. [Laughter.]

What he can get in a few years is of no interest to him. [Laughter.]

I want to congratulate the Senator from Nevada.

Senator MALONE. That is really no credit.

(Mr. Lucas' prepared statement follows:)

STATEMENT OF SCOTT W. LUCAS, REPRESENTING JOSEPH E. SEAGRAM & SONS, INC., ACCOMPANIED BY FREDERICK J. LAND, 325 PARK AVENUE, NEW YORK, N. Y.

Mr. Chairman and members of the committee, my name is Scott W. Lucas. I am an attorney at law, with offices at 1025 Connecticut Avenue NW., Washington, D. C. I am appearing here today as Washington counsel for Joseph E. Seagram & Sons, Inc., an Indiana corporation, which directly and through subsidiaries operates distilleries and rectifying plants in Kentucky, Indiana, Maryland, and Pennsylvania. Although the company is a subsidiary of Distillers Corporation-Seagrams, Ltd., a publicly owned Canadian corporation, the committee's attention is invited to the facts that some 4,000 United States citizens are stockholders of the Canadian company and that approximately 90 percent of the total operations of the Seagram organization are in the United States.

The primary purpose of the new section 5000 of the Internal Revenue Code of 1954, as set out in title II of the measure before the committee, is to extend the bonding period on the force-out of whisky from 8 to 20 years. As I understand the situation, there is no one in the distilling industry who objects to this provision. The conflict arises because, as section 5000 is worded, the bonding period would be extended from 8 to 20 years for existing stocks as well as future production. Joseph E. Seagram & Sons, Inc., as is the overwhelming portion of the industry, is lined up with the Distilled Spirits Institute in vigorously opposing this retroactive provision of the measure for the following reasons:

As I understand it, Schenley Distillers, Inc., is the principal distiller advocating the passage of the retroactive feature. Schenley claims that an emergency faces the industry in that there are tremendous stocks of whisky on hand which are going to be forced out of bond soon as a result of the 8-year law. This, they claim, will result in extreme hardships to those who would be forced to pay such large amounts of taxes at one time, and would result in chaos in the industry, since so much whisky would be forced on the market at one time.

The position of the majority of distillers in the industry is that there is no such emergency as is claimed by Schenley, and that for most of the distillers there is no desire for retroactive benefits; that Schenley and certain others, who have the tremendous surplus, deliberately preserved their aged whiskies with a view toward a competitive advantage; that the so-called emergency, claimed by Schenley to exist, is a smoke screen myth created by Schenley to gain an advantage for themselves.

Other prudent distillers, including my client, in recognition of the 8-year law, have always operated in such a manner as to avoid excessive, aged inventories. Should title II of this bill pass without amendment, it would give to Schenley, which has kept its inventory without any attempt to adjust it, a tremendous competitive advantage, in that it would be putting on the market next year 9-year-old whisky; in 1960, 10-year-old whisky; in 1961, 11-year-old whisky; and in 1962, 12-year-old whisky, etc., when others would not have such whisky available. It would start a "battle of ages," which could well result in the destruction of the small distiller.

Here is what the Tariff Commission said on this subject in its recent whisky report:

"The excessive stocks remaining from fiscal 1951 production are not evenly distributed throughout the industry, and the disposal problem, therefore, is more serious for some firms than for others. In fact, in terms of individual company's stocks, the problem is one faced principally by the large firms."

The testimony at the hearings and the briefs filed prove conclusively that one company, Schenley, holds the preponderance of stocks of older whiskies, and has been adding to its inventory of older whiskies, both by manufacture and acquisition of inventories of other companies, in the expectation of great commercial advantages to be obtained if the bonding period is extended retroactively.

Schenley is not only attempting to get bailed out through congressional action, but Schenley has also been seeking relief in the courts of this country. I refer to a decision in the United States Court of Appeals for the Third Circuit, which was handed down May 15, 1958, in the case of *Schenley Distillers, Inc., and Joseph S. Finch and Company, Appellants* v. *United States of America.*

Plaintiffs were denied the relief sought, and the court said, among other things:

"However, the plaintiffs' real trouble comes not from that clause, but what is for them an unfortunate business situation. Their complaint states the reason for the unusual supply of whisky in warehouses. Prior to or at about the time of the Korean trouble the distillers began making up extraordinarily large quantities of whisky. There were two reasons for this. One was that they feared restrictions upon manufacturers of the type experienced in World War II. The other was the expectation that excise taxes would be reduced and the possibility of a cheaper product would also tend to increase consumption. Both of these expectations proved to be untrue. There was no reduction in taxes, instead there was an increase. There were no restrictions placed upon manufacturers. So the quantity of material manufactured and stored was unusually high. In the meantime, public taste has, temporarily, at any rate, changed. Much of the whisky which these plaintiffs have on hand is of a type suitable for blending with neutral spirits and unfit for use without that. And it just so happens that this blended whisky has experienced, according to the plaintiffs who should know, a diminishing demand on the part of consumers who want something else. The consequences are an oversupply and an underdemand. The Government says that the plaintiffs 'gambled and lost.' We would not put it that way except in the sense that every business venture may be a 'gamble.' Our point is that the situation is one of economic conditions, not unconstitutional tax law.

"If the demand for the plaintiffs' products had kept up and they could have sold this whisky as they took it out of the bonded warehouses within the time required there would be no complaint. The fact that they have had to pay a tax because they have manufactured a presently unmerchantable article cannot, we think, render unconstitutional a tax which was perfectly valid before the market changed."

The retroactive feature of this bill would permit Schenley to bring out of the warehouse 9-, 10-, 11- and 12-year-old whiskies within a few years, when others, who had geared their operations to the law, would not have them available. And in that set of circumstances lies the competitive disadvantage to most of the distillers of America.

Mr. Chairman, I was a member of the Finance Committee in 1943. In December of that year, one Mr. George Beneman, who had been Schenley's lawyer and spokesman for years, appeared before the Finance Committee on a bill which subsequently became the Revenue Act of 1943. Speaking about a proposal that was before the committee on the subject of liquor and liquor taxes, Mr. Beneman made the following statement:

"Now this proposal that Senator Overton has introduced which will graduate the tax based on age seems to me not only to be entirely unfair and of questionable legality. I think it is probably true, but frankly I have not had a chance to run down the cases or make a study of the legal question, but I think it is true that Congress can impose a retroactive excise tax on the privilege of producing whisky though I doubt very much if Congress can set a new rule for the classification of the taxable operation retroactively after the product has been produced."

What an ironic position for Schenley to take at this time. Here was Schenley then objecting to retroactive legislation, and here is Schenley now insisting upon retroactive legislation.

It is proper to point out a brief history of this measure in the House of Representatives. In 1950, Congressman Forand, heading a subcommittee of the Ways and Means Committee, had started hearings on an omnibus bill to revise some of the tax laws. Included for such consideration was the Eberharter bill, H. R. 5537, which would extend the bonding period on a retroactive basis. In a report to the chairman of the Committee on Ways and Means, dated December 31, 1950, the Honorable Aime J. Forand, chairman of the Subcommittee on Excise Taxes, had this to say among other things in his report to the full committee:

"However, as a result of evidence adduced during public hearings, the subcommittee feels that it is necessary to call the attention of the committee to the fact that a substantial segment of the industry is not satisfied with the bonding period provisions of H. R. 12208. This segment of industry feels that enactment of the presently proposed solution to the bonding period for 20 years for existing stocks and future production as well, and at the same time for the mingling of older whiskies with younger whiskies to obtain relief from the bonding limitation, will result in a serious competitive disadvantage for persons who do not hold large stocks of distilled spirits which are nearly 8 years of age.

"The segment of the industry not satisfied with the bonding period provision in the bill proposes as an alternate solution that (a) the commingling of older whiskies with younger whiskies be permitted, with the older whiskies taking the age of the younger for bonding limitation and labelling purposes, (b) as an alternative to the commingling treatment, but as to existing stocks only, the retention of the distilled spirits in bond beyond the present 8-year period be allowed with a gage at the end of the 8 years and tax payment at the time of withdrawal on the basis of the 8-year gage, and (c) as to future stocks only, the principle of unlimited bonding be adopted."

Notwithstanding this report, the Ways and Means Committee, without further hearings, and very probably in the belief that both sides of this controversy would be satisfied, disregarded the recommendation of the Forand committee and stated in its report:

"(3) *Bonding period.*—The bill provides for the extension of the bonding period for distilled spirits from the present 8 years to 20 years, and for limited commingling in an internal-revenue bonded warehouse of distilled spirits of different ages, with the product taking the age of the youngest spirits mingled, for purposes of determining the expiration of the bonding period."

We submit that this is retroactive legislation at its worst. It simply means that Seagram and most other distillers, who have manufactured their products under the present law, will be discriminated against because they do not have large stocks of spirits approaching 8 years of age. Even if Seagram had a tremendous surplus of older whiskies on hand, it would be definitely opposed to this retroactive provision, because we feel it would mean the ultimate destruction of many a small distilling company. We contend that fair competition is the staff of life in this industry, and we do not under any circumstances want to reach a point where the Government could contend that a monopoly exists in the whisky industry.

I am sure that members of this committee are thoroughly familiar with the long-standing policy of the Congress in amending laws and the Treasury Department in promulgating regulations. A careful analysis of the laws and regulations shows without question that at all times Congress and the Treasury have sought to avoid any retroactive effects which would create competitive advantages. Illustrative of congressional policy in this respect is the legislative history of the bonding period, which has been amended twice since its enactment in 1868. The amendments adopted in 1878 and 1894 provided for temporary compensatory penalties on existing stocks held in bond for a period longer than the previous existing bonding period. In taking such action, Congress, deliberately avoided the retroactive competitive advantages which are inherent in title II of this bill.

I am certain that this committee and the Congress will follow precedent and strike the retroactive factors involved in this legislation.

Mr. Chairman and members of the committee, within recent weeks Schenley has bombarded the industry with a release which emphasizes the need for extension of the bonding period and which concludes, "Urge industry support of H. R. 7125 for benefit of all." Nowhere in this release is there any mention of the retroactive feature. This gives rise to an altogether legitimate question: Does Schenley now favor H. R. 7125 if the retroactive feature is deleted?

If not, not only is this Schenley release deceptive, but the language in H. R. 7125 which it is supporting is nothing more than a private bill for the relief of Schenley. To relieve Schenley of its economic folly is to disregard sound precedent and to open the door to the destruction of small distillers, contrary to the free enterprise system upon which this Nation has thrived.

Mr. Chairman and members of the committee, there has been considerable talk about the fact that in the United Kingdom and Canada there is no storage period for whisky before payment of the excise tax. Although this is an irrelevant factor so far as the issue before this committee is concerned, let me again invite your attention to the Tariff Commission whisky report, which said:

"It is significant, however, that although distillers of both Scotch and Canadian whiskies have, for many years, been in a position to market whisky over 8 years old, only extremely small quantities of such whisky have been sold."

This fact, considered together with the actual inventory position of the Scotch and Canadian whisky industries, shows that the United States industry need not fear any influx of aged whisky imports and negates any idea that bond extension on a retroactive basis is justified.

Mr. Chairman and members of the committee, lest there be any misunderstanding, we must reiterate that we are in favor of the extension of the bonding period and wholeheartedly support the extension. But we support it on condition that all distillers be treated alike. To treat all distillers alike means that the legislation must apply only to future production and that every distiller in the country should start from scratch insofar as the extension of the bonding period is concerned.

Mr. Chairman, and members of the committee, I do not want to conclude without complimenting the House and Senate committees, and their staffs, the Treasury Department, the Joint Committee on Internal Revenue Taxation and the Internal Revenue Service on the other portions of the bill. The rest of the bill is a good and needed measure, and merits enthusiastic support. The entire title II would deserve full and unqualified support if the retroactive feature were deleted.

Senator KERR (presiding). Our next witness is Mr. Dan L. Street, representing the Distilled Spirits Institute.

Will you give us your name, address, business? We are glad to have you with us.

STATEMENT OF DAN L. STREET, CHAIRMAN OF THE BOARD OF DIRECTORS, ACCOMPANIED BY JOHN D. McELROY, ASSISTANT DIRECTOR, REPRESENTING THE DISTILLED SPIRITS INSTITUTE, INC., WASHINGTON, D. C.

Mr. STREET. I am Dan Street, chairman of the board of directors of the Distilled Spirits Institute, Washington, D. C., and executive vice president of Brown-Forman Distillers Corp., of Louisville, Ky.

Because of the importance of this question to the industry and since I am here for the Distilled Spirits Institute, we have prepared and filed with the committee, a statement which would take longer than 10 minutes for me to give to you, and I would like to ask permission to file that statement, but I have prepared a summary which I can hold to the 10-minute limitation, and if you will allow me to do so my remarks will be taken from the summary, and will not follow the statement which you have in front of you.

Senator KERR. Very good.

The statement will be filed in its entirety and, therefore, as well as the summary.

I notice one of the distinguished Senators from Kentucky is with us today and I wonder if he has anything he wants to say.

Senator MORTON. I am here for educational purposes, too, Senator.

Senator KERR. To get or to give?

Senator MORTON. To get. Following Mr. Street I might like to ask a question, if I may.

Mr. STREET. The Distilled Spirits Institute is a trade association representing the interests of 26 domestic distilling company members, and their affiliates and subsidiaries. Those companies produce approximately 70 percent of all the domestic distilled spirits consumed in the United States. I will be glad to submit for the record a list of the institute membership and its board of directors and officers if the committee desires it.

Senator ANDERSON. I think we ought to have that.

Senator KERR. Very good, you may do that.

Mr. STREET. We will submit that.

(The following list was subsequently received for the record:)

DISTILLED SPIRITS INSTITUTE, INC., 1132 PENNSYLVANIA BUILDING, WASHINGTON, D. C.

Howard T. Jones, executive secretary
Dan L. Street, chairman of the board
C. K. McClure, president
Frank R. Schwengel, vice president
R. E. Joyce, vice president
Carleton Healy, vice president
A. Smith Bowman, Jr. vice president
Walter J. Devlin, treasurer

BOARD OF DIRECTORS, FEBRUARY 1, 1958

T. Jere Beam, vice president, James B. Beam Distilling Co., Inc., Clermont, Ky.
Ellis Benjamin, vice president, Felton & Sons, Inc., 516 East Second Street, South Boston, Mass.
Charles A. Berns, chairman of the board, "21" Brands Distillers Corp., 23 West 52d Street, New York, N. Y.
A. Smith Bowman, Jr., vice president, A. Smith Bowman Distillery, Sunset Hills, Va.
Cloud L. Cray, president, Midwest Solvents Co., Inc., 1300 Main Street, Atchison, Kans.
Walter J. Devlin, vice president, the Fleischmann Distilling Corp., 625 Madison Avenue, New York, N. Y.
Joseph A. Engelhard, president, Glenmore Distilleries Co., Post Office Box 000, Louisville, Ky.
Carleton Healy, vice president, Hiram Walker & Sons, Inc., Penobscot Building, Detroit, Mich.
E. O. Jolley, Jr., executive vice president, Mr. Boston Distiller, Inc., 1010 Massachusetts Avenue, Boston, Mass.
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Frederick J. Lind, vice president, Joseph E. Seagram & Sons, Inc., 375 Park Avenue, New York, N. Y.
John G. Martin, president, Heublein, Inc., 330 New Park Avenue, Hartford, Conn.
C. K. McClure, secretary-treasurer, Stitzel-Weller Distillery, Inc., Station D, Louisville, Ky.
Wathen Medley, president, Medley Distilling Co., Post Office Box 548, Owensboro Ky.
J. W. Red, Jr., vice president, Canada Dry Corp., 100 Park Avenue, New York, N. Y.
S. G. Stein, chairman of the board, Grain Processing Corp., 1600 Oregon Street, Muscatine, Iowa
Dan L. Street, vice president, Brown-Forman Distillers Corp., 1908 Howard Street, Louisville, Ky.

W. A. Thomson, Jr., president, Kentucky River Distillery, Inc., Brook and Eastern Parkway, Louisville, Ky.
Samuel L. Westerman, president, T. W. Samuels Distillery, Deatsville, Nelson County, Ky.

HONORARY MEMBERS

Frank R. Schwengel, chairman of the board, Joseph E. Seagram & Sons, Inc., 375 Park Avenue, New York, N. Y.
J. P. VanWinkle, Stitzel-Weller Distillery, Inc., Station D, Louisville, Ky.

Mr. STRENT. In view of the 10-minute limitation on witnesses, I will summarize my prepared statement, but will request the privilege of submitting my entire statement for inclusion in the record of the hearings.

Title II of H. R. 7125 would make a complete, modernizing revision of the basic Federal laws relating to liquor tax administration. The need for providing a more efficient and economical system of supervision and tax collection has long been recognized. The changes embodied in the revision are the result of almost 5 years of study by the Alcohol Tax Survey Committee appointed by the Treasury Department at the specific direction of the Ways and Means Committee.

Extensive hearings were held on title II of the bill by the Forand Subcommittee on the House side, and the bill, with one exception, has the support of the Treasury Department and the entire industry.

Title II will be highly beneficial not only to the Government but, also, to the industry in the administration of the liquor tax laws.

We recommend only one substantive change in title II of the bill, that being with reference to the provisions which would extend the bonding period from 8 years to 20 years as to existing stocks of distilled spirits as well as to future production. We do not oppose the extension of the bonding period to 20 years on a prospective basis, but we do oppose the unrestricted application of a 20-year bonding period to existing stocks.

Most of you gentlemen are undoubtedly aware of the controversy which surrounds an extension of the bonding period, the reason for the controversy, and the efforts of the Distilled Spirits Institute to resolve the problem.

The basic cause of the problem lies in the heavy overproduction of spirits at the time of the Korean crisis. The industry, fearing a repetition of the complete discontinuance of the production of beverage alcohol which occurred during World War II, started heavy overproduction at the beginning of the Korean conflict. Most companies have, since that time, balanced their inventories by using their oldest whiskies first, and by reducing their production to compensate for their Korean overproduction. Some companies, either through design or otherwise, did not balance their inventories, so that today they are faced with a serious force-out problem.

The Institute, beginning with the Saylor bill in 1953, has always favored legislation which would avoid whisky being forced out of bond at the end of 8 years if there was no market readily available for it, but we have just as consistently opposed granting that relief in such manner as to give to whisky relieved from force-out a competitive market advantage.

The reason for this position should be readily apparent. If the bonding period is extended on a retroactive basis, that is, if applied without restriction to spirits produced 6, 7, and 8 years ago, the few

companies having large inventories of aged whisky will gain a tremendous competitive advantage over other companies not holding large stocks of aged whisky, by being in position to market 10- and 12-year-old [illegible] at least 2 years earlier than companies which have more prudently managed their inventories.

Your committee fully recognized the need for protecting those companies who are not faced with a force-out problem from the extra age of relief whisky in your report on the Saylor bill. I refer to your Report No. 1090, dated July 28, 1954, where you specifically pointed out the dangers inherent in a retroactive extension of the bonding period.

The institute has in the past endorsed three proposals, any one of which would have granted the relief needed, but at the same time would have provided the protection necessary for those companies not in need of relief from force-out.

In 1953 the institute recommended the Saylor bill, which would have extended the bonding period as to existing stock but would have restricted the claiming of age over 8 years. Schenley Industries, then a member of the institute, concurred in this proposal. After the bill passed the House, however, and had been approved by this committee as an unanimous proposal of the industry, Schenley repudiated its agreement and actively fought the bill in the Senate. So great was the confusion, Congress adjourned without any action being taken.

In 1955 the institute recommended the 8-year regage proposal and endorsed it before the Ways and Means Committee. Schenley opposed this provision. Again, in 1956, the institute endorsed a suggestion made by a nonmember which has become known as the commingling proposal. Again Schenley opposed this provision before the Ways and Means Committee.

The record is clear. The institute has endorsed every reasonable proposal which would grant relief as to existing stocks without giving competitive advantage of certain companies holding large inventories of aged whisky. Just as consistently, Schenley has fought each of these proposals and has insisted on an unlimited extension of the bonding period on a retroactive as well as a prospective basis. It has done this solely in order to obtain a competitive advantage over practically all the rest of the industry.

That is a blunt charge and I am sorry that I have to make it, gentlemen, but it can be fully substantiated by the record, over the past 5 or 6 years.

I pointed out more than 5 years ago to the House Ways and Means Committee that Schenley was hoarding its inventory by bottling 4-year-old whisky and withholding from the market 6- or 7-year-old stock. That statement has never been contradicted. Schenley has continued down to this date to hoard its older whiskies, and to purchase aged whiskies on the open market so as to increase its holdings of 6- and 7-year-old bulk. These practices, all of which are directly contrary to normal practice in the industry, have been designed to obtain for Schenley a competitive advantage over the rest of the industry in the event of a retroactive extension of the bonding period.

I think in support of that I need cite only Schenley's purchase of Park & Tilford in 1955 as the result of which purchase Schenley obtained some 12 or 13 million additional gallons of whisky in bond or in bulk as we call it.

The result of Schenley's hoarding are obvious. On the basis of the well-known Liberty Bank reports, issued December 31, 1957, Schenley and Park & Tilford own about 25 percent of the Kentucky whisky of all ages, but these 2 companies own 51 percent of all the Kentucky whisky over 7 years of age and 45 percent of all the Kentucky whisky over 6 years of age.

Senator FLANDERS. I don't get the mathematics of that statement. The 2 companies owned 51 percent of Kentucky whisky over 7 years of age?

Mr. STREET. Yes, sir.

Senator FLANDERS. And 45 percent——

Mr. STREET. I am referring to two different periods.

Senator FLANDERS. I am beginning to get it. It is beginning to seep through.

Senator KERR. Seep?

Senator FLANDERS. Seep is the word.

Mr. STREET. On a percentage basis, therefore, Schenley's holdings of whisky over 6 years of age are twice as great as its holdings of whisky under 6 years of age. There is no accurate public record of Schenley's holdings in other States, but from the information at hand it is apparent that the same practice has been followed elsewhere.

By contrast, my company owns 7.15 percent of the Kentucky whisky of all ages, but less than one-fourth of 1 percent of the total Kentucky production over 6 years of age. Obviously we could not hope to compete with Schenley on whiskies over 8 years of age should the bonding period be extended retroactively.

The bonding period problem should be resolved and resolved now. In solving the problem, however, we must not create new problems and inequities for those companies who now have no force-out problem. The solution is to limit the unrestricted application of the 20-year bonding period to future production, and to extend the bonding period as to present stocks in a manner which would grant relief from force-out without allowing competitive advantage.

The Distilled Spirits Institute urges:

1. That title II, amended as we suggest, be reported favorably by your committee;

2. That the unrestricted application of the 20-year bonding period be limited to future production only;

3. That, in order to grant complete relief as to existing stocks, provision be made, in addition to the commingling provision contained in the bill, to require whisky which is to be retained in bond beyond 8 years to be regaged at the end of 8 years, and when later withdrawn from bond to be taxpaid on the basis of the 8-year regage.

(The prepared statement is as follows:)

STATEMENT OF DAN L. STREET ON BEHALF OF THE DISTILLED SPIRITS INSTITUTE, INC.

I am Dan Street, chairman of the board of directors of the Distilled Spirits Institute of Washington, D. C., and executive vice president of Brown-Forman Distillers Corp., of Louisville, Ky. The Distilled Spirits Institute is a trade association representing the interests of 26 domestic distilling company members, their affiliates and subsidiaries. These companies produce approximately 70 percent of all the domestic distilled spirits consumed in the United States. I will be glad to submit for the record a list of the institute's membership and its board of directors and officers if the committee desires it.

I appreciate the opportunity to appear before your committee to testify in support of H. R. 7125 and present the views of the institute with respect to it. My

remarks will be directed to title II of the bill. That portion of the bill would amend chapter 51 of the Internal Revenue Code of 1954 dealing with distilled spirits, wines, and beer. The amendments amount to a complete revision of the basic Federal laws in the field of liquor tax administration.

The revision of chapter 51 of the code relating to distilled spirits was initiated almost 5 years ago by the Treasury Department when it was announced that the Alcohol and Tobacco Tax Division of the Internal Revenue Service would undertake a study of the internal revenue laws relating to alcoholic-beverage taxation with a view to recommending such revision as was necessary to facilitate more efficient and economical supervision by the Government, and to afford the industries involved a modern, businesslike basis of operation.

In 1953 the Treasury Department appointed an Alcohol Tax Survey Committee to carry out the study announced earlier. Immediately thereafter, the Distilled Spirits Institute appointed a committee, composed of representatives of member companies, to cooperate with the Alcohol Tax Survey Committee in carrying out its assignment. Other trade associations and groups, including distilling companies not members of trade associations, appointed representatives to work with the Survey Committee on the project. All of these groups immediately began the monumental task of making a detailed study of every phase of governmental supervision and of industry operations. In the spirit of complete cooperation, representatives of Government and all industry continued their arduous work until the job was completed.

While this study was under way, the Congress undertook a complete revision and recodification of the Internal Revenue Code. The Treasury Department study had not progressed sufficiently to permit the inclusion of any basic revision of the distilled spirits laws in that bill. Both the House Ways and Means Committee and your committee, however, in the committee reports on H. R. 8300, 83d Congress, took cognizance of the fact the Treasury Department was engaged in such a study, that time had not permitted the Department to complete its study in time to include basic revisions in the new Internal Revenue Code of 1954, and both committees directed the Alcohol Tax Survey Committee to continue its study and to submit further changes to the 84th Congress.

Late in 1955, when the work of the various study groups had been completed, the Treasury Department submitted its recommendations to the Ways and Means Committee. The Subcommittee on Excise Tax Technical and Administrative Problems, under the chairmanship of Mr. Forand, held extensive hearings on the recommendations late in 1955 and early in 1956, and Mr. Forand introduced H. R. 12208 on July 18, 1956, incorporating the Treasury Department's proposed revision of the laws relating to distilled spirits. It was too late in the session for action to be taken on the bill by the 84th Congress. During the recess of the Congress further study was devoted to the recommendations by the Treasury Department, additional hearings were held by the Forand subcommittee, and on May 20, 1957, the bill now before your committee was introduced in the House of Representatives by Mr. Forand.

In the drafting of title II of this bill the Treasury Department made every effort to incorporate recommendations which would be acceptable to both Government and industry. Compromises on both sides were necessary to avoid controversial areas and to insure the support of all concerned. Controversies were avoided and the bill, with the one exception hereafter noted, has the support of the Treasury Department and of the entire distilling industry.

The need for the revisions which would result from enactment of title II of this bill have long been recognized by the Ways and Means Committee, the Treasury Department, and the industry. The basic statutes under which the distilling industry operates today were enacted, for the most part, in 1868, and have experienced little change in the interim. In 1868 there were over 1,000 distilleries in the United States, mostly very small operations and widely scattered and isolated. Today there are less than 100 legal whisky distilleries. Technological advances since 1868 have been as far-reaching in this industry as in any other field of the modern business world. The difficulties of operation and supervision of a mid-20th century plant under mid-19th century laws and regulations are so apparent as to warrant no further elaboration. It is sufficient to say that the changes embodied in the proposed revision are sorely needed by both Government and industry, and if amended in one particular, I urge you, on behalf of the Distilled Spirits Institute and its member companies, to give title II of H. R. 7125 your early and favorable consideration.

The Treasury Department has recommended certain technical changes in title II in which we concur. Those changes are merely clarification changes and strengthen the bill as originally drafted.

We would recommend only one substantive change in title II of the bill. I refer to Internal Revenue Code sections 5006 (a) (2) and 5173 (c) (1) (A) and bill section 206 as they appear in title II of H. R. 7125. Those sections would extend the period for which distilled spirits may be stored in bonded warehouses before tax payment from the present 8 years to 20 years whether the whisky was made before or after the proposed change in the bonding period.

I am reasonably certain that every member of the committee is familiar with the difference between what the industry in general wants and what Schenley Industries, Inc., demands as to bond extension on whisky already made, under the present rules. The controversy has raged since 1954 when Schenley withdrew from an industrywide agreement to support the Saylor bill (H. R. 5407) which was then before your committee.

The position of the Distilled Spirits Institute was then and is now that there should be relief procedure so as to prevent any whisky from being forced out of bond when it becomes 8 years of age if there is no market readily available for such whisky, but that whisky given relief should not be given market advantage also. Distillers who have so managed their affairs as to avoid a serious force-out problem are entitled to protection against the extra age of relief whisky. The need for such protection is well expressed in your own committee's official report No. 1000 dated July 28, 1954. That statement reads:

"If, however, the bonding period were merely extended without additional safeguards, those companies having large stocks of whiskies reaching the age of 8 years in the near future would be in a position to market products of advanced age whereas the other companies would not. Testimony before your committee developed that the public considered the age of a whisky as highly important in determining the quality of the product, and that most consumers who have a choice between two products of the same price will tend to favor the one which is represented as being the older. Your committee believes, moreover, that the sales advantage which would result (without the restrictions contained in the bill) might seriously disrupt the orderly distribution of distilled spirits in this country and the established system of liquor taxation and control. It is for these reasons that H. R. 5407 provides that the person taking advantage of the extension privilege (whether the proprietor of a warehouse or the owner, distiller, rectifier, blender, bottler, or wholesaler) consents to restrictions on the advertising and labeling of the product which preclude any representation that its age or period of storage exceeds 8 years."

Members of this committee felt so strongly about possible competitive advantages that following the language which I have just quoted, you added the following significant paragraph:

"Your committee has materially strengthened the labeling and advertising restrictions of the House-passed bill by providing as a penalty for violation, the payment of tax and withdrawal of such distilled spirits within 30 days."

The Institute has in the past endorsed three provisions granting relief on existing whisky: (1) The Saylor bill, which was before your committee in 1954, (2) a proposal which would provide for whisky to be regaged upon becoming 8 years of age so that when the whisky is thereafter withdrawn from bond the tax to be paid would be based upon the 8-year regage, and (3) a proposal allowing commingling of whisky approaching 8 years of age with whisky of younger age, with the provision that for advertising and bonding period purposes the commingled whisky shall take the age of the younger whisky. This third proposal was adopted by the House and is contained in title II. However, this proposal has been nullified for all practical purposes as a relief measure because the bonding period was extended on a retroactive basis. Because of cost factors, and because of the desire to be competitive in age, no company would commingle whisky solely to avoid force-out if it could retain whisky in bond in its original container.

The reason for the position of the Institute should be readily apparent. There should be an extension of the bonding period to apply to future production in order to eliminate the controversy which exists in the industry. On the other hand, inequities should not be created with respect to whisky already produced and in bond. If the bonding period is extended on a retroactive basis, those companies with heavy inventories of aged whisky will obtain a competitive advantage over other companies which have conducted their affairs in a normal manner and which do not now have large inventories of whiskies over 6 years of age. This advantage would result because companies having large inventories of whisky over 6 years of age would be in a position to market 10- or 12-year-old whiskies at least 2 years earlier than those companies which have

little or no whisky over 6 years of age. Due to the importance assigned to the age of whisky in the public concept, there would undoubtedly be a competitive advantage to accrue from a retroactive application of the extension of the bonding period.

On the other hand, the Distilled Spirits Institute has just as consistently sponsored proposals which would grant relief but which would not afford a competitive advantage. The Institute believes that no company should suffer if it finds itself with 8-year-old whisky for which there is no market. Within the next year, a considerable volume of whisky will become 8 years of age for which there will be no market available. This situation has resulted for the most part because of the heavy overproduction at the time of the Korean crisis. You gentlemen of the committee will recall that during World War II our industry made no beverage alcohol for about 3 years. Thinking that such a situation might occur again, the industry started very heavy production at the beginning of the Korean crisis and continued this heavy overproduction for about a year. Most companies have balanced their inventories by using their oldest inventories first and by reducing their production so as to compensate for their Korean overproduction. As a result they today have only enough inventory to meet normal sales. On the other hand, a few companies, either through design or because the situation was beyond their control, could not balance their inventories properly so that today they are faced with a force-out problem. The Institute believes that relief should be afforded to any such company and we agree with Treasury that the revenue would not be affected by reason of the granting of any such relief.

Some of you gentlemen on the committee are familiar with the efforts made by the Institute to resolve this bonding period problem. In 1953 the Institute recommended the Saylor bill, which extended the bonding period from 8 to 12 years on whisky already manufactured provided no age beyond 8 years was claimed in advertising or otherwise with respect to the whisky over 8 years. At that time, Schenley was a member of the Institute and concurred in this proposal. After the Saylor bill had passed the House and had been approved by this committee as a unanimous proposal of the industry, Schenley chose to repudiate its agreement and began actively fighting the passage of the Saylor bill in the Senate. So great was the confusion, Congress adjourned without any action being taken.

Subsequently, in 1955, the Institute recommended the 8 year regage proposal as a relief measure and endorsed that provision before the House Ways and Means Committee. Schenley opposed this provision. Again in 1956, the Institute endorsed a suggestion made by a nonmember which has become known as the commingling proposal. Again Schenley opposed this provision before the House Ways and Means Committee.

The record is clear. The Institute has accepted and endorsed any reasonable proposal which would grant relief as to present stocks on hand without at the same time giving a competitive advantage to certain companies. Just as consistently, Schenley has fought each of these proposals and has insisted upon an unlimited extension of the bonding period on a retroactive as well as a prospective basis. It has done so solely in order to obtain a competitive advantage over practically all of the rest of the industry. This blunt accusation can be readily demonstrated.

At the time of the hearings on H. R. 1215 on March 31, 1953 (page 89 of hearings before House Ways and Means Committee), I charged that Schenley had been deliberately hoarding its inventory of bulk whisky in order to obtain a competitive advantage if H. R. 1215 became law. In support of that position I analyzed the record of Schenley's withdrawals of Kentucky whisky as shown by the well-known Liberty Bank reports, and pointed out that Schenley had been bottling whisky curently becoming 4 years of age and had been withholding from the market 6- and 7-year-old whiskies in order to be able to take advantage of a retroactive extension of the bonding period. That statement, made by me 5 years ago, was not then contradicted by Schenley nor has it ever been contradicted by Schenley. It could not be contradicted because it was an absolutely true statement of the facts then existing. That practice, begun 5 years ago, has continued down to date and Schenley, throughout those years, has been hoarding its older whiskies instead of bottling its oldest whisky first, which is the normal practice in the industry.

About 2 years ago Schenley purchased Park & Tilford and obtained with that purchase approximately 13 million gallons of whisky. If Schenley had an existing inventory of whisky which it could not bottle out before 8 years of age, why would it purchase the Park & Tilford Co., which added such a large

amount of aging bulk to its inventories? In addition, Schenley has continued to purchase aged whiskies on the open market so as to increase its holdings of 6- and 7-year-old bulk.

Now just what has been the net result of all of this? Today, Schenley owns almost 50 percent of all the whisky in the United States over 6 years of age. We have an accurate record of Schenley's ownership of Kentucky whiskies through the Liberty Bank reports. The latest of those reports, issued December 31, 1957, shows that while Schenley and Park & Tilford own only 25 percent of the Kentucky whisky of all ages, those two companies own 51 percent of the Kentucky whisky over 7 years of age and 45 percent of all the Kentucky whisky over 6 years of age. Therefore, on a percentage basis, Schenley's holdings of whisky over 6 years of age were twice as great as its holdings of whisky under 6 years of age. There is no accurate public record of Schenley's ownership of whiskies in other States. From the information at hand, however, it is apparent that Schenley has followed the same practice in other States and that its holdings of whisky over 6 years of age are disproportionately greater than those of any other company.

Contrast the position of Schenley with that of my own company, Brown-Forman. We are one of the large so-called independents but much smaller than any of the "Big Four." Our ability to survive depends to a large extent upon the stability of the laws and regulations controlling our highly competitive industry. We think that we had a right to assume—we could not afford to assume otherwise—that the bonding period as to whisky produced by us and by our competitors, would be the same bonding period of 8 years.

Therefore, we have operated our business prudently, and today we have a very small inventory of whisky over 6 years of age. Again, I refer to the Liberty Bank reports with respect to Kentucky production. The latest report, issued on December 31, 1957, shows that Brown-Forman owned 525,158 barrels of Kentucky whisky of all ages or 7.15 percent of the total whisky in Kentucky warehouses. But, we owned only 2,026 barrels of whisky over 6 years of age, which was less than one-fourth of 1 percent of the total Kentucky production over that age. Having practically no whisky over 6 years of age, we could not hope to compete with Schenley on whiskies over 8 years of age should the bonding period be extended retroactively.

Schenley will undoubtedly tell this committee that a serious force-out problem exists and that disaster faces it and several other companies unless the bonding period is extended on a retroactive basis. It will also tell this committee that the troubles of the domestic industry are due to foreign competition and the claimed advantages possessed by Canadian operators. But all this is simply a smoke screen to hide Schenley's real purposes. If Schenley is in dire straits today, it is in such a position by design.

The record is clear. Schenley has acquired enormous quantities of old whisky in order to take advantage of a retroactive extension of the bonding period. If the bonding extension adopted by the House becomes law, Schenley will be in a position to market 10- and 12-year-old whiskies much earlier than any other company in the industry. Thus, its heavy inventory of whisky over 6 years of age, which now amounts to a disastrous condition, would, upon the passage of the House bill, be converted into a tremendous advantage to the detriment of the balance of the industry. It is an inequity such as this which the Distilled Spirits Institute opposes with all the force at its command.

The bonding period problem should be resolved and resolved now. In resolving that problem, the first consideration should be the maintenance of equality of opportunity in the industry so that all companies may operate on an equal footing. This cannot be done if the bonding period is extended on a retroactive basis without limitation because in such event only a few companies will gain an advantage to the detriment of all other companies. The solution is to limit the unrestricted application of the 20-year bonding period to future production, and to extend the bonding period as to present stocks in a manner which would grant relief from force-out without allowing competitive advantage.

The Distilled Spirits Institute urges:

1. That title II, amended as we suggest, be reported favorably by your committee;

2. That the unrestricted application of the 20-year bonding period be limited to future production only;

3. That, in order to grant complete relief as to existing stocks, provision be made, in addition to the commingling provision contained in the bill, to require

whisky which is to be retained in bond beyond 8 years to be regaged at the end of 8 years, and when later withdrawn from bond to be taxpaid on the basis of the 8-year regage.

Senator KERR. How would that last give the relief that you ask for? If they paid at the time of regaging, would they not still be able to take it out later and sell it as 10-year-old whisky?

Mr. STREET. They could under that proposal of ours. That could be done. That can be done under the law as it now exists today.

Under the law as it exists today, whisky can be taxpaid at 8 years of age, and can be held to 10, 12.

Senator KERR. I understand, but I did not think that is what you recommended. What was that third recommendation that you made?

Mr. STREET. The third recommendation that we make is that there be an 8-year regage provision put into the law so if some company cannot get relief by reason of commingling they would be allowed to take advantage of the 8-year regage and not have to pay the tax when it becomes 8 years of age.

Senator KERR. When they brought it out—would it have to be 8 years old when they brought it out?

Mr. STREET. No, sir; if they wanted, if they paid, if they took the economic loss on the tax.

Senator KERR. Would the advantage of the regage provision compel them to pay the tax now?

Mr. STREET. Economically, it would compel the early payment of the tax after 8 years. That is the reason why we have sponsored that proposal, because, you see, they would be losing not only the whisky but also the tax on the whisky because they would have to pay it based on the 8-year regage, when they actually withdrew it from bond. Do I make myself clear on that?

Senator KERR. I am sure that you did. I am sure that the fault is not yours but mine. I just do not understand it but that is all right.

Senator FLANDERS. Mr. Chairman, we had an illuminating definition here awhile ago. I would like to have another. What is regaging?

Mr. STREET. It is the method by which the amount of the whisky in the barrel is determined. It is measured. In other words, you can take a barrel of whisky which is 8 years old and by certain methods recommended and sponsored and approved by the Treasury Department, determine the number of gallons of whisky actually in that barrel on that date.

Senator FLANDERS. I do not get the significance of this regaging in your proposal No. 3.

Senator BENNETT. They put in 51 gallons.

Senator FLANDERS. I am glad to get this information——

Mr. STREET. They hold 51 gallons.

Senator FLANDERS. From a disciple of Brigham Young.

Senator BENNETT. As a man who has been engaged in the paint business and chemical business in which alcohol is also occasionally used, I have learned a good deal. It is volatile. Whisky gets more volatile after human consumption. They put 51 gallons in the barrel, and after 8 years, part of that alcohol has evaporated so, instead of paying tax on the original 51 gallons, under this provision they would be allowed to remeasure the barrel and pay tax on the actual volume of whisky that remained.

Mr. STREET. Which would be approximately 30 to 32 gallons at the end of the 8-year period, depending upon the loss taking place.

Senator KERR. The law now is that you are taxed on the capacity of the barrel and not on the volume of the content?

Mr. STREET. No, sir; what I said was that on the law as it exists today, you can regage the whisky at 8 years and actually pay out the money, the tax to the Government and then continue to hold that whisky as long as you want and market it as 10, 12, or 14 years of age.

Senator KERR. But you only pay tax on the actual content of the barrel?

Mr. STREET. You would pay it on the content at 8 years of age because that would be in conformity with the 8-year force-out provision as it now exists.

Senator KERR. The Senator from Vermont and I are in the same identical position, I would say to you. We have listened carefully and attentively and still we do not understand.

Senator FLANDERS. I would like to ask an elementary question. Is the tax on the alcoholic content or is it on the number of gallons?

Mr. STREET. On domestic whisky, Senator, the tax is based upon the number of 100 proof wine gallons in the barrel at the time of withdrawal and taxpayment——

Senator FLANDERS. So if it is 80 proof, you correct the gallonage to bring it to 100 proof?

Mr. STREET. You would pay the tax on the 100 proof, on that portion.

Senator FLANDERS. You pay it on the 100 proof even though only 80?

Mr. STREET. That is correct, but that very rarely happens because in the aging of whisky, the proof goes up rather than down, except upon very rare occasions. Most whisky withdrawn from the barrel is about 108 to 110 proof. And it is reduced to the bottling proof through distilled water.

Senator FLANDERS. The gentleman from Utah claims that the alcohol evaporates and you claim that the concentration increases.

Mr. STREET. What I said was on an 8-year-old whisky there would be 30 to 32 gallons, and I meant by that 30 to 32 proof gallons. That is, whisky of 100 proof at the time of the 8 years.

Senator KERR. If it is 108 how can there be less gallons of the 100 proof than there is of liquid volume?

Mr. STREET. Because the liquid volume has decreased very substantially, more than the amount—you see the liquid volume would be less than the 30 to 32 gallons but the additional proof would raise the proof gallons to 30 or 32 gallons at 8 years of age.

Senator KERR. What is the meaning of 108 proof—108 what?

Mr. STREET. It means that actually the content is 59 percent alcohol by volume on 108 proof.

Senator KERR. Proof is the percentage of alcohol to volume?

Mr. STREET. That is correct.

Senator ANDERSON. On that percentage it would figure out to 118.

Mr. STREET. I beg your pardon, it is 54.

Senator ANDERSON. Don't confuse us any more than necessary.

Senator FLANDERS. What is it that goes through the bung hole after 8 years?

Senator KERR. During the eighth.

Senator FLANDERS. Is it water or alcohol that evaporates or oozes out or seeps out?

Mr. STREET. You have a loss of alcoholic content over the period of aging.

Senator FLANDERS. It is principally the alcohol that seeps?

Mr. STREET. It is both, depending upon the particular proof of the whisky. You understand that I don't want to be difficult about this thing at all.

Senator FLANDERS. I resign, Mr. Chairman.

The CHAIRMAN. Your resignation is not accepted.

Senator JENNER. I do not understand why all of these people are not in here arguing for no period at all. I mean, let us forget about whisky for a moment.

Mr. Street, is there any other product that you know of manufactured in America where you have to pay tax on it before you sell it?

Mr. STREET. Not that I know of.

Senator JENNER. Why are you arguing for 8 or 20 years? Why do you not take in all of them? Wouldn't that be fair?

Mr. STREET. Senator——

Senator JENNER. Is that not what it is in Canada?

Mr. STREET. It is not that way in Canada.

Senator JENNER. I thought that the gentleman just testified there was no bonding period.

Mr. STREET. I said that. There is no bonding.

Senator JENNER. Why do we not do the same as Canada?

Mr. STREET. We do propose that for production here in the future.

Senator JENNER. Why all of this controversy about the 8 or 20 years? I do not know why any product in this country, an automobile, a thimble, a threshing machine, or any other product, should be taxed before you sell it.

Mr. STREET. This happens to be a product which is distinct, which is whisky, and from time immemorial we have had——

Senator JENNER. This gentleman awhile ago said aging didn't mean anything if it does not sell it at 3 or 4 years, and let each individual manufacturer be the judge of how long he wants to hold it, because if he holds it he gets the shrinkage that you speak of. Certainly, he has to pay warehousing and local taxes—he has to pay lights and warehousemen. Why should we in this country tax any industry, I am not talking about whisky, I just think it is a bad form of taxation, and if I were you, as the head of the Distilling Institute—apparently Schenley is not a member——

Mr. STREET. No; it is not.

Senator JENNER. If I were you, I would be in here arguing for no bonding period. I would not be fighting about the aging.

Mr. STREET. May I make this clear to you and to the rest of you? We do not propose that any company have to pay the tax at 8 years.

Senator JENNER. Why should they pay it at any year?

Mr. STREET. Because that has been the law since 1894.

Senator JENNER. Why not let them keep it 100 years? Why should any product be taxed in this country until it is sold? Answer that question, will you?

Mr. STREET. The law was passed in 1894.

Senator JENNER. I do not care if it has been the law since 1894—why do we not correct it, if it has been wrong?

Mr. STREET. We do suggest that it be corrected for future production.

Senator JENNER. That is all I have to say. I do not understand what this is all about.

Senator DOUGLAS. The question of the effect of age on whisky seems to have a subtle fascination upon the minds of the tectotalers and amateur drinkers on the committee.

Senator KERR. Is the Senator speaking in the first or third person?

Senator DOUGLAS. I want to separate the members of the committee into these two categories. I confess it has a fascination for me. And I would like to address a few elementary questions to the witness.

How much is the value of whisky increased each year by aging—that is, what would be the sale value of 16-year or 20-year-old whisky?

Mr. STREET. Since we have no experience on that, that would be a matter of speculation on my part and I could not answer that.

Senator DOUGLAS. Could you give me an approximation?

Mr. STREET. I can only do it in this fashion. There are a few whiskies in this country that are sold as 16 years of age. Whereas, Scotch whiskies are 6 to 8 years of age and sell at around $6 a fifth. Those 16-year-old whiskies sell at around $9 to $10 a fifth, to the best of my recollection. That is approximately a 33⅓-percent increase.

Senator JENNER. But it is not any better.

Senator BENNETT. Fifty percent.

Mr. STREET. I beg your pardon?

Senator JENNER. Actually, no better, it was testified to awhile ago.

Senator DOUGLAS. I am not going into that question. I am going into the question of what happens to its market value. What about the carrying costs of whisky, let us say, at the end of the 8 years? There would be interest, would there not be?

Mr. STREET. There would be interest on the amount invested.

Senator DOUGLAS. And storage costs?

Mr. STREET. And storage, warehousing costs. There would be, of course, also, additional loss of what we call outage in the amount of the whisky in the barrel.

Senator DOUGLAS. That was the next point I was going to make. There would be a shrinkage in quantity?

Mr. STREET. That is correct.

Senator DOUGLAS. Then the question I would like to raise is this, are there any real profits by keeping the whisky in bond for more than 8 years. If the price increased 50 percent in 8 years and the interest rates for 8 years, let us say, would be 5 percent cumulatively or almost 50 percent, and in addition there would be warehousing charges, and security charges, and so forth, and on top of that shrinkage——

Senator KERR. Would you yield? This is with reference to the question.

Senator DOUGLAS. Yes.

Senator KERR. The percentage of increase is as to the cost of production, which is one thing, and the percentage of increase in the value, as I understood it, was as to the sale price, and that includes the addition of the tax to the cost of production.

Mr. STREET. That is correct.

Senator KERR. So that the percentage that the Senator is referring to would be applicable maybe to the dollar and a half a gallon which

is the cost of production, and the percentage of increase that the witness referred to was as to the sale price, which includes the addition of the tax.

Mr. STREET. That is the correct statement, Senator.

Senator DOUGLAS. What I am trying to find out is this, when one takes into account the added cost of storage and loss, is the gain by prolonging the period of keeping the whisky in the barrels a profitable thing?

Mr. STREET. You understand, that 10 and 12 years of age—I think that most is marketed at 10 or 12 years of age rather than 16 and the additional cost in either of those two would not be too great because the loss would not be much in the barrel over a period of, say, 2 years—only about 1 gallon after 8 years of age experience indicates there is a loss of only about 1 gallon for each additional year of aging in the barrel.

Senator DOUGLAS. How much more is 12-year-old whisky worth than 8-year-old whisky?

Mr. STREET. There is no market on 12-year-old whisky in this country because none of it is sold, that is, domestically.

Senator DOUGLAS. What about on the basis of the scotch?

Mr. STREET. I don't know offhand of any——

Senator DOUGLAS. What about scotch?

Mr. STREET. That I can think of at the moment. I don't think of any. There may be some on the market. I will try to find out and answer that. I don't recall any 12-year-old.

Yes, there is. There is Chivas Regal.

Senator JENNER. Who sells that?

Mr. STREET. That is a scotch whisky.

Senator JENNER. Who sells that?

Mr. STREET. Seagram.

Senator DOUGLAS. How much does that sell for compared to 8-year-old whisky?

Mr. STREET. Scotch whisky?

Senator DOUGLAS. Yes.

Mr. STREET. I would like to have some help on that for the moment, because I don't remember those bottle prices.

Senator ANDERSON. There is a 6-year-old, 10-year-old and, 12-year-old age scotch—there is no 8?

Mr. STREET. There is an 8-year-old but not in much quantity. Most of the scotch whisky, practically all of it sold, is less than 8 years of age. The Tariff Commission pointed out, as a matter of fact, that less than 1 percent of the scotch whisky brought into this country was over 8 years of age.

So it is an infinitesimal amount.

Senator DOUGLAS. Don't you think that it is giving a great privilege to a company, then, to postpone its tax to a later time in view of the shrinkage, in quantity and the carrying charges?

Mr. STREET. You understand that we propose relief. We propose 2 methods by which any company can avoid the payment of the tax at 8 years of age. We are not suggesting that there be any penalty. We say that as to production now in being that relief be granted in either of the 2 methods that we have suggested but that insofar as the bonding period is concerned, that it be extended prospectively only.

Senator DOUGLAS. If it is extended retroactively there would be the additional carrying charges for the additional years.

Mr. STREET. There would be. There would be an advantage, so we think, commercially, if Schenley or any other company was able to market a 10- or a 12-year-old domestic whisky in advance of other companies. For instance, my company, as I pointed out here, has practically no whisky over 6 years of age, whereas Schenley has very large quantities of it. Schenley would have at least a 3-year advantage over us in marketing 10- and 12-year-old whiskies.

Senator DOUGLAS. And have the added cost?

Mr. STREET. They would have an added cost, it is true, but I do not think that the added cost would compensate in any way what we ask here, that everybody be given an equal opportunity to marketing 10- and 12-year-old whiskies in this country. That is by extending the bonding period prospectively only. As to present production, grant relief in the manner in which we have suggested.

Senator DOUGLAS. That is all. Thank you.

Senator MALONE. You spoke of the 26 members. Is that all of the members your distilling institute has?

Mr. STREET. Yes, sir.

Senator MALONE. Twenty-six members?

Mr. STREET. Yes, sir.

Senator MALONE. How many other organizations are there in the United States that would be eligible for membership?

Mr. STREET. The three large companies that are not members of the institute are Schenley, Publicker, and American. There are, also, some very small companies, I doubt seriously if you have ever heard of any of them, that are not members.

Senator MALONE. Could you furnish a list of those companies to the best of your ability, for the record?

Mr. STREET. That are not members of the institute?

Senator MALONE. Yes.

Mr. STREET. I will do the best I can. I will furnish the members of the institute.

(The information referred to was subsequently submitted for the record, as follows:)

DISTILLED SPIRITS INSTITUTE

ACTIVE MEMBERS, 1958

S. Singer, secretary, James B. Beam Distilling Co., 65 East South Water Street, Chicago 1, Ill.
E. DeLong Bowman, president, A. Smith Bowman Distillery, Sunset Hills, Va.
Dan L. Street, executive vice president, Brown-Forman Distillers Corp., 1908 Howard Street, Louisville 1, Ky.
J. W. Red, Jr., vice president, Canada Dry Corp., 100 Park Avenue, New York 17, N. Y.
Jack Daniel Distillery, Inc., Lynchburg, Tenn.
Sidney B. Flashman, president, Double Springs Distillers, Inc., 70 Scollay Square, 10 Cambridge Street, Boston 8, Mass.
Ellis Benjamin, vice president, Felton & Son, Inc., 516 East Second Street, South Boston, Mass.
Walter Devlin, vice president, the Fleischmann Distilling Corp., 625 Madison Avenue, New York 22, N. Y.
Curtis Palmer, president, Glencoe Distilling Co., City National Bank Building, Beverly Hills, Calif.

Joseph A. Engelhard, president, Glenmore Distilleries Co., Post Office Box 000, Louisville, Ky.
S. G. Stein, chairman, Grain Processing Corp., 1600 Oregon Street, Muscatine, Iowa
John G. Martin, president, Heublein, Inc., 330 New Park Avenue, Hartford, Conn.
W. A. Thomson, Jr., president, Kentucky River Distillery, Inc., Brook & Eastern Parkway, Louisville 8, Ky.
John E. Laird, president, Laird & Co., Scobeyville, N. J.
Wathen Medley, president, Medley Distilling Co., Post Office Box 548, Owensboro, Ky.
Cloud L. Gray, president, Midwest Solvents Co., Inc., 1800 Main Street, Atchison, Kans.
E. O. Jolley, Jr., executive vice president, Mr. Boston Distiller, Inc., 1010 Massachusetts Avenue, Boston 18, Mass.
R. E. Joyce, vice president, National Distillers & Chemical Corp., 99 Park Avenue, New York 16, N. Y.
Marvin J. Padgett, president, Old Boone Distillery Co., Post Office Box 66, Shively Branch, Louisville 16, Ky.
Samuel L. Westerman, president, T. W. Samuels Distillery, Deatsville, Nelson County, Ky.
Frederick J. Lind, vice president, Joseph E. Seagram & Sons, Inc., 375 Park Avenue, New York 22, N. Y.
C. K. McClure, secretary-treasurer, Stitzel-Weller Distillery, Inc., Station D, Louisville, Ky.
Charles A. Berns, chairman "21" Brands Distillers Corp., 23 West 52d Street, New York 19, N. Y.
Carleton Healy, vice president, Hiram Walker & Sons, Inc., Penobscot Building, Detroit 26, Mich.
Joseph H. Makler, president, Waterfill & Frazier Distillery Co., Inc., 120 South LaSalle Street, Chicago 3, Ill.
Thompson Willett, president, the Willett Distilling Co., Bardstown, Ky.

ASSOCIATE MEMBER

H. F. Hiller, president, San Francisco Warehouse Co., 625 Third Street, San Francisco, Calif.

Registered distilleries authorized to operate Jan. 1, 1958

Name	Registry No.	FAAA permit No.	Location
CALIFORNIA			
The American Distilling Co	[1] 4	14-D-19	Sausalito.
Schenley Distillers, Inc. (Schenley)	[1] 14	14-D-234	Fresno.
Ste. Pierre Smirnoff Fls. (DSI)	[1] 16	SF-D-40	Menlo Park.
CONNECTICUT			
United Distillers Products Corp	[1] 1	D-841	Amston Hebron post office.
Heublein, Inc. (DSI)	[1] 3	BOS-D-3	Hartford.
FLORIDA			
Florida Fruit Distillers, Inc	[1] 1	ATL-D-2	Lake Alfred.
ILLINOIS			
The American Distilling Co	[1] 2	D-2	Pekin.
Hiram Walker & Sons, Inc. (DSI)	[1] 3	D-23	Peoria.
National Distillers & Chemical Corp. (DSI)	[1] 4	9-D-201	Do.
Columbia American Distillers, Inc	[1] 7	9-D-14	Columbia.
INDIANA			
Joseph E. Seagram & Sons, Inc. (DSI)	[1] 1	D-126	Greendale (Lawrenceburg post office).
Also operated under lease by Julius Kessler Distilling Co., Inc.	.....	CIN-D-22	
Schenley Distillers, Inc. (Schenley)	[2] 2	9-D-4	Do.
Commercial Distillers Corp	[1] 3	D-768	Terre Haute.

See footnotes at end of table.

Registered distilleries authorized to operate Jan. 1, 1958—Continued

Name	Registry No.	FAAA permit No.	Location
James Walsh & Co., Inc.	14	D-388	Greendale (Lawrenceburg Post Office).
Merchants Distilling Corp. (Schenley)	15	CIN-D-31	Terre Haute.
Park & Tilford Distillers Corp. (Schenley)	16	9-D-9	Tell City.
IOWA			
Grain Processing Corp. (DSI)	12	12-D-14	Muscatine.
KANSAS			
Midwest Solvents Co., Inc. (DSI)	11	OMA-D-8	Atchison.
KENTUCKY			
Schenley Distillers, Inc. (Schenley)	21	7-D-116	Louisville.
Schenley Distillers, Inc. (Schenley)	22	7-D-91	Do.
Also operated under lease by Old Charter Distillery Co.		7-D-92	
National Distillers Products Co. (DSI)	18	D-237	Do.
Also operated under lease by—			
Sunny Brook Distillery Co.		D-638	
The Bond & Lillard Distillery Co.		7-D-114	
The Hermitage Distillery Co.		CIN-D-16	
Glenmore Distilling Co. (DSI)	14	CIN-D-1	Bardstown.
Jas. E. Pepper & Co (Schenley)	15	D-12	Lexington.
Park & Tilford Distillers Corp. (Schenley)	26	7-D-902	Louisville.
Also operated under lease by Bonnie Bros., Inc.		7-D-97	
Frankfort Distilleries, Inc. (DSI)	17	D-11	Do.
Also operated under lease by—			
Julius Kessler Distilling Co., Inc.		CIN-D-15	
Hunter-Wilson Distilling Co., Inc.		CIN-D-23	
The Calvert Distilling Co.		CIN-D-29	
The Calvert Distilling Co. (DSI)	18	7-D-47	Lawrenceburg.
The Fleischmann Distilling Corp. (DSI)	10	D-952	Owensboro.
The New England Distilling Co. (Schenley)	11	D-24	Covington.
Barton Distilling Co.	12	D-396	Bardstown.
James B. Beam Distilling Co. (DSI)	13	CIN-D-2	Beam (Boston Post Office).
The Old Grand Dad Distillery Co. (DSI)	14	7-D-9	Forks of Elkhorn.
The Calvert Distilling Co. (DSI)	15	CIN-D-12	Lair (Cynthiana Post Office).
Stitzel-Weller Distillery (DSI)	16	D-379	Shively.
National Distillers Products Co. (DSI)	19	D-7	Louisville.
Also operated under lease by—			
The Hill & Hill Distillery Co.		7-D-39	
The Bourbon de Luxe Distillery Co.		7-D-12	
The Old Taylor Distillery Co.		CIN-D-18	
Old Farmer's Distillery (DSI)	20	D-203	Athertonville.
Glenmore Distilleries Co. (DSI)	24	D-8	Owensboro.
The Old Crow Distillery Co. (DSI)	25	D-290	Glenn's Creek (Frankfort Post Office).
Grossourth Distillers, Inc.	26	7-D-89	Anchorage.
J. T. S. Brown's Son Co. (Schenley)	27	7-D-401	Lawrenceburg.
Also operated under lease by Schenley Distillers, Inc.		CIN-D-8	
Waterfill & Frazier Distillery Co. (DSI)	28	D-913	Bardstown.
General Distillers Corporation of Kentucky (DSI).	30	D-562	Louisville.
Heaven Hill Distilleries, Inc.	31	D-85	Bardstown.
Also operated under lease by—			
The Stonegate Distillery, Inc.		7-D-85	
Nelson County Distilling Co.		7-D-102	
International Distilleries Co.		CIN-D-13	
"21" Brands Distillers Corp. (DSI)	32	CIN-D-21	Frankfort.
Associated Kentucky Distilleries Co.	33	7-D-16	Ekron.
The Old Joe Distillery Co.	35	7-D-699	Lawrenceburg.
Julius Kessler Distilling Co., Inc. (DSI)	37	CIN-D-27	Louisville.
Also operated under lease by—			
The Calvert Distilling Co.		CIN-D-28	
Joseph E. Seagram & Sons, Inc.		CIN-D-30	
Old Boone Distillery Co. (DSI)	39	D-964	Meadowlawn (Valley Station Post Office).
Schenley Distillers, Inc. (Schenley)	42	D-721	Bardstown.
The Willett Distilling Co. (DSI)	43	7-D-766	Do.
Old Samuels Distillery, Inc.	44	CIN-D-3	Loretto.
Also operated under lease by Laurel Springs Distilling Co.		CIN-D-25	
Kentucky River Distillery, Inc. (Schenley) (DSI).	45	7-D-41	Camp Nelson (Nicholasville Post Office).
Also operated under lease by Schenley Distillers, Inc.		CIN-D-11	
Schenley Distillers, Inc. (Schenley)	47	LOU-D-2	Gethsemane.

See footnotes at end of table.

Registered distilleries authorized to operate Jan. 1, 1958—Continued

Name	Registry No	FAAA permit No.	Location
Medley Distilling Co. (DSI)	[1] 49	7-D-7	Owensboro.
Park & Tilford Distillers Corp. (Schenley)	[1] 50	7-D-20	Midway.
Double Springs Distillers, Inc. (DSI)	[2] 51	7-D-61	Greenbrier (Bardstown Post Office).
Brown-Forman Distillers Corp. (DSI)	[1] 52	7-D-40	Frankfort.
The Old Taylor Distillery Co. (DSI)	[1] 53	D-725	Glenn's Creek (Frankfort post office).
Schenley Distillers, Inc. (Schenley)	[1] 105	7-D-68	Stamping ground.
National Distillers Products Co. (DSI)	[1] 106	D-884	Shively (Louisville post office).
H. McKenna Distillery (DSI)	[1] 111	CIN D-24	Fairfield.
Hoffman Distilling Co	[1] 112	D-408	Lawrenceburg.
Schenley Distillers, Inc. (Schenley)	[1] 113	D-9	Frankfort.
T. W. Samuels Distillery (DSI)	[1] 146	D-148	Deatsville.
James B. Beam Distilling Co. (DSI)	[2] 230	D-534	Clermont.
Yellowstone, Inc. (DSI)	[1] 240	D-180	Louisville.
Brown-Forman Distillers Corp. (DSI)	[1] 354	7-D-48	Do.
Brown-Forman Distillers Corp. (DSI)	[2] 414	D-10	Do.
MARYLAND			
Paul Jones & Co., Inc. (DSI)	[2] 1	D-14	Baltimore.
Also operated under lease by—			
Joseph E. Seagram & Sons, Inc		PHI-D-3	
The Calvert Distilling Co		PHI-D-7	
The Calvert Distilling Co. (DSI)	[2] 3	D-400	Relay (Baltimore post office).
Hunter-Wilson Distilling Co., Inc. (DSI)	[1] 9	5-D-17	Owings Mills.
Majestic Distilling Co., Inc	[1] 11	5-D-29	Lansdowne.
Cockeysville Distilling Co. (DSI)	[2] 15	5-D-26	Cockeysville.
MASSACHUSETTS			
Mr. Boston Distiller Inc. (DSI)	[1] 4	1-D-1	Readville.
Felton & Son, Inc. (DSI)	[1] 5	D-25	South Boston.
A. & G. J. Caldwell Co. (DSI)	[1] 6	D-370	Newburyport.
NEW JERSEY			
The Distillers Co., Ltd.	[1] 1	PHI-D-2	Linden.
NEW YORK			
The Fleischmann Distilling Corp. (DSI)	[1] 1	D-247	Peekskill.
OHIO			
National Distillers Products Co. (DSI)	[2] 1	8-D-1	Cincinnati.
Also operated under lease by W. & A. Gilbey, Ltd.		CIN-D-14	
W. & A. Gilbey, Ltd. (DSI)	[2] 7	8-D-14	Do.
OREGON			
Hood River Distillers, Inc.	[2] 2	SF-D-27	Hood River.
PENNSYLVANIA			
Continental Distilling Corp	[1] 1	D-18	Philadelphia.
Schenley Distillers, Inc. (Schenley)	[2] 4	3-D-40	Schenley.
The Huntington Creek Corp. (DSI)	[1] 8	PHI-D-6	Ruffs Dale.
Kinsey Distilling Corp.	[1] 10	3-D-7	Linfield.
Park & Tilford Distillers Corp. (Schenley)	[1] 15	3-D-2	Brownsville.
TENNESSEE			
Jack Daniel Distillery (DSI) Lem Motlow, Proprietor, Inc.	[1] 1	ATL-D-3	Lynchburg.
VIRGINIA			
A. Smith Bowman Distillery (DSI)	[1] 3	D-449	Sunset Hills.

[1] Internal Revenue bonded warehouse on bonded premises.
[2] Internal Revenue bonded warehouse contiguous to bonded premises, operated by distiller or independent.
[3] Operates distillery denaturing bonded warehouse.

Senator MALONE. Is Mr. Jones your president?

Mr. STREET. Mr. Howard Jones is our executive secretary.

Senator MALONE. I have known him very well for many years. It confuses me just a little when you say there is no advantage to the older whisky. At the same time, you object strenuously to having anyone possess older whisky that they could sell to the public. What did you mean by there being no advantage in charges that they make for it after holding it?

Mr. STREET. Because, Senator, 99 out of 100 people in this country think that the older a whisky is the better it is. There is some aura attached to whisky that you cannot define too well, but it is there.

Senator MALONE. I have seen some propaganda on other subjects lately that sell to the public pretty fast. Could you not use some of that propaganda for the Distilled Liquor Institute to educate all of these people?

Mr. STREET. Nobody has ever tried it because there has never been any occasion for it up to this point, because of the 8-year bonding period.

Senator MALONE. You probably would if this law goes through the way it is now.

Mr. STREET. I cannot answer to you, sir, what the individual companies might do on a marketing basis in order to meet this problem.

Senator MALONE. It has been testified there are about 40 million gallons that Schenley has in storage, that is around 8 years old; is that correct?

Mr. STREET. In order to give you the most accurate figures available to me and that are made public, I am referring now to the Liberty Bank report of December 31, 1957——

Senator MALONE. Just give me that for Schenley.

Mr. STREET. I am giving you that. The Schenley and Park & Tilford. On that date, Schenley owned 109,824 barrels of whisky in 1950 production.

Senator MALONE. How many gallons?

Mr. STREET. There are 50 gallons—original proof gallons in a barrel, so you multiply it by 50 to get it. Park & Tilford owned——

Senator MALONE. Why don't you just put the gallons in there? We have been talking about gallons.

Senator JENNER. You have to put shrinkage in, too.

Mr. STREET. It depends on whether we are talking about tax gallons or original proof gallons. There is the problem.

Senator MALONE. Put them both in. Technically, we do not know much about this business.

Mr. STREET. I will try to get the total here.

Senator MALONE. You can insert it in the record later.

Mr. STREET. If I may.

(The December 31, 1957 bulletin of the Liberty National Bank and Trust Co. follows. A later bulletin dated April 30, 1958, appears on p. 288.)

DISTILLED SPIRITS IN BONDED WAREHOUSES IN KENTUCKY ON DECEMBER 31, 1957

Whisky by various periods of production remaining in bonded warehouses in Kentucky as of Dec. 31, 1957

[Prepared from information obtained at the office of the department of revenue of the Commonwealth of Kentucky]

Distillery	Remaining whiskey produced or received—Bottled in bond, age, calendar year ending Dec. 31 (Number of barrels)								Total	
	1950	1951	1952	1953	1954	1955	1956	1957	Number of barrels	Percent
Barton Distilling Co., Inc., Bardstown, Ky	4,647	5,023	3,366	7,260	64,453	72,640	79,069	72,702	308,151	4.22
Jas. B. Beam Distilling Co.:									(250,430)	4.89
Clermont, Ky	780	1,663	9,390	25,409	47,714	39,392	40,519	39,965	204,692	
Boston, Ky				5	21,647	26,369	50,712	56,005	154,738	
J. T. S. Brown's Son Co.:									(113,551)	1.55
Lawrenceburg, Ky	3,840	1,592	42	135	8,214	34,174	28,299	14,943	91,239	
Early Times, Ky	226	192				7,792	5,040	1,100	14,340	
Wilder, Ky								7,972	7,972	
Brown-Forman Distillers Corp., (3 units), Louisville, Ky	900	1,126	7,965	69,385	105,477	92,245	125,446	122,614	525,158	7.15
Double Springs Distilling Co., Bardstown, Ky	2,671	3,508	19		48	17,509	22,083	10,218	56,056	.76
Fleischmann Distilling Corp., Owensboro, Ky	892	9,321	4,467	26,417	36,031	35,563	39,675	59,914	212,280	2.89
General Distillers Corporation of Kentucky, Louisville, Ky	707	193	1,528	1,899	15,057	4,100	5,635	13,905	43,014	.59
Glencoe Distilling Co., Bardstown, Ky		338	5,797	5,661	15,017	18,672	25,320	21,305	92,110	1.25
Glenmore Distilleries Co.:									(475,891)	6.48
Owensboro, Ky	2,876	33,585	59,681	74,548	55,995	53,260	27,802	66,798	365,445	
Yellowstone, Inc., Louisville, Ky	15	12,065	20,225	18,531	11,670	13,211	15,786	18,943	119,446	
Grosscurth Distillers, Inc., Anchorage, Ky	326	556	1,557	1,663	4,321	5,599	7,689	6,353	28,374	.39
Heaven Hill Distilleries, Inc., Bardstown, Ky	2,683	6,043	7,549	10,686	40,312	47,328	61,971	72,319	248,891	3.39
Hoffman Distilling Co., Inc., Lawrenceburg, Ky	914	1,461	799	1,868	3,826	5,615	4,806	6,030	25,326	.34
Kentucky River Distilling Co., Camp Nelson, Ky	3,796	6,545	1,574	4,912	9,341	98	13,663	14,273	54,202	.74
Medley Distilling Co., Owensboro, Ky	565	12,069	18,698	20,785	26,654	15,813	26,140	33,124	156,878	2.13
National Distillers and Chemical Corp.:									(1,535,447)	20.89
(3 units) Louisville, Ky	1,517	28,706	14,473	37,179	111,122	188,264	225,603	153,417	761,281	
(3 units) Frankfort, Ky	250	481	216	32,244	108,471	178,219	141,959	204,546	666,386	
Bellows unit, Louisville, Ky		13,859	12,627		19,143		8,601	53,540	107,770	
Old Boone Distillery Co., Meadowlawn, Ky	2,096	3,738	3,265	3,989	6,943	9,676	8,357	11,326	49,390	.67
Old Joe Distillery Co., Inc., Lawrenceburg, Ky	1,174	1,978	122	3,251	5,102	16,529	15,397	11,880	55,533	.75
Old Jordan—T. W. Samuels Distillery, Deatsville, Ky	7,035	8,216			5,419	10,361	15,153	23,316	69,500	.95
Old Samuels Distillery, Inc., Loretto, Ky					2,463	2,348	1,618	3,219	9,648	.13
Park & Tilford Distillery of Kentucky:									(163,199)	2.22
Louisville, Ky	2,965	22,327	15,837	16,270	19,406	17,909	19,924	17,674	132,312	
Midway, Ky	8,066	3,251	1,610	2,049	4,757	981		10,173	30,887	

Schenley Industries, Inc.:										
Associated Kentucky Distilling Co., Ekron, Ky	1,002	5,380		23,399	1,900	14,467	11,962		(1,705,319)	28.20
Bernheim Distilling Co., Louisville, Ky	46,475	37,412	42,831	81,530	50,881	68,761	51,760		58,110	
Dant Distillery Co., Gethsemane, Ky	472	817	79	7,742	10,694	12,551	6,938	65,442	445,092	
James E. Pepper & Co., Lexington, Ky	24,589	3,629	13,474	23,575	15,641	26,859	25,085	13,640	52,933	
Schenley Distillers, Inc.:								17,893	150,745	
Burgin, Ky		6,244	450	12,299	472	2,891		209	22,565	
Loretto, Ky		7,960			15,084	2,717	9,754	4,755	40,270	
Stamping Ground, Ky										
The George T. Stagg Co.:	1,158	1,195	4,276	7,352	2,907	6,774	3,570	1,400	29,132	
Bardstown, Ky				17,209	10,043	17,706	18,700	7,334	113,919	
Frankfort, Ky	14,076	28,861								
Lebanon, Ky	20,793	119,132	52,333	85,998	69,522	88,292	95,153	119,586	650,839	
Limestone Springs, Ky		17,052	2,300	24,673	8,358	17,758	7,404	13,200	90,745	
Jos. E. Seagram & Sons, Inc.:	1,259	15,588	7,600	17,612		5,200	800	2,910	50,969	
Julius Kessler Distilling Co.:										
2 units, Louisville, Ky	36,891	69,524	39,602	26,278	20,499	70,425	19,477	33,651	(740,355)	
Fairfield, Ky	1,051	2,849	3,348	2,153	1,076	5,126	2,028	1,363	316,347	10.07
Juniper Springs, Ky	240	1,007	7,222	5,843	1,868	1,098			18,994	
St. Francis, Ky	6,351	7,841	4,536	3,498	1,334	2,270	1,164	3,542	17,273	
Calvert Distilling Co., Lawrenceburg, Ky	270	11,382	6,201	7,962	3,753	7,901	4,718	198	30,536	
Carstairs Bros. Distilling Co., Cynthiana, Ky	1,858	20,795	6,420	6,282	16,439	8,661	7,766	6,517	42,385	
Frankfort Distilleries Corp. (2 units), Louisville, Ky	14,450	31,438	25,281	45,202	22,391	27,334	3,534	4,840	74,735	
Hunter-Wilson Distilling Co., Athertonville, Ky	4,690	32,132	5,958	1,305	6,149	7,462	3,125	4,486	174,770	
Stitzel-Weller Distillery, Inc., Louisville, Ky	3,354	15,906	19,757	28,154	31,253	34,909	37,386	45,253	65,307	
"21" Brands Distillers Corp., Frankfort, Ky	469	3,194	250	967	2,585	2,496	4,012	8,041	215,972	2.94
Waterfill & Frazier Distillery Co., Bardstown, Ky	6,728	7,435	2,548	3,452	6,487	9,181	6,615	12,009	22,014	.30
Willett Distilling Co., Bardstown, Ky	348	641	1,518	915	2,860	6,171	7,761	7,759	54,456	.74
Total each year Dec. 31, 1957	235,465	625,254	427,761	798,036	1,050,761	1,364,067	1,346,302	1,501,492	28,008	.38
Total all years Dec. 31, 1957	629,518	948,270	606,061	1,11..,356	1,067,014	1,389,686	1,377,365		7,349,138	
Total Dec. 31, 1956	1,131,263	1,353,418	729,155	1,126,605	1,074,719	1,400,126			7,198,214	
Total Dec. 31, 1955	1,644,678	1,631,933	730,793	1,125,553	1,078,606				7,090,963	
Total Dec. 31, 1954	2,120,802	1,643,404	735,058	1,132,104					6,872,486	
Total Dec. 31, 1953	2,187,658	1,642,254	739,665						6,909,920	
Total Dec. 31, 1952	2,179,555	1,617,785							6,826,051	
Total Dec. 31, 1951	2,210,693								7,138,856	
Total Dec. 31, 1950		1		15	50	60	110	58	6,548,883	
New England Distilling Co. (rum), Covington, Ky									294	

Reconciliation of whisky in warehouses in Kentucky for 4 months ending Dec. 31, 1957

Distillery	Total barrels in warehouses, Aug. 31, 1957	Barrels received from out of State	Barrels produced in Kentucky	Barrels received from warehouses in State	Total number of barrels in bond	Barrels Government tax paid [1]	Barrels transferred to warehouses in State	Other withdrawals in 4 months ending Dec. 31, 1957	Total number of barrels withdrawn	Total number of barrels remaining in warehouses, Dec. 31, 1957
Barton Distilling Co., Bardstown, Ky	333,624	260	15,254	7,011	356,249	34,470	12,375	253	47,098	309,151
James B. Beam Distilling Co.:										
Clermont, Ky	209,218	854	11,868	19,542	241,482	36,668		122	36,790	204,692
Boston, Ky	140,156		17,740		157,896	350	2,808		3,158	154,738
J. T. S. Brown's Son Co.:										
Lawrenceburg, Ky	87,732	1,160	12,513	7,753	109,158	8,475	6,187	3,257	17,919	91,239
Early Times, Ky	14,539			210	14,749		409		409	14,340
Wilder, Ky				7,972	7,972					7,972
Brown-Forman Distillers Corp. (3 units), Louisville, Ky	519,214	80	42,952	62,569	624,815	44,181	52,512	2,964	99,657	525,158
Double Springs Distilling Co., Bardstown, Ky	58,347	636		718	59,701	2,223	593	829	3,645	56,056
Fleischmann Distilling Corp., Owensboro, Ky	198,547	70	29,440		228,057	15,173	600	4	15,777	212,280
General Distillers Corporation of Kentucky, Louisville, Ky	40,121		4,865	963	45,949	534	2,401		2,935	43,014
Glencoe Distilling Co., Bardstown, Ky	88,802		7,211	7,143	103,156	1,788	9,228		11,046	92,110
Glenmore Distilleries Co.:										
Owensboro, Ky	365,443	1,346	36,465	9,001	412,255	39,155		7,655	46,810	365,445
Yellowstone, Inc., Louisville, Ky	108,165		8,473	2,389	119,027	5,733	2,847	1	8,581	110,446
Grosscurth Distillers, Inc., Anchorage, Ky	30,603	150	155	250	31,198	1,175	1,147	502	2,824	28,374
Heaven Hill Distilleries, Inc., Bardstown, Ky	238,971	296	25,159	4,009	268,435	15,086	4,158	310	19,554	248,881
Hoffman Distilling Co. Inc., Lawrenceburg, Ky	25,665		2,180	100	27,945	2,335	284		2,619	25,326
Kentucky River Distilling Co., Camp Nelson, Ky	55,445	2,904	185	4,056	62,590	4,060	4,328		8,388	54,202
Medley Distilling Co., Owensboro, Ky	164,946	35	10,360	60	175,401	11,474	7,030	19	18,523	156,878
National Distillers & Chemical Corp.:										
(3 units) Louisville, Ky	780,692	80	80,531	61,418	922,721	81,039	64,084	16,326	161,440	761,281
(3 units) Frankfort, Ky	675,597		62,432	21,543	759,572	72,048	21,128		93,176	666,396
Bellows unit, Louisville, Ky	111,105			14,870	125,975	595	17,610		18,205	107,770
Old Boone Distillery Co., Meadowlawn, Ky	49,998		3,398	196	54,022	2,642	1,970		4,612	49,390
Old Joe Distillery Co., Inc., Lawrenceburg, Ky	54,648	620	2,485	638	58,391	2,586	16	256	2,858	55,533
Old Jordan—T. W. Samuels Distillery, Deatsville, Ky	72,313		5,552		77,865	2,590	5,775		8,365	69,500
Old Samuels Distillery, Inc., Loretto, Ky	8,959		710		9,669	18		3	21	9,648
Park & Tilford Distillers of Kentucky:										
Louisville, Ky	122,680		17,674		140,354	4,822	3,170		8,042	132,312
Midway, Ky	32,618				32,618	201	1,530		1,731	30,887
Schenley Industries, Inc.:										
Associated Kentucky Distillers Co., Ekron, Ky	631,222				63,122	1,840	3,172		5,012	58,110
Bernheim Distilling Co., Louisville, Ky	435,303		35,709	15,364	486,376	41,104	180		41,284	445,092
The Dant Distillery Co., Gethsemani, Ky	54,218		13,379	9,417	77,014	14,442	9,639		24,081	52,933
Jas. E. Pepper & Co., Lexington, Ky	148,640		9,660	5,000	163,300	6,522	6,033		12,555	150,745
Schenley Distillers, Inc.:										

Burgin, Ky.	25,351				25,351	1	2,785		2,786	22,565
Loretto, Ky.	42,152			4,755	46,907	467	2,774	3,396	6,637	40,270
Stamping Ground, Ky.	37,490				37,490	2,533	5,825		8,358	29,132
The Geo. T. Stagg Co.:										
Bardstown, Ky.	131,404			800	132,204	676	9,901	7,706	18,285	113,919
(2 units) Frankfort, Ky.	659,491	1,496	60,393	13,164	734,544	73,651	7,192	2,862	83,705	650,839
Lebanon, Ky.	90,097			4,832	94,929	3,584	600		4,184	90,745
Limestone Springs, Ky.	58,019				58,019	1,855	5,195		7,050	50,969
Jos. E. Seagram & Sons, Inc.:										
Julius Kessler Distillery Co.:										
(2 units) Louisville, Ky.	328,276	1,633	1,338	3,379	334,626	11,894	3,486	2,899	18,279	316,347
Fairfield, Ky.	21,360				21,360	482	1,884		2,366	18,994
Juniper Springs, Ky.	21,639				21,639	1,447	2,913	1	4,361	17,278
St. Francis, Ky.	32,332				32,332	1,545	250	1	1,796	30,536
Calvert Distilling Co., Lawrenceburg, Ky.	43,460			377	43,837		1,452		1,452	42,385
Carstairs Bros. Distilling Co., Cynthiana, Ky.	73,581			3,512	77,093	1,505	850		2,355	74,738
Frankfort Distilleries Corp., Louisville, Ky.	180,406	2,608	18,158	6,019	207,191	10,585	7,791	14,045	32,421	174,770
Hunter-Wilson Distilling Co., Athertonville, Ky.	65,865			1,872	67,737	1,196	1,232		2,430	65,307
Stitzel-Weller Distillery Co., Inc., Louisville, Ky.	213,472		18,891		232,363	16,391			16,391	215,972
"21" Brands Distillers Corp., Frankfort, Ky.	19,398	119	2,451	2,360	24,328	2,114	200		2,314	22,014
Waterfill & Frazier Distilling Co., Bardstown, Ky.	52,084		4,452		56,536	1,469	611		2,080	54,456
Willett Distilling Co., Bardstown, Ky.	27,387		3,174		30,561	1,485	1,005	68	2,558	28,003
Total	7,412,695	14,347	565,717	303,302	8,296,061	586,252	297,190	63,481	946,923	7,349,138
New England Distilling Co. (rum), Covington, Ky.	278		665		943	42		607	649	294

[1] Includes some whisky on which State ad valorem taxes have been paid, but not the Federal excise tax.

NOTE.—Fractional barrels reduced to 1 full barrel. Storage does not necessarily represent ownership.

Spirits by various periods of production remaining in bonded warehouses in Kentucky as of Dec. 31, 1957

Distillery	Remaining spirits produced or received, calendar year ending Dec. 31								Total number of barrels
	1950, number of barrels	1951, number of barrels	1952, number of barrels	1953, number of barrels	1954, number of barrels	1955, number of barrels	1956, number of barrels	1957, number of barrels	
Barton Distilling Co., Inc., Bardstown, Ky								1,285	1,285
Jas. B. Beam Distilling Co., Clermont, Ky	19							218	237
J. T. S. Brown's Son Co., Lawrenceburg, Ky						88			88
Brown-Forman Distillers Corp., Louisville, Ky							35	2,631	2,666
Double Springs Distilling Co., Bardstown, Ky							34	116	150
Fleischmann Distilling Corp., Owensboro, Ky								282	282
Glencoe Distilling Co., Bardstown, Ky								18	18
Glenmore Distilleries Co., Owensboro, Ky								12,624	12,624
Kentucky River Distilling Co., Camp Nelson, Ky							1		1
Medley Distilling Co., Owensboro, Ky								83	83
National Distillers & Chemical Corporation, Louisville, Ky								1,513	1,513
Old Joe Distillery Co., Inc., Lawrenceburg, Ky								51	51
Old Jordan—T. W. Samuels Distillery, Deatsville, Ky					6			50	56
Schenley Industries, Inc.:									
New England Distilling Co., Covington, Ky							4,929		4929
The Geo. T. Stagg Co., Frankfort, Ky							29		29
Jos. E. Seagram & Sons, Inc.:									
Julius Kessler Distilling Co.:									
Louisville, Ky									
Fairfield, Ky	9,602	18,114	21,041	15,607	36,294	3,971	11,056	14,209	129,894
St. Francis, Ky								747	747
Calvert Distilling Co., Lawrenceburg, Ky				37					37
Carstairs Bros. Distilling Co., Cynthiana, Ky				86					86
Frankfort Distilleries Corp., Louisville, Ky								2,746	2,746
Hunter-Wilson Distillery Co., Athertonville, Ky	1,155	5,055	8,673	6,848	530	889	8,272	13,670	45,092
"21" Brands Distillers Corp., Frankfort, Ky								2,029	2,029
Waterfill & Frazier Distilling Co., Bardstown, Ky								34	34
								16	16
Total for Dec. 31, 1957	10,776	23,169	29,714	22,578	36,830	4,948	24,356	52,322	204,693

Reconciliation of spirits in warehouses in Kentucky for 4 months ending Dec. 31, 1957

Distillery	Total barrels in warehouses, Aug. 31, 1957	Barrels received from out of State	Barrels produced in Kentucky	Barrels received from warehouses in State	Total number of barrels in bond	Barrels Government tax paid [1]	Barrels transferred to warehouses in State	Other withdrawals in 4 months ending Dec. 31, 1957	Total number of barrels withdrawn	Total number of barrels remaining in warehouses, Dec. 31, 1957
Barton Distilling Co., Inc., Bardstown, Ky	1,985	536			2,421			1,136	1,136	1,285
Jas. B. Beam Distilling Co., Clermont, Ky	506	450			956	7		712	719	737
J. T. S. Brown's Son Co., Lawrenceburg, Ky	107			239	346	252	6		258	88
Brown-Forman Distillers Corp., Louisville, Ky	2,084	2,121			4,205	69		1,470	1,539	2,666
Double Springs Distilling Co., Bardstown, Ky	267	116			383	233			233	150
Fleischmann Distilling Corp., Owensboro, Ky	171	1,859			2,030			1,748	1,748	282
Glencoe Distilling Co., Bardstown, Ky	89				89			71	71	18
Glenmore Distilleries Co., Owensboro, Ky	12,242	3,791			16,033	2,903		506	3,409	12,624
Kentucky River Distilling Co., Camp Nelson, Ky		6			6	5			5	1
Medley Distilling Co., Owensboro, Ky	30	260			290			207	207	83
National Distillers & Chemical Corp., Louisville, Ky	3,659	3,315			6,974			5,461	5,461	1,513
Old Joe Distillery Co., Inc., Lawrenceburg, Ky	23	110			133			82	82	51
Old Jordan-T. W. Samuels Distillery, Deatsville, Ky	24	100			124	6		62	68	56
Schenley Industries, Inc.:										
New England Distilling Co., Covington, Ky	6,291		1		6,292		1,343	20	1,363	4,929
The Geo. T. Stagg Co., Frankfort, Ky	29			1,342	1,371	1,342			1,342	29
Jos. E. Seagram & Sons, Inc.:										
Julius Kessler Distillery Co.:										
Louisville, Ky	139,150	901	21,362	3,144	164,557	25,157	4,147	5,359	34,663	129,894
Fairfield, Ky	747				747					747
St. Francis, Ky	37				37					37
Calvert Distilling Co., Lawrenceburg, Ky	86				86					86
Carstairs Bros. Distillery Co., Cynthiana, Ky	1,331			1,791	3,122		376		376	2,746
Frankfort Distilleries Corp., Louisville, Ky	44,278	3,368	15,314	7,951	70,911	6,532	10,192	9,095	25,819	45,092
Hunter-Wilson Distilling Co., Athertonville, Ky	200			1,962	2,162		133		133	2,029
"21" Brands Distillers Corp., Frankfort, Ky	357	150			507	234	239		473	34
Waterfill & Frazier Distilling Co., Bardstown, Ky	24	100			124			108	108	16
Total for Dec. 31, 1957	213,617	17,183	36,677	16,429	283,906	36,740	16,436	26,937	79,213	204,693

[1] Includes some whisky on which State ad valorum taxes have been paid, but not Federal excise tax.

Cases bottled in bond whisky in warehouses in Kentucky on Dec. 31, 1957

Distillery	Cases in warehouses Aug. 31, 1957	Cases received from out of State	Cases received from warehouses in State	Total number of cases in bond	Cases tax-paid [1]	Cases transported to warehouses in State	Other withdrawals in 4 months ending Dec. 31, 1957	Total number of cases withdrawn	Number of cases remaining in warehouses Dec. 31, 1957
Barton Distilling Co., Inc	13,217		94,870	108,087			101,106	101,106	6,981
Jas. B. Beam Distilling Co	8,400		46,243	54,643	157		52,077	52,234	2,409
J. T. S. Brown's Son Co., Lawrenceburg, Ky	10,776		45,262	56,038	2,517		45,803	48,320	7,718
Brown Forman Distillers Corp	15,756		46,563	62,319			62,105	62,105	214
Double Springs Distilling Co	977		14,386	15,363			13,538	13,538	1,825
General Distributing Corporation of Kentucky	1,932		5,130	7,062	220	35	6,229	6,484	578
Glencoe Distilling Co	4,415			4,415		4,415		4,415	
Glenmore Distilleries Co., Owensboro, Ky	869		2,114	2,983	18		1,775	1,793	1,190
Medley Distilling Co	6,145		48,151	54,296	115		49,341	49,456	4,840
National Distiller. & Chemical Corp.:									
Louisville, Ky	52			52					52
Frankfort, Ky	24,386		547,103	571,489	364	50,977	502,276	553,617	17,872
Old Boone Distillery Co	883		2,048	2,931	102		1,853	1,955	976
Old Joe Distillery Co., Inc	6,488		6,826	13,314			10,020	10,020	3,294
Old Jordan—T. W. Samuels Distillery	18,860		7,853	26,713	746		16,427	17,173	9,540
Old Samuels Distillery, Inc	51		160	211			203	203	8
Park & Tilford Distilleries of Kentucky, Louisville, Ky	197			197	85			85	112
Schenley Industries, Inc.:									
Bernheim Distilling Co	756		205,403	206,159	3	5,560	198,455	204,018	2,141
Dant Distillery Co., Gethsemane, Ky	2,411		220,244	222,655			219,750	219,750	2,905
Schenley Distillers, Inc., Louisville, Ky			5,860	5,860		1	5,859	5,860	
Stitzel-Weller Distillery, Inc	8,542		24,776	33,318	330		26,003	26,333	6,985
"21" Brands Distillers Corp	460		652	1,112	995			995	117
Waterfill & Frazier Distilling Co	3,308		8,216	11,524			11,324	11,324	200
Willett Distilling Co	1,223		10,476	11,699	4		10,696	10,700	999
Total Dec. 31, 1957	130,104		1,342,336	1,472,440	5,656	60,988	1,334,840	1,401,484	70,956
Total Dec. 31, 1956									101,646
Total Dec. 31, 1955									113,360
Total Dec. 31, 1954									72,628
Total Dec. 31, 1953									98,307
Total Dec. 31, 1952									85,242
Total Dec. 31, 1951									83,127
Total Dec. 31, 1950									45,516

[1] Includes some whisky on which State advalorum taxes have been paid, but not the Federal excise tax.

Senator KERR. Go ahead.

Mr. STREET. Of the 1950 whisky Schenley owned 109,124, and Parke & Tilford, a wholly owned subsidiary, 11,051 barrels. Of the 1951 production, Schenley owned 243,270 barrels and Parke & Tilford 25,578 barrels.

Senator MORTON. Just only in Kentucky?

Mr. STREET. That is only Kentucky production. The 1951 production amounted to 51 percent of the total in Kentucky and over 6 years of age it was 45 percent of all of the Kentucky whisky.

Senator MALONE. The purpose of my question, anyway, was this, if they have 40 million gallons—how many total barrels do they have now—as of now—since Schenley has been made a party to this business? Apparently Seagram and Schenley are at odds on this business.

Mr. STREET. They are the two largest companies in the business.

Senator MALONE. Then let us confine it to that.

Schenley, let us assume they have 40 million gallons, how many barrels do they have on hand that is 6 to 8 years old?

Mr. STREET. That is not public information, sir, and I cannot give you that.

Senator MALONE. We will find that out then.

Mr. STREET. I think it was filed with the Tariff Commission but it was not put in the report and I cannot give you those exact figures.

Senator MALONE. The purpose of that question was to lay the groundwork of the next one. What would they do with that whisky—what could they do with it if they did not want to pay the $10.50 a gallon tax and there was no sale for it at the time? I might ask you that question first.

Mr. STREET. There would be two "outs," if I might use that term.

Senator MALONE. Tell us.

Mr. STREET. Those two outs are that you can redistill. You can put it back in the still, and redistill it, at 190 proof as spirits and avoid the payment of tax. You would start the taxpaying period all over again. Or they could ship it outside of the country. They could do either 1 of those 2 things.

Senator MALONE. They would have to sell it to somebody, would they not?

Mr. STREET. Schenley, of course, has plants in Canada. If they wanted to move it to a Canadian plant, they could do so if they so choose.

Senator MALONE. Then they could sell it anywhere they wanted to and pay the dollar and a quarter tax, if they brought it back here?

Mr. STREET. If they paid the import tax and brought it back.

Senator MALONE. They would sell it as older whisky here—under your arrangement here—if they paid the tax to come back in?

Mr. STREET. I think they could.

Senator WILLIAMS. They could do that under existing law?

Mr. STREET. They could do that under existing law. No problem on that.

Senator MALONE. What does it cost to redistill a barrel of whisky?

Mr. STREET. Do you mean the amount of the loss or the actual reproduction cost?

Senator MALONE. Suppose they just redistilled 40 million gallons, the number of barrels they have, in order to evade the tax. What would it cost to do that?

Mr. STREET. Senator, I have to give it to you in this way: that the cost, the average cost, I would think, of 8-year-old whisky would be about a dollar and a half a gallon or about $75 a barrel, somewhere in that neighborhood, and then when you redistilled you would end up with, say, 30 gallons of spirits which today would have a market value of about 35 to 40 cents a gallon, if I remember the market correctly.

Senator MALONE. What does it cost to redistill it?

Mr. STREET. The actual redistillation cost would be very, very little.

Senator MALONE. In other words, they would have to get rid of their whisky or pay the tax unless this bill goes through as it now is written?

Mr. STREET. No, no. Not under our proposal, sir, because we offer two methods by which the tax can be avoided.

Senator MALONE. I am asking the question on the terms of the bill now. If it does not go through and we did not pass anything on whisky, then they would have to get rid of their whisky—they would have to redistill or send it to a foreign country.

Mr. STREET. Or pay the tax unless they could sell it.

Senator MALONE. Of $10.50 a gallon?

Mr. STREET. That is right.

Senator MALONE. Would there be a market for 40 million gallons? You have not told me how many barrels they have. Would there be a market now for that whisky if they just put it on the market?

Mr. STREET. I would have to let Schenley answer that question, because for this very reason they would have to put it into a great many brands which are now being sold at younger ages and I cannot determine that.

Senator MALONE. They would have to blend it?

Mr. STREET. No, no. You see, whisky that is 8 years of age can be—you do not have to label it being 8 years of age—you can call it as 4- or 5-year, any age underage. They market a great many brands under 8 years of age. What the extent of that market is and how many of those gallons they could dispose of in the course of the year they would have to answer and I could not give it to you.

Senator MALONE. I am not getting very much information, anyway, that I thought I needed.

This is a fight between Schenley and Seagram as to who would get the market if they passed this law?

Mr. STREET. No, sir; I want to make it perfectly clear that this isn't. It is true that Seagram opposes Schenley on this proposal, but I, also, want every member of this committee to understand that the other members of the Distilled Spirits Institute are also opposed to the Schenley proposal. My company is one of them, Brown & Forman, of Kentucky.

Senator MALONE. What I am getting at, I do not see the smaller companies here who are fighting it very hard. You are representing all of the smaller companies, but they are not a member of your organization.

Mr. STREET. Some of them are, sir.

Senator MALONE. They are among these 26?

Mr. STREET. Yes; there are some very small companies.

Senator MALONE. You do not know how many companies there are that are not members of your institute?

Mr. STREET. You asked me that before. I will have to give you that list.

Senator MALONE. What do you think?

Senator KERR. You said 70 percent of the production.

Mr. STREET. I said Distilled Spirits Institute members sell approximately 70 percent of all of the domestic whiskies sold in the United States—percentagewise.

Senator MALONE. This institute of yours, explain just what it is. It is an organization, then, of the sellers of whisky?

Mr. STREET. Of distillers. It is a national trade association of distillers.

Senator MALONE. When you give us a list of the membership, they are large ones and smaller ones, you testified—how do they contribute, according to their amount of business done, or just so much a member?

Mr. STREET. No, sir; it is based on percentage of sales, roughly.

Senator MALONE. Would you then give us at the same time the percentage of sales for each member for the record?

Mr. STREET. Senator, that might come in the class of confidential information. I would be happy to give it for my company but whether other companies would allow me to give that for them, I can't answer to you at the moment.

Senator MALONE. Isn't it a matter of record how much whisky each one of these companies sell?

Mr. STREET. There is not——

Senator JENNER. There must be some place, they have to pay tax on it.

Mr. STREET. That record could be obtained only from the Government. They are not available to the members of the industry.

Senator MALONE. Then you don't think you want this committee to know the amount of their sales individually or the amount of dues they pay based on their sales—you don't think they want us to know?

Mr. STREET. I can't answer that they would or would not. I am suggesting that might be confidential information.

Senator MALONE. Will you furnish it?

Mr. STREET. We will have to poll every company. If they will do so, I will furnish it.

(The following was subsequently received for the record:)

DISTILLED SPIRITS INSTITUTE, INC.,
Washington, D. C., July 16, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR BYRD: On yesterday I was asked the question as to the relation between the sales of the various distilling companies in the United States; i. e., the share of the market enjoyed by each of those companies. I have checked and reaffirm my belief that there is no public record of any kind by which the Distilled Spirits Institute can inform the committee as to the gallonage sales of the various domestic companies. The only public record available to us at this time is the finding of the Tariff Commission in its report to this committee dated August 12, 1957, wherein the Tariff Commission on pages 50-51, with respect to the seven largest companies, stated as follows:

"CONCENTRATION OF PRODUCTION AND BOTTLING

"Four companies—the Big Four in the whisky industry (National Distillers & Chemical Corp., Schenley Industries, Inc., Distillers Corp.-Seagrams, Ltd., and Hiram Walker-Gooderham & Worts, Ltd.)—have accounted for a large part of domestic production and bottling of whisky since repeal (see table 16). In 1934,

the first year after repeal, the Big Four distilled 60 percent of the whisky produced in the United States. This percentage declined to 45 percent in 1936, but rose again, to 64 percent, in 1938. The Big Four produced 41 percent of the small quantity of whisky distilled in fiscal 1943. The share of total distillation accounted for by these four companies reached 68.8 percent in fiscal 1949 and since then has fluctuated between 53.6 percent (in 1951) and 66.9 percent (in 1952); in fiscal 1957 it was 64.4 percent. The Big Four and three other companies (Publicker Industries, Inc., Brown-Forman Distillers Corp., and Glenmore Distilleries Co.) accounted for 78.8 percent of the whisky distilled in the United States in fiscal 1955 and for 74.4 percent in fiscal 1957.

"Since World War II, annual taxpaid withdrawals by the Big Four have accounted for 59.5 percent (in 1953) to 75.1 percent (in 1949) of annual taxpaid withdrawals by all companies. In 1957, 62.3 percent of total tax-paid withdrawals were made by the Big Four, and the Big Four plus the 3 other companies mentioned above accounted for 75.7 percent of the total.

"The Big Four have accounted for an even higher percentage of bottled output than of production and withdrawals, principally because the smaller companies usually bottle straight whisky, whereas the Big Four bottle more spirit blends. In fiscal 1943, the Big Four accounted for 56.7 percent of bottled output by all companies. This percentage reached 82.3 percent in 1949, but declined to 68.7 percent in 1957. The Big Four and the 3 other companies together accounted for 79 percent of bottled output of whisky in fiscal 1955, and for 76.6 percent in fiscal 1957. In terms of bottled output in recent years, these seven companies ranked as follows: (1) Distillers Corp.-Seagrams, Ltd.; (2) National Distillers & Chemical Corp.; (3) Schenley Industries, Inc.; (4) Hiram Walker-Gooderham & Worts, Ltd.; (5) Brown-Forman Distillers Corp.; (6) Glenmore Distilleries Co.; and (7) Publicker Industries, Inc."

If any further information is desired by the members of your committee that information would have to be obtained from Alcohol and Tobacco Division of the Treasury, because additional information along the lines requested is not available to us.

Yours very truly,

DAN L. STREET,
Chairman, Board of Directors.

Senator MALONE. You are speaking for the entire membership that you have?

Mr. STREET. That is correct, sir.

Senator MALONE. All of the members of your organization agree with your testimony?

Mr. STREET. I have heard of only one company, and I do not know this to be accurate, but I have understood that the Willet Distilling Co., of Kentucky, has said that it agrees with the Schenley proposal and it is a member of the institute. They have not advised me to that effect, but I have heard it.

Senator MALONE. Is the American Distilling Co. a member of your institute?

Mr. STREET. No, sir; it is not.

Senator MALONE. They don't agree with your testimony, do they?

Mr. STREET. I do not know what the position of the American Distilling Co. is.

Senator MALONE. Does the James B. Beam Distilling Co. agree with your testimony?

Mr. STREET. Yes, sir; it does.

Senator MALONE. They are a member?

Mr. STREET. They are.

Senator MALONE. They do not agree with the passage of the bill as it is now written; the Beam Distilling Co.?

Mr. STREET. No, sir; no member so far as I know of the Distilled Spirits Institute agrees with the bill as it is now written.

Senator MALONE. They are a member?

Mr. STREET. It is.
Senator MALONE. How about the J. D. S. Brown Sons Co.?
Mr. STREET. No, sir; it is not a member of the institute as I recall; I don't think so.
Senator MALONE. What about Waterfill & Frazer?
Mr. STREET. Yes, sir; it is.
Senator MALONE. Double Springs, Inc.?
Mr. STREET. Yes.
Senator MALONE. Old Joe Distillery?
Mr. STREET. I am speaking from recollection. I am sure that these companies are not members of the institute.
Senator MALONE. The Glencoe Distilling Co.?
Mr. STREET. Yes, sir.
Senator MALONE. The Old Boone Distillery Co.?
Mr. STREET. Yes, sir.
Senator MALONE. The Whisky Brokers of America, Inc.?
Mr. STREET. They are not distillers, sir.
Senator MALONE. They would not be eligible for membership?
Mr. STREET. They would not.
Senator MALONE. Do they agree with your testimony?
Mr. STREET. I can't answer that because I have never conferred with them on the subject.
Senator MALONE. Sidney B. Flashman Co.?
Mr. STREET. That is a brokerage concern, not a distilling company.
Senator MALONE. Do they agree with your testimony?
Mr. STREET. I would doubt it knowing Mr. Flashman as well as I do.
Senator MALONE. General Distillers Corp.?
Mr. STREET. Yes, sir.
Senator MALONE. They do not, or do they?
Mr. STREET. I can't answer that—I have not conferred with them.
Senator MALONE. Medal Distilled Products?
Mr. STREET. No.
Senator MALONE. They are not a member?
Mr. STREET. Who is this now?
Senator MALONE. Medal.
Mr. STREET. How do you spell it?
Senator MALONE. M-e-d-a-l.
Mr. STREET. I never heard of that.
Senator MALONE. Star Hill Distilling Co.?
Mr. STREET. I am sorry; I never heard of them before.
Senator MALONE. They are not a member?
Mr. STREET. No, sir; it is not.
Senator MALONE. You don't know how they stand?
Mr. STREET. I do not, sir.
Senator MALONE. The Louis Forman & Co., Inc.?
Mr. STREET. I don't think that is a distilling company; I think that is a brokerage concern.
Senator MALONE. Grosscurth Distillers?
Mr. STREET. That is not a member.
Senator MALONE. I don't imagine you know what they are.
Mr. STREET. I don't know what their position is.
Senator MALONE. Willet?

Mr. STREET. The Willet Distilling Co. is a member and I have heard that they are opposed or is in favor of the Schenley position.

Senator MALONE. They are in favor of the Forand bill?

Mr. STREET. As it is now written.

Senator MALONE. The Old Joe Distillery Co.?

Mr. STREET. No, sir; it is not.

Senator MALONE. They are not a member of your outfit and you don't know how they stand on this?

Mr. STREET. No.

Senator MALONE. James Welch & Co.?

The CHAIRMAN. Will you yield there?

The Chair has been notified that they are taking up the reciprocal trade agreement.

Senator MALONE. I will ask to have this memo made a part of the record.

The CHAIRMAN. Without objection that will be made a part of the record.

(The memo referred to is as follows:)

Waterfill & Frazier Distillery Co.

"I will appreciate any effort on your part to help pass the Forand bill which is so badly needed by American distillers. The advantage that foreign distillers have over American companies has created a very serious situation and should be corrected." (Joseph Makler, president, Waterfill & Frazier.)

Double Springs Distillers, Inc.

"What we need is a relief from the burdens which require us to pay the heavy excise tax at a given time when we are without a ready, stable market for our product. We feel that if unlimited bond extension is passed, it will help stabilize the entire market. There should be no serious objections thereto from the opponents, if any, to the passage of H. R. 7125."

Old Boone Distillery Co.

"We accordingly urgently request passage of the Forand bill now before your committee, in its present form, which includes extension of the bonded period, lest we perish."

Glencoe Distilling Co.

"Our company is hopeful that Congress will see fit to extend the bonding period * * *. Because of the overproduction caused by the Korean conflict, whisky inventories in the United States have been unbalanced for many years, and the threat of the 8-year bonding provision, which causes whisky to be placed on the market at liquidation prices in order to avoid catastrophe of tax payments due at the end of 8 years, has for several years last past depressed prices of whisky in the open market to such an extent that small distilleries have been unable to operate, generally speaking, except at losses. A continuation of this governmental policy which, in our opinion, has no effect upon the revenue, will tend to drive from the market place those few independents who still struggle on."

The Whiskey Brokers of America, Inc.

Sent to the committee a certified copy of a resolution unanimously adopted at its national convention urging enactment of the bill "in the form in which such act is presently being considered by the Senate Finance Committee at Washington."

Members of the Whiskey Brokers Association are: Oliver Jacobson, Chicago; R. L. Buse, Jr., Cincinnati; Stewart Friedman, Cincinnati; Alvin Gould, Cincinnati; Harold Laden, Philadelphia; Fred Metzger, Newark; Frank Silverman, Chicago; Stanley Levi, Philadelphia; Melvin Todes, Chicago; Melvin Grosskin, Philadelphia; Sam Glass, Philadelphia; Sam Manly III, Louisville; Frank Hower, Jr., Louisville; Ernest O. Baer, San Francisco; Sidney B. Flashman, Boston; Robert Gould, Cincinnati; Herman G. Handmaker, Louisville; Phil Marshall, Los Angeles; Ben Maltz, Beverley Hills; Herbert Silverman, Chicago;

W. A. Thompson, Jr., Louisville; Henry Copeland, San Francisco; Harry Hummel, Chicago; Edward Hart, Cincinnati; Clem Faine, Cincinnati; Lester Abelson, Chicago; Booker Robinson, Louisville; L. Wertheimer, Cincinnati; E. Wertheimer, Cincinnati.

Pennco Distillers, Inc.

"Failure of passage of this bill in its entirety will undoubtedly result in putting small distillers out of business."

Sidney B. Flashman Co., Inc.

"Filed petition jointly with Double Springs Distillers, Inc."

General Distillers Corp.

"Filed petition jointly with Double Springs Distillers, Inc."

Hoffman Distilling Co.

"We earnestly request the favorable consideration of your committee on the adoption of H. R. 7125 in its present form. It is our opinion that, without relief afforded under this resolution, some of the smaller independents will be unable to survive the conditions of the force-out problem which will be presented in the next 2 years."

Medal Distilled Products, Inc.

"You and your committee would do our industry, and particularly the independent traders therein, a great service if you could see fit to extend the 8-year bonding limitation so that the whiskys can be marketed in an orderly manner without the ever-present threat of an artificial force-out."

Star Hill Distilling Co.

"We strongly favor passage of Internal Revenue Code bill H. R. 7125 pertaining to distilled spirits."

Louis Forman & Co., Inc.

"The arguments for and against this bonding extension have been in the hands of a few of the big companies. We small-business men find it difficult to make our voices heard. However, it is my opinion that the present bill 7125 gives advantages to both sides in the controversy and if it is passed into law will not only help the small distiller and bottler to survive and compete in the American market, but will also benefit the giants of our industry."

Grossourth Distillers, Inc.

"In many instances foreign based distilleries are selling domestic whiskies in the United States at prices far below cost. Their losses are recouped by extraordinary profits on highly advertised imported whiskies which these companies also sell. The net effect of the dumping at ruinous prices of domestic whiskies is to cause American distillers to be gravely and perhaps permanently impaired. The bill before your committee would correct this condition by granting a reasonable period in which each distiller could withdraw his whisky from bond, pay the tax, and properly merchandise it."

The Willet Distilling Co.

"Our company strongly urges favorable action by the Senate Finance Committee on the Forand bill."

Old Joe Distillery Co.

"We desire to go on record with you and your committee as strongly advocating the passage of the Forand bill (H. R. 7125) in its present form. * * * It is our firm opinion that the passage of this bill will result in the whisky markets returning to normalcy which will benefit all levels of the industry with injury to none."

James Walsh & Co., Inc.

"We understand that certain of those opposed to the adoption of this resolution contend that an extension of the bonded period, without some age limitation on labels, will put the smaller companies at a disadvantage. We do not agree for we are convinced that the small distiller is at a greater disadvantage under existing regulations, because, when confronted with force-out whiskies he is

financially unable to taxpay and carry whiskies beyond the 8-year period, which the larger company is financially able to do."

The CHAIRMAN. I suggest that we adjourn, then, until tomorrow morning to hear the remaining witnesses.

Senator JENNER. Ten o'clock in the morning?

The CHAIRMAN. Yes.

The hearing is now recessed until 10 o'clock tomorrow.

(By direction of the chairman, the following is made a part of the record:)

STATEMENT OF THE SECURITIES AND EXCHANGE COMMISSION FILED WITH THE SENATE COMMITTEE ON FINANCE ON H. R. 7125

The Securities and Exchange Commission has been requested by the Senate Committee on Finance to comment upon H. R. 7125, a bill which is currently the subject of hearings by the committee.

On December 17, 1956, the Commission submitted its comments to the Subcommittee on Excise Taxes of the House Ways and Means Committee on H. R. 12298, 84th Congress, 2d session, which was a predecessor bill to H. R. 7125. In its statement the Commission pointed out that the increased rate of tax as proposed by H. R. 12298 might have had an effect on the continued maintenance of a liquid and orderly market because of increased costs to the investing public with respect to stock market transactions.

H. R. 7125, in part IV, would impose an issuance tax on the shares of certificates of stock issued by a corporation at a rate of 10 cents on each $100 of actual value of these shares or certificates, and would impose a transfer tax on such shares or certificates at rate of 4 cents on each $100 of actual value. This is in contrast to the present issuance tax of 11 cents and a transfer tax of 5 cents on each $100 of par value of such shares.

It appears that in part IV (sec. 4321) H. R. 7125 already embodies the comments made by this Commission with respect to H. R. 12298.

This Commission did not include in its comment to the House Subcommittee on Excise Taxes any remarks relating to the effect of that bill upon the issuance and transfer of investment company shares.

Regulated investment companies are of two types, closed end and open end. Closed-end companies have fixed capital structures which are modified only infrequently, and their shares are traded between shareholders on national securities exchanges or in the over-the-counter market. On the other hand, the shares of open-end investment companies are not generally traded in the open market. Rather, persons desiring to invest in such a company generally buy newly issued shares on original issue from the company. When they wish to withdraw from the company persons usually surrender their shares to the company for redemption at their current net asset value. Open-end companies stand ready to redeem their shares at any time upon presentation. Thus, unlike a normal business corporation or a closed-end investment company, the capital of an open-end investment company is in a constant state of flux because new shares are issued daily to some persons and outstanding shares are redeemed by others. The open-end investment company industry has in the past issued securities equal to about 10 percent of its capitalization each year. The issuance tax, which is a nonrecurring incident to the formation of the ordinary corporation, becomes a contining tax on the open-end company.

Under present law the taxes imposed on stock issued by open-end investment companies appears to be substantial. According to the estimate of the National Association of Investment Companies, given in testimony before your committee, an aggregate issuance tax of approximately $520,000 was paid by open-end companies in 1957. An issuance tax of approximately $1,560,000 would have been paid by open-end companies had the rates proposed by H. R. 7125 been in effect in 1957. Thus it apears that an effect of H. R. 7125 would be to treble the issuance tax currently being levied on the original issue of open-end investment company shares. Since the issuance tax is an expense of operation, it would reduce investment company income and thus would be borne by the investment company shareholders.

It is the Commission's understanding that the essential purpose of H. R. 7125 is to make technical changes in the Federal excise tax laws, rather than to accomplish an increase in tax revenues. If such is the case the Commission would

urge that the committee might consider whether it desires at this time to increase the tax burden of investment companies in this way. It would appear that the bill may be placing an unduly heavy burden upon one segment of the investing public which might, in turn, adversely affect the free flow of capital to the markets.

The Commission prefers not to comment at this time upon the suggestion made by the National Association of Investment Companies that issuance of shares by open-end companies be exempt from the issuance tax. However, it does appear that investors in investment company shares can be kept in a position relatively the same as that of other public investors by setting the issuance tax on investment company shares at 4 cents as suggested by the association. This would likely result in some increase in tax revenue but it would not be of such substantial proportions as to create disparity among classes of public investors. This is particularly significant when it is considered that the increased tax would lay heavily upon the very great number of small investors who purchase investment company shares.

STATEMENT OF STEWART W. PIERCE, RICHMOND, VA., TO THE FINANCE COMMITTEE, UNITED STATES SENATE ON SECTION 202, H. R. 7125

1. This statement reflects my interest as an individual and a consumer, in support of the proposed excise return system on cigarettes upon condition of legislative requirement that relief to the manufacturers from present financial and administrative costs will be passed on to the distributive channels by a reduction in manufacturers' price.[1]

2. The present financial and administrative costs of the stamp system are estimated to be "many millions of dollars," and more specifically as approximately $8 million annually.[2] These costs, as well as the excise tax itself, are included in the manufacturers' price and are thus "recovered by the manufacturers from the ultimate consumer, who is the taxpayer."[3] Manufacturers, if relieved of these costs without a requirement or intent to correspondingly reduce their prices, would benefit by way of "increased income."[4] Up to this time no mention whatsoever has been made of a corresponding reduction in price. The purpose of the present language of section 202, H. R. 7125, was well described as follows: "All manufacturers could be helped if they were permitted to pay their excise taxes like all other companies paying such taxes—at the end of the month or when the product is sold instead of having to buy tobacco stamps in advance."[5]

3. With this background to the proposed legislation, it is suggested that all pertinent factors be considered, including the record of increased earnings of the manufacturers,[6] as contrasted with the narrow distributive margins,[7] and rising consumer prices. Reductions and increases in the excise tax have been heretofore of major influence in the establishment of manufacturers' price.[8] The elimination of the financial and administrative costs in connection with the excise tax should likewise be of influence in the reduction of price.

4. Two major points have been advanced in justification of the proposed return system to the benefit of the manufacturers: (*a*) "equitable treatment" of the manufacturers, and (*b*) consistency with "changing commercial practices."[9] Upon examination, neither of these points can be supported from the legislative record in the House of Representatives or by other data.

(*a*) Prior to the present system of collection, the tax statute required payment at time of manufacture. By administrative agency regulation and legislative

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[1] On May 19, 1958, a draft of this statement was forwarded to Senator Harry F. Byrd (Virginia) in support of a request that consideration be given to the introduction of an amendment to sec. 202, H. R. 7125, specifically providing for a price reduction requirement. On May 23, Senator Byrd advised that this request had been turned over to a staff member of the Joint Committee on Internal Revenue Taxation for his review and suggestion, prior to further reply. No further reply having been received, this statement is necessarily on basis of affirmative-conditional support of sec. 202. If and when an amendment is introduced, this statement should be considered in full affirmative support thereof.

[2] P. 540, hearings, House Ways and Means Committee, on Excise Tax Technical and Administrative Problems, October 1955.

[3] P. 602, above hearings.

[4] P. 541, above hearings.

[5] Statement of Senator Robertson (Virginia), Richmond Times-Dispatch, Richmond, Va., May 18, 1958, p. 30-A.

[6] First quarter, 1958, sales and earnings of the R. J. Reynolds Tobacco Co. were 7.5 and 20.6 percent, respectively, over first quarter, 1957 (Business Week, May 3, 1958, p. 32).

[7] Cox, Competition in the Tobacco Industry (1933), p. 258.

[8] Tilley, The Bright Tobacco Industry, p. 557.

[9] Ways and Means Committee Report No. 1337, p. 94; and Senate Finance Committee Report No. 1622.

action, the present system provides for payment of the tax by the manufacture by stamp at time of shipment, this constituting a "mitigation of burden."[10] Thus, the proposed system of payment (after shipment has been completed, and paid for) would not be merely the "equitable treatment" of the manufacturers, as contended by proponent companies and others. It would be, instead, a legislative grant of further privilege and further mitigation of burden, which, if enacted, should be to the benefit of those who presently bear the ultimate burden by payment of the financial and administrative costs as a part of price.

(*b*) Where in the legislative record is found any support to the claim of "changed commercial practices"? The evaluation in a major antitrust case of the pricing practices of the manufacturers as "being entirely arbitrary and justified on no economic ground" is as valid today as it was when originally expressed.[11]

Significant here as a key and unchanged practice in the distribution of cigarettes, the present (f. o. b. origin, freight prepaid) delivered pricing system was established in 1890,[12] in connection with the organization of the Tobacco Trust. It has been enforced by the present companies against purchasers desiring to arrange other terms of transportation and delivery. For example, during the period 1916 to 1920[13] and at the present time in 1958, the manufacturers have either refused to quote price on any basis other than the delivered formula, or have quoted price f. o. b. origin identical to the delivered price. As a current matter, the actions of the manufacturers are directly opposed to and serve to defeat the provisions of Armed Services Procurement Regulations, which were significantly amended to facilitate efficient and economical procurement of military purchases from the specific industry discussed here, among others.[14]

5. The excise tax on freight transportation was recently repealed by the Congress. Effective August 1, 1958, the cigarette manufacturers will be relieved of this cost (in excess of $600,000 annually[15]) under the mandatory delivered price system. Is this present cost passed on to purchasers as a part of price? If so, as a precedent to the return system relief of costs, the manufacturers should be expected to reflect the freight tax savings by reduction in price. Otherwise a windfall to the manufacturers will result from the continued collection and retention of the nonexistent freight tax.

6. The combined costs of the stamp excise system and the freight excise tax were imposed by congressional action, and are passed on by the manufacturers to purchasers. Legislative action in eliminating these costs should likewise impose the certainty that the manufacturers will pass on the relief from these costs by appropriate price reduction.

7. This combined relief is substantial in the aggregate, in terms of millions of dollars, and could be reflected by minor reduction in the unit price (per 1,000 cigarettes) of the manufacturer to the distribution level. The only hope or prospect that the ultimate consumers will benefit in time from the relief inherent in the above referenced legislation is to be found in the clear requirement of reduced manufacturers' price. Otherwise the Congress will have enacted dual windfalls by endorsing the retention by the manufacturers of unjustified benefits.

T. W. SAMUELS DISTILLERY,
Deatsville, Nelson County, Ky., *July 19, 1958.*

HON. HARRY F. BYRD,
Chairman, Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: May I thank you for your kind acknowledgment of the receipt of my letter to you of mid-June. It was out of respect for the expressed wishes of your committee that the scheduled hearings be abbreviated, that in my writing (which embraced our petition for your support for H. R. 7125, as

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[10] 290 U. S. 383, p. 386.
[11] 147 Fed. 2d 118, affirmed by U. S. Supreme Court (1946).
[12] Mund. Government and Business, p. 361; testimony of James B. Duke, May 9, 1901, hearings, U. S. Industrial Commission.
[13] 13 F. Supp. 445 (1936) and Court of Claims cases referred to therein.
[14] ASPR 1–306.2, as amended July 1955, following inquiry of the Senate Small Business Committee to the Department of Defense (Assistant Secretary for Supply and Logistics), on possible antitrust implications of previous regulation.
[15] Truckload and carload freight charges in 1956 over $20 million. Does not include substantial charges for less-truckload and less-carload shipments. (Motor: Bureau of Transport Economics and Statistics, ICC, Statement 5718; Rail: Table 7, p. 38, pt. I: Transport Statistics in the United States, 1956, ICC.)

passed by the House of Representatives, and more particularly the provisions, as written, relating to the much needed extension of the bonding period), I stated that I would hold myself available for oral testimony at the hearing, should you express a wish for such an appearance.

Accordingly, on July 15, 16, and 17, believing that this legislation was most vital, not only to the future stability of an entire industry, but also to the health of our own little independent company, and those similarly situated, I came to Washington and studiously listened to those who oratorically presented their respective views. May I, Senator, in all frankness, lay before you the reactions of my lay mind, to what I there heard and observed; that which in a great measure sounded in the main like "yesterday's newspaper."

As I have heretofore informed you, our company enjoys membership in the Distilled Spirits Institute—and with due modesty—that I personally serve as a member of the board of directors of that association. Through years of experience, as a distiller (daily confronted with matters relating to the production of whisky, the storage of bulk whiskies, the financing of this production, and with the selling and advertising of our company's product, and all the many other problems which an executive of a small distillery must resolve), and through the experience acquired through serving as a member of the board of directors of the Distilled Spirits Institute, I do feel that I have gained full cognizance of the views of the various segments of the distilling industry.

With the knowledge, thus obtained from daily experience, and after careful consideration of all that was said at the above mentioned hearings before your committee, I find nothing which would merit a departure from my views, heretofore expressed to you, in effect as follows:

"The sorely needed relief from the 'force out' problems of the obsolete 8-year bonded period can best be accomplished through the adoption by Congress of H. R. 7125, in that very form as unanimously approved by the Members of the House of Representatives."

As one of the smaller independent distillers, our company made a full disclosure to the United States Tariff Commission and to your committee of all pertinent facts anent our inventories of older bulk whiskies. Through the passage of H. R. 7125, as presently written, we will be permitted to face the future with an assured opportunity for growth and this will give to our employees, many of whom have made distilling their life's work, an opportunity for continuous employment.

We do respect the great demands which are made upon your committee and the many important matters which are before your worthy body. We do not wish to unduly extend our remarks by embellishing the thoughts heretofore conveyed to you in our communication of June 10. For your convenience, should you wish to review our prior expressions (which at this writing is fully expressive of our thinking of this present day), we enclose a copy of that writing.

Thanks to you, Senator Byrd, and to the members of your committee for your patience and for your interest in our cause. The 2 long years of study consumed in the House of Representatives, in bringing forth this Excise Tax Technical Changes Act presents a great step forward. We small businessmen in the distilling industry are in great need of your help and the immediate relief which will be available when H. R. 7125 becomes a law.

The passage of this act will enable us to go forward—unshackled by any further limitations on the out-of-bond provisions of the law.

Again, our sincere thanks,

Respectfully yours,

T. W. SAMUELS DISTILLERY,
By S. L. WESTERMAN, *President.*

PHILADELPHIA, PA., *July 20, 1958.*

Hon. HARRY E. BYRD,
Senate Finance Committee, Senate Office Building:

As one of the industry's smallest distillers and the only independent distiller left in Pennsylvania we wish to express to you and your committee our appreciation for the time and attention given our industry's problems.

It was our desire to appear as a witness, but out of deference of the committee's wishes to limit witnesses, we did not do so. However, we did file a statement which sets forth our position of wholehearted support of H. R. 7125 as passed by the House.

It seemed to us that several of the witnesses tried to make it appear that this bill would benefit only Schenley. This we categorically deny to be so as we know of many small companies, including our own, that will be greatly benefited by passing H. R. 7125 as now written.

We ask your support of this bill.

Respectfully yours,

S. S. GLASS,
President, Penneo Distillers, Inc., of Pennsylvania.

BARDSTOWN, KY., *July 10, 1958.*

Hon. HARRY F. BYRD,
Senate, Washington, D. C.:

Re hearing on H. R. 7125, Excise Technical Changes Act of 1957. As persons vitally interested and affected, we strongly reiterate our opinion that it should become law unamended.

The 8-year regage proposal by Distilled Spirits Institute, of which we are a member, is heartlessly cruel and arbitrary. It provides effectively for the tax payment of barreled air, whereas the law now properly imposes the tax only on spirits in existence.

The dialectics that developed this outrageous and ruinous idea are un-American and smell like caviar. We will appreciate your support of H. R. 7125 in its present form.

THE WILLET DISTILLING CO.,
THOMPSON WILLETT, *President.*

THE WILLETT DISTILLING CO., INC.,
Bardstown, Nelson County, Ky., July 10, 1958.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: Thank you for your letter of July 11, in which you notify me that you would be unable to hear by verbal statement at the committee hearing this week.

It is regrettable in this connection that the spokesman for the Distilled Spirits Institute implied in his statement that he represented the sentiments of all of the members.

Not only do we disagree with his position, but we have certain knowledge that there are other members who disagree with it. As a matter of fact, we believe that a majority of distillers disagree with it.

We are in favor of the extension of the bonded period to 20 years simply because it is a matter of simple justice that this be done. It makes the excise tax on whisky just what it should be. It is a revenue measure, and it should not be the punitive executive of a distiller who has not found a market for some whisky which has reached the end of the bonded period.

The new law should apply to all whisky, both that now in existence and future production as well. The amendment proposed that whisky 8 years old should be then regaged, and the tax paid later on on the evaporated contents should be further amended to provide that the unfortunate distiller should be presented with a Government pistol and official authorization to commit the American equivalent of hara-kiri. The justice of the first part of the amendment would then be tempered by a like mercy in the second.

With best wishes and appreciation for your consideration, we are,

Very truly yours,

THOMPSON WILLETT, *President.*

PHILADELPHIA, PA., *July 10, 1958.*

Hon. HARRY E. BYRD,
Senate Finance Committee, Senate Office Building,
Washington, D. C.

We attended the hearing on title 2 of H. R. 7125 but did not appear as witness. However, we filed a statement in full support of the bill as it is now written. As a result of attending the hearing we would like to add these observations to that statement.

First, the passage of this bill would not benefit only one company as claimed by some, but will benefit all segments of our industry, especially small company such as ours.

Second, passage of this bill will stabilize our industry and make it possible to create more revenue in the form of corporate and income taxes.

Third, passage of this bill would create no competitive advantage for any company in the sale of premium whisky over 8 years' old as is possible for all domestic companies desiring to enter this field to purchase their requirements on a free and open market, with plenty of old whisky available at prices less than younger whisky.

Fourth, passage of H. R. 7125 would make it possible for American distillers and bottlers to enter the premium over 8-year-old market that is now the monopoly of foreign shipment.

Fifth, passage of this bill will help small business to secure financing not now available because of the present forecout law.

Sixth, commingling or consolidation alone will not help those of us who have not been able to produce whisky during this trying period.

For these reasons and for those expressed in our previous statement filed with your committee, I entreat your support of H. R. 7125 as passed by the House.

Respectfully yours,

LOUIS FORMAN,
Proprietor, Louis Forman & Co.

NATIONAL DISTILLERS & CHEMICAL CORP.,
New York, N. Y., July 18, 1958.

Concerning H. R. 7125

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: In the course of the hearings before your committee on July 15, 16, and 17, 1958, there was considerable testimony and discussion in respect of the provisions of section 5006 (a) (2) of the above bill which would extend the bonded storage period for distilled spirits from 8 years as provided in existing law, to 20 years. The provisions of the House bill would apply retroactively, i. e., apply to existing stocks as well as to future production. As you are aware, the liquor industry generally is favorably disposed to the passage of the bill as it passed the House, except as to the provisions of section 5006 (a) (2) referred to.

Senator Kerr and other members of the Finance Committee expressed interest in knowing the volume of aged whisky owned by individual companies, to aid them in arriving at a conclusion and a decision as to the legislation. With the thought in mind that such information in the case of National Distillers & Chemical Corp. would be of help to the committee in its endeavors, we are submitting in this communication, for the confidential information of the committee, the inventory position of our company in this regard.

National Distillers owns, as of June 30, 1958, the following quantities of 6- and 7-year-old whiskies which are on storage in barrels in its bonded warehouses:

	Original proof, gallons
Between 6 and 7 years old	2,712,000
Between 7 and 8 years old	5,023,000
Total	7,735,000

Of these quantities it is estimated that 6,439,000 gallons may be disposed of to meet normal market demands before reaching the 8-year force-out age.

National Distillers & Chemical Corp. is, and has been for many years, a member of the Distilled Spirits Institute and subscribes to the statement made on behalf of the institute by Dr. Dan L. Street at the public hearing.

Very truly yours,

R. E. JOYCE, *Vice President.*

STATEMENT OF CHARLES R. OREM, CHAIRMAN EXCISE TAX ADMINISTRATION SUBCOMMITTEE, TAXATION COMMITTEE, THE NATIONAL ASSOCIATION OF MANUFACTURERS

Since 1952, the association, through its tax committee's subcommittee on excise tax administration, has been conducting studies and supporting activities looking toward a comprehensive revision of the excise-tax provisions of the Internal Revenue Code.

We, therefore, are most pleased to have this opportunity to express our support for the Excise Tax Technical Changes Act, H. R. 7125.

In view of the extensive hearings held by the Subcommittee on Excise Taxes of the House Ways and Means Committee and the widespread agreement on the provisions of the pending legislation, we heartily concur in the judgment of the Committee on Finance in holding only brief hearings in the interest of achieving enactment at this session of Congress.

The bill is designed to remove inequities in present excise-tax law and to improve its administration without having a substantial revenue effect. The exhaustive investigation conducted by Representative Forand and his subcommittee assures that the bills provisions deal with situations which in the interest of fairness and good administration require remedial legislative action. Therefore, we strongly suggest to this committee that the benefit of doubt in regard to any provision of the bill be resolved in favor of its retention in the legislation.

One of the most needed and meritorious provisions is section 115, which provides limited extension of the principle of constructive pricing already in the code.

A tax on business operations may be levied in good conscience only when it is designed to leave competing producers in relatively the same position after imposition as before. While complete equality in application may not always be attainable, there can never be justification for use of expedient rationalizations to avoid all reasonable effort to achieve this end.

Although the present provision for constructive pricing in the case of manufacturers selling directly at retail is not widely used, it patently is necessary to avoid a substantial differential in tax between the normal situation in which a manufacturer sells to distributors and that in which a competitor sells only to ultimate consumers. It is equally necessary to avoid a differential in tax in the situation where a manufacturer sells to retailers although the normal method of distribution in the industry may be selling to wholesalers. Section 115 of the proposed legislation seeks to correct the competitive inequities which arise in this situation under present law.

It may be helpful to give a simple illustration of the kind of discrimination which exists under present law. Manufacturer A distributes its entire output of a taxed product through independent wholesalers, and the base of the tax is, of course, the price charged such wholesalers. Manufacturer B, a competitor of A, distributes 25 percent of its output through independent wholesalers and 75 percent through an unincorporated wholesaling division. The tax base with respect to this 75 percent of the output of manufacturer B would be the price charged by the unincorporated division to independent retailers, thus placing manufacturer B at a serious competitive disadvantage with manufacturer A.

Section 115 simply provides, in effect, that if (1) selling to wholesalers is the normal method of distribution in the industry and (2) in a given case such as that of manufacturer B, sufficient sales are made to independent wholesalers to insure the bona fides of the prices charged (this is readily determinable mathematically), manufacturer B would be entitled to base the tax on sales through its unincorporated division on the highest price charged independent wholesalers.

Thus the tax paid by manufacturer B would be comparable to that paid by manufacturer A and both would be competing on an equal footing. This would obviously be the fair result, and would carry out the basic concept of a manufacturers' excise tax which is to tax the sale by a manufacturer *as a manufacturer* rather than as a wholesaler.

The Treasury Department has stated that the proposed section 115 attempts to define a normal or equalizing price as the price to large volume wholesalers. But this is not the concept of section 115 which would base the tax on the *highest* price charged independent wholesalers.

The Treasury also apparently foresees administrative problems and possible controversy in attempting to establish a constructive price. But no serious

problem could arise in establishing a constructive price which is simply the *actual invoice price* on sales to independent wholesalers.

It has also been stated that section 115 would fail to achieve equity in all cases and in support of this contention the situation is cited of one manufacturer which sells a large part of its output through wholesalers who perform only a limited distribution function. However, a survey made among 595 manufacturers indicates that this case is *unique* rather than typical and the problem of this manufacturer, moreover, can readily be solved by a simple amendment to section 115, that proposed by Senators Martin and Hickenlooper.

We therefore strongly support retention of section 115, perfected as provided in the Martin-Hickenlooper amendment.

We appreciate the willingness of the committee to take up H. R. 7125 in the midst of a busy schedule, and urge your favorable action on the legislation as a whole.

STATEMENT OF BYRNE LITSCHGI, COUNSEL FOR FEDERAL EXCISE TAX COUNCIL, ON H. R. 7125

H. R. 7125 represents a major step in the comprehensive revision of the technical and administrative povisions of the Internal Revenue Code relating to Federal excise taxes. This meature provides for the first general revision and recodification of the excise-tax laws in 26 years. Despite the several hundred clarifying sections in its 429 pages, this much-needed modernization of the excise-tax laws involves an estimated revenue loss of only $15 million, or less than one-fifteenth of 1 percent of total excise-tax revenues. This is a negligible price to pay for the major savings in compliance and enforcement costs to taxpayers and the Treasury alike.

The bill represents 8 years of study by taxpayer groups and Government tax officials, and reflects 2 years of public hearings, legislative drafting, and consideration by the Ways and Means Committee in closest cooperation with Treasury and Internal Revenue Service officials.

Title I of the bill contains the first overall technical revision of the general excise-tax provisions since 1932, the year when a great many of these provisions were adopted. In addition to numerous changes in virtually all classes of the miscellaneous excise taxes, the provisions relating to the communications and documentary stamp taxes, and the important credit and refund provisions have been entirely rewritten.

Title II of the bill is concerned with the provisions of the code relating to the taxes on distilled spirits, wines, beer, tobacco products, and firearms, and is not a subject of this statement.

Again it should be emphasized that there is in effect no substantial revenue loss involved in this legislation. It is essentially a bill to improve the administration of a much-neglected area of the tax law. The bill would modernize the taxes on—

(*a*) retailers by more precisely describing articles subject to tax;

(*b*) manufacturers by simplifying administrative procedures in the processing of credits and refunds;

(*c*) communication companies by introducing new collection procedures; and

(*d*) those subject to stamp taxes by adopting clear-cut statutory requirements eliminating the ambiguities existing in present law.

The council was formed with the major purpose in mind of improving the administration of these excise tax laws and H. R. 7125 would contribute a great deal to this purpose. Title I of the bill, while not correcting all of the problems in the excise tax field (other than alcohol and tobacco), is a substantial step toward bringing up to date the administration of these taxes.

Particular reference should be made to section 115 relating to constructive sale price for manufacturers excise taxes. The manufacturers tax is imposed on the manufacturer. One manufacturer should not pay more or less tax than another because of the use of a different system of distribution—such discrimination is now the case and section 115 goes a long way toward correcting such inequities and removing many of the problems in this area.

The council feels with particular reference to the improvements in the retailers and manufacturers fields that the bill should be favorably reported by the Senate Committee on Finance.

PROPOSED RECLASSIFICATION OF TELETYPEWRITER EXCHANGE SERVICES IN H. R. 7125

Statement submitted in writing by the Association of American Railroads in lieu of a personal appearance before the Finance Committee of the Senate in opposition to the proposed reclassification of teletypewriter exchange services as set forth in proposed section 4252 (d) of section 133 of H. R. 7125

The reclassification for Federal tax purposes of communication services proposed by H. R. 7125 would create new, unintended, and uneconomic discriminations as between types and methods of communications employed by common carriers in their internal operations.

Since the first Federal excise tax on communications was imposed as a war measure 40 years ago, it has been recognized by the Congress that common carriers, especially railroads, have peculiar, vital, operational needs with respect to communications, as well as particular responsibilities with respect to the maintenance of a strong transportation service in peacetime as well as war. Consequently, Congress has always provided, in effect, "No tax shall be imposed [for communications services] utilized in the conduct, by a common carrier * * *, of its business as such." See section 4253 (f), IRC (1954).

It is recognized that H. R. 7125 attempts to eliminate an asserted discriminatory effect of the communications excise tax. The railroad industry, more than any other, is sympathetic with this objective, having felt the anticompetitive force that an excise tax which affects the costs of affording services can inject into normal competition.

It is submitted that the complete elimination of excise taxes with respect to the communications services used by common carriers would best preserve true economic competition, leading to the most efficient employment of communications services by the railroads.

In any event, the present exemption from the communications excise tax provided for common carriers should not be disturbed.

Section 4251 of the Internal Revenue Code of 1954 imposes a tax on amounts paid for communication services or facilities, as follows:

Taxable service:	*Rate of tax (percent)*
(*a*) Local telephone service	10
(*b*) Long distance telephone service	10
(*c*) Telegraph service	10
(*d*) Leased wire, teletypewriter, or talking circuit special services	10
(*e*) Wire and equipment service	8

Amounts paid for (*d*) or (*e*), however, by a common carrier in the conduct of its business as such, are exempted from such tax by the 1954 code and have been for years. H. R. 7125, however, proposes to change this long established statutory exemption.

H. R. 7125 (85th Cong., 1st sess.) would modify the above by substituting in place of (*d*) 2 categories described as "Teletypwriter exchange service" and "Wire mileage service," each taxed at 10 percent. Common carriers would be exempted from the tax on "Wire mileage service" but not exempted from the tax on "Teletypewriter exchange service," the latter being described as "any service where a teletypewriter (or similar device) is connected (directly or indirectly) to an exchange operated by a person engaged in the business of furnishing communication service, if, by means of such connection, communication may be established with any other teletypewriter (or similar device)."

Teletypewriters are used with all other forms of communications in the internal operations and business of common carriers, as such

A large railroad property is comprised of many freight yards, passenger stations, shops, and offices all connected together by a narrow right-of-way. The right-of-way may extend from Chicago to New York, to New Orleans, to Texas, to the west coast or to almost any point you can name. In any case, each major railroad property is a huge dynamic transportation system spread over a large part of the country. Only by means of fast, dependable communication can such a farflung property be operated efficiently.

The communication facilities of such a railroad must be capable of providing contact between all points on the railroad having need for such contact. The facilities must have capacity to handle peak communication without undue delay. They must be instantly and always available.

THE MOST IMPORTANT CIRCUITS

It is generally agreed that the most important communication circuits on a railroad are those directly employed in the operation of trains.

There are various methods employed in directing the movement of trains ranging from the use of timetable and train orders to traffic control systems (commonly called CTC) where the train proceeds as directed by signals, over routes lined up by automatic operation of switches from a centralized control point. In all systems the train movements over a section of the railroad such as a district, are under the jurisdiction of a dispatcher.

To function efficiently a dispatcher must have as much information as possible concerning train movements and conditions in his territory. Often the time of receipt of information or dispatch of orders is of the utmost importance. Even in CTC territory full and complete information is required by the dispatcher in order to properly manipulate signals and switches. An unchanging light on the CTC board will tell the dispatcher that a train is stalled but only communications can tell him why it is stalled and what can be done to get it moving again.

In modern practice the dispatcher is provided with a high-grade circuit for his exclusive use in issuing train orders and instructions regarding train movements. This circuit is connected into each way station in his territory. Train radio or inductive carrier is now frequently used to provide a communication link between a way-station operator and the train crew with facilities to connect these stations to the dispatcher's circuit as needed.

The handling of trains and cars once they reach terminal areas is also facilitated and expedited by adequate communications. By radio an incoming train may be advised of arrangements for handling as it approaches the yard and thus save time by moving right into the track assigned. Wheel reports transmitted by teletype from a departure yard to the receiving yard at the train's destination and at intermediate yards enables the yardmaster at those points to prepare plans and instructions for handling the train in the most expeditious manner. Such plans would concern switching to be arranged, advice to connecting lines, servicing of perishable commodity and livestock cars and similar matters. Advance notice of such requirements will assist in prompt handling of cars, a matter of utmost importance especially in these days of keen competition.

Another important function of communication in connection with train and car handling has to do with reconsigning and tracing of cars. To perform such services most efficiently and expeditiously, appropriate railroad personnel must have exact information on location of all cars on the system. As an indication of how well railroad communication officials are modernizing facilities, many railroads are installing or have installed mechanized car reporting systems. In these systems a punched teletype tape is made from waybills at the point of origin and transmitted by teletype to a central car accounting office. At this point the received tape is fed to a converter which prepares punched cards from the information on the tape. These cards fill two requirements (*a*) speed of posting, and (*b*) full accessibility of information on all cars.

Teletypewriter service may be obtained in different ways, with possibly different tax consequences under H. R. 7125

As generally used, teletypewriter exchange service means that the subscriber rents from the telephone company the teletypewriter machine which includes a wire connection to the telephone company's switchboard handling teletypewriter exchange service. This switchboard has available to it connections to exchanges of the same telephone company or other telephone companies which in turn have connected to it other subscribers with leased teletype machines. The telephone company operator receives from the sending teletypewriter machine operator a specific call for a connection to a teletype machine at some remote point. The telephone company's operator then, by means of the switchboard facilities, connects the two machines together by means of communications circuits which would be available to all users of the teletype system. After the connection has been set up, the sending operator is notified and the transmission begins. Charging for the call starts at the time the sending operator is notified that the connection is complete. Charging stops at the time the sending operator notifies the telephone's company's operator that the transmission has been completed. The telephone company's operators then break the wire connections from the various switchboards that have been involved in the connection.

In some cases a different arrangement is made. That is, a railroad at which a sending machine is located may lease from the telephone company wires

between switchboards of that company or associated companies, with the thought that the operator at the exchange on request by the sending operator may select one of those leased circuits for connection to the sending teletype machine, with a similar connection to be set up by a telephone company operator at the receiving end of the leased wire circuit. Under such circumstances, it might be construed under the proposed bill that such service was "teletypewriter exchange service," even though no specific charge would be made for the individual calls placed over the leased wire circuit, which circuit would be leased for certain specific hours of the day. The telephone company operator would then be performing only the service of connecting the circuits together, but it would perform no function in connection with the assessments of costs to the users. Under such conditions the teletypewriter machines might either be leased from the telephone company or might be owned outright by the company requesting the service depending upon the tariffs of the telephone companies involved.

A leased wire circuit would seem to differ from the last described system in that the wire leased from the telephone company would terminate for operating purposes only in equipment on the premises of the operator of the teletypewriter equipment and would be under the control of such operator at all times. Such a circuit would not be readily available to an operator or employee of the telephone company, although such circuit would necessarily be carried through the main terminating frame of the telephone company.

A careful reading of the report of the Ways and Means Committee concerning H. R. 7125 seems to indicate an intent by that body to tax teletypewriter exchange service in those situations wherein subscribers to such a service are connected with other third-party subscribers through some sort of telephone exchange. With this intent there can be no quarrel. To the extent, however, that H. R. 7125 imposes the tax when, as is the case with the railroads, teletypewriters are used within the component parts of a given railroad system, it seems perfectly clear that such is without the basic intent and is patently wrong. In such circumstance, there is no need "to correct excise-tax inequities and competitive disparities" which the Ways and Means Committee of the House stated, in its report with respect to this bill, to be its primary purpose (p. 1).

Where, as described in the preceding paragraphs, a railroad subscriber is using the teletypewriter facility in the conduct of its common carrier business as such, that is, in its internal operation as a railroad as distinguished from its communication with the general public, no tax should be imposed.

RECOMMENDATIONS

It is recommended, therefore, that the excise-tax exemption with respect to teletypewriter service which is presently granted common carriers by the Internal Revenue Code of 1954, and which has been retained by every Congress since the first excise tax on communications was imposed in 1918, be continued in effect without change.

Withdrawal of that exemption could only result in the imposition of an uneconomic and unproductive tax and in discouraging the use by the railroads of the most efficient available communications service. It is not believed that any such result was intended nor that the language should permit any such result by construction. In order to assure that this will not obtain and to carry out what is believed to be the true intent of the proposed measure, it is recommended that section 4252 (d) of section 133 of H. R. 7125 be amended to include the following clarifying sentence:

"As used in the preceding sentence, 'exchange' does not include a connection used by a common carrier for the transmission of communications to or from a connecting common carrier, or between points on its own system."

STATEMENT OF POSITION OF GEORGE R. FRANKOVICH, EXECUTIVE SECRETARY, MANUFACTURING JEWELERS & SILVERSMITHS OF AMERICA, INC.

This association, representing the majority of the manufacturing jewelers of this country, wishes to voice its approval of H. R. 7125 in its present form.

This position in no way compromises the position of the association, however, in advocating immediate and outright repeal of the discriminatory excise tax on

the products of this industry. Our position follows this logic: that if, in spite of the discriminatory, business depressing effect of the excise tax on these products, it is still to be continued, then H. R. 7125 is of some assistance in its administration.

The Treasury Department has on several occasions attempted to change the definition of the term "sold at retail" as it appears in sections 1051 and 2400 of the Internal Revenue Code of 1939 to "sales not for resale." Representatives of the Treasury Department before the Subcommittee on the Federal Excise Tax Laws of the Committee on Ways and Means of the House of Representatives submitted testimony advocating a narrowing and distortion of the term "sold at retail" in the manner outlined above. The present bill, H. R. 7125, does not contain the Treasury's recommendations in this regard. It is advocating that these recommendations of Treasury continue to be disregarded, and that the term "sold at retail" remain unchanged.

I. BACKGROUND INFORMATION WHICH LED TO THE TREASURY RECOMMENDATION THAT THE TERM "SOLD AT RETAIL" BE CHANGED TO A "SALE NOT FOR RESALE"

A. In *Nathan Gellman et al.* v. *United States* (236 Fed. (2d) 87), the United States Court of Appeals for the Eighth Circuit reversed a decision of the United States district court, Minnesota (120 Fed. Suppl. 291), which had sustained the position of the Government that, in applying the retailer's excise taxes imposed by sections 1051 and 2400 of the Internal Revenue Code of 1939, the term "sold at retail" is equivalent to "sale for purposes other than resale." The court's decision held that sales of jewelry and luggage to various fraternal and church organizations, taverns, concessionaires, and operators of games for use as prizes, and to industrial firms for use as premiums or awards to employees and particular customers were not "retail sales" under the Internal Revenue Code and were therefore exempt from the excise tax.

B. It was held that sales made by Gellman for the foregoing purposes were not retail sales. They were not acquired by the purchaser in order to satisfy his own personal wants but rather for business purposes—as stimulants to the sale of other goods, to increase attendance at functions, to compensate employees, etc. Therefore, Gellman was not responsible for collection and payment of the jewelry or luggage excise tax on its sales falling into this category.

C. In United States District Court for the Eastern District of Wisconsin (citation C. A. 6015, Nov. 19, 1956), *Louis, Ned E. Basil* a torti *D/B Wisconsin DeLuxe Co.* v. *United States*, the court ruled that the facts were similar to the Gellman case and in that the sales "were not for resale" in the meaning of the code, the company was entitled to full refund of taxes paid.

II. THE ASSOCIATION'S POSITION

Shortly after the Gellman decision was announced, we understand that the Treasury Department proposed legislation which was introduced as H. R. 12421 which would change the Internal Revenue Code in a manner which would tax all transactions made of products that are ordinarily subject to the excise tax for other than resale.

A. The obvious intent of Congress in levying a tax on jewelry at retail was because of the ordinary nature of such a sale, to satisfy a personal want, in this case a want that, under the wartime circumstances present, and the pressing need for revenue, might justify a penalty in order to satisfy revenue requirements. All types of sales selected for this tax had one thing in common, they were sales to satisfy a personal, and in wartime, dispensable, desire.

B. A deliberate effort was made to exclude from excise taxation retail sales of products which ordinarily satisfied a business need or an organizational purpose[1] and sales in which the purchaser had a utilitarian objective, rather than the objective of satisfying dispensable personal desire.[2]

C. Congress contemplated that many sales not for resale such as those made to further legitimate business or organizational needs are not ordinarily regarded as retail sales.

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[1] Badges and emblems worn to signify membership are nontaxed if of base metal but taxed if of precious metal. Athletic medals and trophies are not taxed of base metal, are taxed if of precious metal.

[2] Base metal flatware is not taxed, hollowware is, sterling flatware is taxed. Jewelry for religious purposes is tax exempt.

Mr In Roland Co. v. *Walling*, Circuit Court of Appeals, Fourth District, No. 45, October 8, 1955—decided January 28, 1956—the decision reasoned:

"11. The debates in Congress show an intent to restrict the word 'retail' to such transactions with ultimate consumers as are commonly carried on at local dry goods, butchering or grocery stores (p. 672).

"12. This is confirmed by the general usage of the word 'retail,' which makes a distinction, not merely between the size and volume of sales but also between types of purchasers. It relates to sales to ultimate consumers, as distinguished from those who buy to resell or to use for business needs (p. 673).

"13. Government usage makes the same distinction on the basis of the use for which the goods are purchased (p. 674).

"In general usage the noun 'retail' means 'the sale of commodities in small quantities or parcels; opposed to wholesale.' The verb 'retail' means 'to sell in small quantities, as by the single yard, pound, gallon, etc.; to sell directly to the consumer; as to retail cloth or groceries.' Webster's New International Dictionary, Unabridged (2d edition, 1938).

"In the suggested use of the word 'retail' as opposed to the word 'wholesale,' a distinction appears not merely between the size and volume of the sales but between types of purchasers. For example—'Wholesaling includes all marketing transactions in which the purchaser is actuated solely by a profit or business motive in making the purchase.' 'Retailing includes all marketing transactions in which the purchaser is actuated solely by a desire to satisfy his own personal wants or those of his family or friends through the personal use of the commodity or service purchased.' (Beckman and Engle in Wholesaling Principles and Practice (1937), p. 25.)

"Similarly the Encyclopedia of Social Sciences states that 'The distinguishing feature of the retail trade * * * consists in selling merchandise to ultimate consumers' (vol. 13, p. 346), whereas wholesaling is said to cover sales 'to a retailer, a wholesaler or an industrial consumer so long as the purpose of the customer in buying such goods is to resell them in one form or another or to use them for business needs as supplies or equipment' (vol. 15, p. 411).

"Governmental usage makes the same distinction on the basis of the use for which the goods are purchased. The Bureau of the Census states in its definition of 'wholesale' that 'in general, the distinguishing characteristic is that goods sold at wholesale are to be used for business purposes (such as materials for further processing and fabrication, merchandise for resale unchanged, etc.), rather than for personal or household consumption.' United States Census of Business 1939, Instructions to Enumerators for Business and Manufactures (p. 18). (Also vol. I, Retail Trade, p. 1; vol. II, Wholesale Trade, p. 1.) It classifies as 'wholesale sales,' sales of goods or merchandise 'to trading establishments of all kinds, to institutions, industrial, commercial and professional users, and sales to governmental bodies' (ibid.). The Bureau of the Budget, in its Standard Industrial Classification Manual, likewise classifies 'wholesale trade' to include 'all establishments or places of business engaged primarily in selling merchandise to retailers, to industrial or commercial users, or to other wholesalers * * *' (vol. II—Nonmanufacturing Industries 1942, p. 35). It defines 'retail trade' to include 'establishments engaged in selling merchandise for personal or household consumption and rendering services incidental to the sales of goods' (ibid.). Similarly the Social Security Board, in its Industrial Classification Code (vol. I, Description of Industries 1942, pp. 99–100), prepared for use of the Board and State agencies administering employment security legislation, distinguishes between wholesale and retail establishments on the basis of whether the goods they sell are to be used for business purposes or for personal or household purposes.

"'Thus, many establishments are engaged in selling goods which have only an industrial or business market, e. g., establishments engaged in selling production machinery, freight trailers, oil-well drilling machinery and equipment, etc. These establishments are not retail establishments within the meaning of section 13 (a) (2) since they do not sell regularly to the general consuming public' (Interpretative Bulletin No. 6, par. 11, 2 C. C. H. Labor Law Service, 32, 106)."

III. SUMMARY

A. The present interpretation of the term "sold at retail" probably exempts a considerable number of jewelry sales which are made by various organizations for legitimate organizational or business purposes. The purchase of these com-

modities is by no means to satisfy the personal wants of the purchaser; nor is their intent to consume these articles for their own satisfaction. These sales were made as incentive awards, sales premium and for the encouragement of participation in an organizational event.

B. The type of sale that common English usage would dictate was intended to be covered, is clear and has been often defined. The factors that are commonly considered in defining the term "retail" are absent in most of the types of sales in which this association is interested.

C. The Government, in debates in Congress, through its courts, through its various commissions including the Bureau of the Budget, Social Security Board, etc., has clearly established over a period of years and in consideration of many eventualities, the definition of the word "retail." The proposal supported by the Treasury Department which would contort and broaden this definition is both contrary to its common usage, to its interpretation by Government and to the usage intended when excise taxes were clearly defined in the court as being "retail" taxes.

It is therefore recommended that those sections of the Internal Revenue Code bearing on this subject and having been interpreted by our courts in several instances, remain unchanged.

THE DELAWARE & HUDSON CO.,
New York, N. Y., July 15, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: The Senate Finance Committee, of which you are the able chairman, has before it for consideration the Forand bill, H. R. 7125, which would correct some inconsistencies in the tax laws and which would result in a very small revenue loss to the Treasury.

One of the inconsistencies in the present law is the distinction made between par value and no-par-value shares and the documentary stamp taxes imposed on no-par-value shares upon original issue and upon transfer. This disparity has maintained since the Revenue Act of 1917. At that time, of course, the issuance of no-par-value shares was a rarity, but the situation has changed so that presently there are many issues of stock without par value. There are probably more issues with an artificial par value.

The purpose of the latter is, of course, designed to avoid the penalty imposed upon no-par-value shares. As an example, the tax on a sale of 100 shares at $100 per share would be 6 cents if the shares carry a $100 par value. But the tax would be $6 if the shares are of no-par-value. The shares might have the same actual or market value, but the tax imposed on the no-par-value shares would be 100 times the tax imposed with respect to the $1 par value shares.

Our company has outstanding shares of no par value because we think that par value is a misleading and artificial value which confuses many shareowners. There is only one real value and that is market value, because even book value is artificial and could rarely be acquired in liquidation. However, the owners of no-par-value share are penalized wherever such shares are transferred. This inequity, we believe, should be corrected and we urge that your committee at the present session of Congress approve H. R. 7125 and recommend its enactment at the current session of the 85th Congress.

Yours very truly,

WM. WHITE.

GREEN VALLEY SWIMMING CLUB, INC.,
Reisterstown, Md., July 16, 1958.

MRS. ELIZABETH B. SPRINGER,
Chief Clerk, Senate Finance Committee,
Washington, D. C.

DEAR MRS. SPRINGER: This is to record our interest in favor of sections 131 and 132 of bill H. R. 7125.

We are a club, consisting of 135 families, whose primary purpose is to provide swimming facilities with emphasis placed on family enjoyment as a unit.

We feel the intent for taxing club membership dues was directed against clubs more social in nature and not clubs such as ours where families of modest means enjoy the very minimum in way of facilities.

Sincerely yours,

M. E. SHOEMAKER, *President.*

SILVER SPRING, MD., *July 14, 1958.*

Senator HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

MY DEAR SENATOR BYRD: I regret that I will not be able to attend the hearings on the excise-tax bill which contains material of interest to all of us who are members of community swimming pools. However, I would like to see inserted in the record for these hearings an excerpt from some of the material which we presented during the House hearings of 2 years ago.

We who are members of community swimming pools have strong feelings about the necessity of relieving the lower middle income group, whose members comprise the mainstay of these community pools, from what we consider a tax primarily directed at the country-club set, and only by circumstances including groups such as ours.

We would deeply appreciate your consideration of the points made in the attached letter.

Sincerely,

EDWARD E. OPPENHEIM.

OAKVIEW RECREATION CORP.,
Silver Spring, Md., December 21, 1956.

Hon. AIME J. FORAND,
Chairman, Subcommittee on Excise Taxes, Committee on Ways and Means,
House of Representatives, Washington, D. C.

DEAR MR. FORAND: The Oakview Recreation Corp., a community swimming pool, speaking for itself and two similar organizations in the Washington area, ask your support in obtaining an equitable, effective date in the proposed repeal of a swimming pool excise tax.

Money collected for construction of these nonprofit community pools is presently subject to a 20 percent excise tax under section 4241 of the Internal Revenue Code of 1954. Section 132 of H. R. 12298, 84th Congress, 2d session, would repeal this tax. It is our impression that a subcommittee of the House Ways and Means Committee, which recently held hearings on the bill, favors repeal.

There is no question that community swimming pools have been a wholesome addition to the American scene.

They represent a healthy "do it yourself" tendency of families getting together with neighbors to get things done, without looking to the Government for help.

They provide the kind of recreation that ties families together; that creates a spirit of togetherness, the heart of our way of life.

They tend to curb the gnawing problem of juvenile delinquency.

And so repeal of the excise tax on community swimming pools would help to encourage and nurture this youngest of American institutions, an institution that already has proved its worth.

Yet the selection of an effective date for this tax relief is the key to whether repeal of the excise tax would help existing community pools, or not help them at all.

It must be remembered that these pools have been financed by subscription from lower middle-income families who no doubt experienced quite a bit of difficulty raising the $150 to $250 needed as their share of the cost of construction.

It should be remembered, too, that the mushroom growth of community pools during the past year was conditioned in part by the expectancy that Congress would grant tax relief. There was every reason for this expectancy, for H. R. 10113, 84th Congress, 2d session, introduced last March, contained an effective tax repeal date of January 1, 1956.

However, the content of H. R. 10113 has since been incorporated in H. R. 12298, and a new effective date has been established as a date following enactment.

Finally, it must be remembered that this new effective date would not benefit in the least the many community pools constructed this past year. Instead, it

would place many pools in the position of reassessing their members in order to gain a sound financial basis of operation, for some of these pools had been counting on tax relief in estimating their costs.

The primary objection to January 1, 1956, as an effective date, seems to be the administrative difficulty in processing excise tax refunds. Generally, this would be a valid objection, for how could persons entitled to a tax refund be located and identified?

But this is not the case with community swimming pools.

Pools built during the past year are easily identified. Also, these pools do maintain accurate membership lists, so that persons who have paid the tax are readily identifiable. Further, refunds could be made with no administrative difficulty at all to the swimming pool associations rather than individual members, provided the pools obtained releases from all their members, permitting this money to be used for the general benefit of all members.

We are enclosing precise language which we feel would do justice to existing community swimming pools, without imposing administrative difficulties on the Treasury Department.

Sincerely yours,

EDWARD E. OPPENHEIM,
General Counsel.

Present wording of section 132 (d) (2) of H. R. 12208, 84th Cong., 2d sess.

"(2) Subsection (b) of section 4243 of the Internal Revenue Code of 1954, as added by subsection (b) of this section, shall apply only with respect to assessments paid for construction or reconstruction begun on or after the effective date specified in section 1 (c) of this act. Subsection (c) of such section 4243, as added by subsection (b) of this section, shall apply only with respect to amounts paid on or after such effective date."

Recommended wording of section 132 (d) (2) of H. R. 12208, 84th Cong., 2d sess.

"(2) Subsection (b) of section 4243 of the Internal Revenue Code of 1954, as added by subsection (b) of this section, shall apply only with respect to assessments paid for construction or reconstruction begun on or after January 1, 1956. Subsection (c) of such section 4243, as added by subsection (b) of this section, shall apply only with respect to amounts paid on or after the effective date specified in section 1 (c) of this act."

SYLVANIA ELECTRIC PRODUCTS, INC.,
Washington, D. C., June 4, 1958.

Hon. EDWARD MARTIN,
United States Senate, Washington, D. C.

DEAR SENATOR MARTIN: In 1941, as a wartime measure, electric-light bulbs and tubes were subjected to an excise tax levy of 5 percent, and this was increased to 20 percent exective April 1944.

Beginning 1947, Sylvania initiated action for the repeal of this tax—Sylvania being a middle-sized producer of light bulbs, with 2 much larger companies and approximately 15 smaller ones. We had a degree of success in 1954 when this tax was reduced to 10 percent, but have failed in succeeding years to have it eliminated completely.

One of the peculiar technical problems involved is that the two larger producers sell to distributors and retailers on consignment, whereas we and the smaller manufacturers just cannot afford that kind of merchandising; and, of course, the independent distributors and retailers who purchase on an outright basis instead of being supplied on consignment have a tax investment in their floor stocks of bulbs at all times, whereas those who merchandise via consignment have a tax obligation only after the product is sold to the ultimate consumer. Obviously, therefore, we and the smaller manufacturers who sell on an outright basis have an obligation to refund the floor stock taxes paid on inventory on hand at time of reduction or repeal of the tax.

I worked very closely with members of the House Committee on Ways and Means in both the initial and current sessions of the 85th Congress. When it became obvious that there would be no public hearings on these taxes, a very short brief of the salient points was prepared for friendly members of that committee for possible executive session use, but, of course, as you know, that

committee approved a 1-year extension of excise and certain other taxes late in May.

I understand that H. R. 7125 and, perhaps, other suggestions are being considered by the Senate Finance Committee as related to certain excise taxes, and submit, as explained in multiple copies of the aforementioned brief, that attention to and consideration of the ridiculous excise levy on light bulbs, with floor-stocks refund provisions, would be a timely, beneficial, and not very costly action.

Enclosed, also, is suggested possible language for use in consideration of repeal of this levy, and, for background, a copy of my statement before the Ways and Means Committee way back in 1950—the important points of which still hold.

Your consideration of this matter as your committee deliberates on these taxes will be most greatly appreciated. Thank you, and best wishes.

Sincerely,

A. L. MILK.

EXCISE TAXES—LIGHT BULBS

Strictly as a wartime measure, electric light bulbs were subjected to an excise tax, effective October 1941. Since light bulbs are a necessity in the home and a standard item of business expense in commerce and industry, they should not now be so taxed.

Light bulbs are produced nationally by some 17 to 20 manufacturers, with more than 80 percent of the output and sale being accomplished by 2 large manufacturers. To those two, the light-bulb business is much less important than it is to the smaller and medium-sized producers whose principal industrial activity is light bulbs.

The two larger manufacturers consign light bulbs to commercial distributor and retail outlets. Obviously, the smaller producers cannot afford that type of distribution and, thus, they are placed in a very trying, competitive predicament, since the distributor and retailer outlets which purchase on an outright basis have an excise-tax investment on their light-bulb purchases in advance of sale, whereas merchants operating on consignment have a tax obligation only after sale to the consumer has been accomplished.

The cost of collecting, administering, and paying light-bulb excises is a hardship on the smaller light-bulb producers. A medium-size producer, for example, in the past year, had to absorb costs approximating $100,000 for the year for this administrative requirement, and it is safe to assume that a still smaller producer would find such costs more difficult to absorb, relatively. Were these smaller producers of light bulbs relieved of this excise-tax burden, it is reasonable to assume that equivalent cost dollars would be available to them for research and development work, and plant and equipment improvement, in the important field of related electronics activities.

Everyone needs light. The Government's sponsorship for the extension of electric power throughout the country would be enhanced by relieving all electric-power consumers of a luxury tax on light bulbs if these excises were terminated.

When excise taxes were first imposed (1941) upon light bulbs at a rate of 5 percent, the tax was absorbed by the manufacturers. The rate was increased to 20 percent, effective April 1944, and was reduced to 10 percent in 1954. The current 10 percent tax is passed on to the consumer as a part of his net cost, and it is recommended that the distribution trade be refunded the equivalent of his excise-tax investment on floor stocks at the effective date of recommended repeal.

Budgetary estimates of light-bulb excise-tax collections anticipated for fiscal 1958 are from $26 million to $28 million—less than one-half of 1 percent of the anticipated total of all excise-tax collections—and as a luxury tax improperly levied against light bulbs. It is further estimated that, since probably in excess of 65 percent of floor stocks in the distribution chain are on consignment, excise-tax refunds on floor stocks on which tax was paid at time of billing would not exceed $7 million to $8 million. To the extent that light-bulb costs are deductible as business and industrial expense, the tax would be recovered in income taxes.

It is believed that, in the current economic situation, complete repeal of excise taxes on light bulbs and tubes, with floor-stock refund provisions, would be a genuine benefit through savings to all consumers, to those unemployed and on short work schedules, and, simultaneously, a genuine stimulus to all business and commerce, and especially the smaller light-bulb producers.

A BILL To reduce excise tax on electric light bulbs and tubes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4131 of the Internal Revenue Code (relating to tax on electric light bulbs and tubes) is hereby amended, effective with respect to articles sold on or after _____ _____, 1958, by striking out "10 percent" and inserting in lieu thereof "5 percent".

SEC. 2. That section 6412 of the Internal Revenue Code (relating to floor stocks refunds) is hereby amended as follows:

(a) By relettering subsections (c), (d), and (e) as (d), (e), and (f), respectively.

(b) By inserting after subsection (b) the following new subsection:

"(c) ELECTRIC LIGHT BULBS AND TUBES.—

"(1) IN GENERAL.—With respect to any article on which tax has been imposed under section 4131, upon which Internal Revenue Tax at the rate prescribed in said section has been paid, and which, on _____, 1958, is held by any person and intended for sale, or for use in the manufacture or production of any article intended for sale, there shall, subject to such regulations as may be prescribed by the Secretary or his delegate, be credited or refunded to the manufacturer or producer of such article (without interest) an amount equal to so much of the difference between the tax so paid and the tax that would have been paid if the applicable rate had been 5 percent, as has been paid by such manufacturer or producer to such person as reimbursement for the reduction of the tax on such articles, if claim for such credit or refund is filed with the Secretary or his delegate prior to _____ _____, 1958, based upon a request for reimbursement submitted by such person to the manufacturer or producer of such article prior to _____, 1958.

"(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No person shall be entitled to credit or refund under this subsection unless he has in his possession such evidence of the inventories with respect to which he has made the reimbursements described in paragraph (1) as the regulations under paragraph (1) prescribe."

(c) By striking from subsection (d) (as so relettered) "sections 4061 and 4081" and inserting in lieu thereof "sections 4061, 4081, and 4131"; and, further, by striking from subsection (d) (as so relettered) "subsections (a) and (b)" and inserting in lieu thereof "subsections (a), (b), and (c)."

UNITED STATES SENATE,
COMMITTEE ON PUBLIC WORKS,
July 17, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR BYRD: Enclosed is a brief presentation submitted to me by Mr. Erle Cocke, Jr., vice president of Delta Air Lines. It refers to a proposed amendment to H. R. 7125 with respect to removing the transportation tax for furlough travel by air for servicemen.

As you know, the existing law grants such an exemption for travel that does not cost more than 2.5 cents per mile. As air travel is considerably more expensive than either bus or railroad, the addition of a tax for the serviceman probably eliminates air travel in many cases.

It is my intention to submit an amendment for consideration by the committee on this subject. I would like to request that the enclosed statement be included in the record of the hearings on H. R. 7125.

With kindest regards, I am,

Very sincerely,

EDWARD MARTIN.

(The amendment referred to was subsequently introduced and identified as No. 20, 7–18–58–C in committee calendar.)

THE TRAVEL TAX LAW SHOULD BE AMENDED TO REMOVE THE DISCRIMINATION WHICH NOW EXISTS AGAINST THE SERVICEMAN ON FURLOUGH WHO GOES HOME BY AIR

In its present form section 4263 (e) of the Internal Revenue Code provides an exemption from the transportation tax for furlough travel by servicemen in uniform provided that the fare paid for such travel is not more than 2.5 cents

per mile. This limitation denies servicemen the use of air travel, tax free, since airline fares are higher than 2.5 cents per mile.

There are approximately 1,600,000 servicemen stationed in the United States and the average serviceman is stationed approximately 800 miles from home. These servicemen made, during 1957, approximately 1,200,000 trips home on official leave, furlough, or pass. Of this total, only 450,000 of such trips were made by air. In view of the substantial distance that the average serviceman is from home, it is obvious that more servicemen would travel by air to their homes were it not for the fact that if they did so they would have to pay not only the higher fare charged by the airlines, but also the transportation tax as well. It is estimated that the average taxpayment on furlough and pass travel amounts to about $8 on the round trip. In view of the limited finances of servicemen this is a serious deterrent to their use of air travel.

Since military furloughs and official leaves are frequently of short duration, to require them to travel only by ground transportation, if they are to receive tax exemption, in many cases prevents them from spending their furloughs at home. This is certainly contrary to the public interest and an unwarranted discrimination against servicemen. Many of the men in military service are away from home for the first time. Certainly everything should be done to enable them to return to their homes and spend their furlough time with their families wherever possible. The attached amendment would accomplish this result. It does not involve a substantial amount of revenue. On the basis of data released by the Department of Defense and studies conducted by the Air Transport Association the total annual revenue loss which would result from deleting from section 4263 (c) of the Internal Revenue Code the 2.5 cents per mile limitation would be approximately $4 million.

SOUTHERN RAILWAY CO.,
Washington, D. C., July 17, 1958.

Hon. HARRY F. BYRD,
United States Senate, Washington, D. C.

MY DEAR SENATOR BYRD: I understand that the Senate Finance Committee is now considering H. R. 7125, the Excise Tax Technical Changes Act of 1957.

Section 141 of the bill proposes amendments to section 4301 of the Internal Revenue Code of 1954, which imposes a documentary stamp tax upon the issuance of stock by a corporation, and section 4321 of the code, which imposes a Federal documentary stamp tax upon the sale or transfer of shares or certificates of stock in a corporation.

Some years ago, Southern Railway Co. common stock was reclassified from par to no-par-value stock, with the approval of the Interstate Commerce Commisison and the Corporation Commission of the State of Virginia. This was done in recognition of the fact that the par value of the shares issued many years before no longer bore any relation to the market value of the shares. If this change had not been made, and taking into consideration our recent stock splits, the par value of Southern Railway Co. common stock would now be $20 a share, whereas its actual value is approximately twice that on today's market.

Thus, we are one of the companies that presently has common stock without par value. Our stockholders pay the transfer tax on the basis of 6 cents per share, whereas if we were to assign the unrealistic par value of $1 to each share of Southern common, under present law we could reduce the stock transfer tax upon the sale of 100 shares of this stock from $6 to 6 cents. We regard this as a most unrealistic distinction.

We respectfully request you support the amendments to sections 4301 and 4321 of the Internal Revenue Code of 1954 proposed to be made in H. R. 7125.

Most sincerely,

CHARLES M. DAVISON, Jr., *Vice President.*

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
Washington, D. C., July 16, 1958.

Re fellowship amendment to H. R. 7125.

Hon. HARRY FLOOD BYRD,
United States Senate,
Washington, D. C.

MY DEAR SENATOR BYRD: I am writing to ask your support of the fellowship amendment to H. R. 7125 currently under consideration by the Senate Finance Committee of which you are chairman. As you know, the proposed amendment would exempt benefits held for scholarship and fellowship funds from Federal excise taxes. The proposed amendment reads as follows:

"Scholarship and fellowship funds.—Any admissions all the proceeds of which inure exclusively to the benefit of a trust or organization described in section 501 (c) (3) which is exempt from tax under section 501 (a) and which is organized and operated exclusively to provide scholarships and fellowships for study above the secondary level."

The fellowship program has been a nationwide activity of the American Association of University Women since 1890. In 1957 fellowship and international grants were awarded to 42 women in the United States and 38 women from foreign countries to carry on advanced study in this country as well as abroad.

As its part of this program, the Washington, D. C., branch of the American Association of University Women has sponsored a Latin American fellowship, which purpose is to promote friendly relations with women scholars of the Latin American Republics and to assist them to prepare for public service in their own countries. Since 1917 33 women from 15 Latin American countries have been the recipients of this fellowship and have carried out valuable research studies at the colleges and universities of the United States. From 1952 the AAUW Latin American fellows have come from Argentina, Brazil, Chile, Paraguay, and Peru. They have pursued graduate studies in the fields of food analysis and control in the United States, English language and literature, mental health, medicine, and library science. Their studies under the fellowship have been conducted at the Universities of Illinois, Iowa, Michigan, and Wisconsin, and at the Medical College of South Carolina, as well as at Simmons College in Boston, Mass.

As with all other fellowships offered by the AAUW, the Latin American fellowship is maintained by the voluntary contributions of our individual members. These contributions are largely received from the sale of tickets for several teas, concerts, and luncheons given throughout the year within the Washington branch. The proceeds from these functions, after deductions for expenses and excise taxes, go entirely to the Latin American fellowship fund. If these benefits were exempt from the excise tax there would be approximately 25 percent more of the proceeds available to be applied to the fellowship. Certainly such an exemption in these days of high educational costs would be a most valuable material assistance to a project which, I am sure you will agree, is a significant contribution to amicable relations with our Latin American neighbors.

For these reasons I hope that you will lend your support to the proposed amendment while it is under consideration by the Senate Finance Committee and that you will cast your vote in favor of it when it comes to the floor of the Senate.

Very truly yours,

MARY E. BRADSHAW,
President, Washington, D. C., Branch.

AMERICAN GUN DEALERS ASSOCIATION,
Washington, D. C., July 16, 1958.

Hon. HARRY F. BYRD,
Senate Office Building,
Washington, D. C.

DEAR SENATOR BYRD: A short time ago it was learned, as the result of a telephone conversation with Mrs. Springer, that the Dirksen amendment to the Mills bill was being held in abeyance by your committee and that it might be con-

sidered at the time your committee held hearings on H. R. 7125. We realize that because of the very heavy pressures which your committee and the rest of the Congress are facing at the present time, there is little likelihood that groups such as ours would have the opportunity to appear in support of the Dirksen amendment.

On February 27, 1958, General Parks wrote to you and the other members of your committee analyzing in detail the Dirksen amendment and giving it the support of the National Rifle Association of America. Without repeating the thoughtful and compelling reasons contained in General Parks' letter, our association would like to go on record as supporting the Dirksen amendment and urging that it be made a part of H. R. 7125. This amendment would eliminate several very troublesome provisions of the National Firearms Act which have plagued the gun dealers and collectors of this country. Therefore, we urge the favorable consideration of the Dirksen amendment at this time.

Very truly yours,

FRED B. RHODES, JR.
General Counsel.

AUSTIN, NICHOLS & CO., INC.,
New York, N. Y., July 8, 1958.

Hon. HARRY F. BYRD,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: I am president of Austin, Nichols & Co., Inc., producers, importers, wholesalers, and distributors in the wine and liquor business, principal offices in New York City. My business is what you might call a "big" small business.

If you would like to check further on me, I am an old friend of Gen. Alfred M. Gruenther, president of the American Red Cross, and also a good friend of Mr. A. Smith Bowman, Jr., of A. Smith Bowman Distillery, Sunset Hills, Va.

I am writing to ask you to vote in favor of extending the bonding period. My reasons for asking you to favor it are as follows:

1. I don't think any foreign country should have an advantage of us. In my opinion our Government is at no tax disadvantage if the bonding period is extended.

2. I am afraid because some big companies have a great deal of 1950–51 whiskies which will be forced on the market into this year and next year we may have some serious price cutting which would be very bad for our industry which is staggering under the $10.50-per-gallon tax now. The increase in the bonding period would eliminate this possibility. I do not believe that the people who have excessive supplies of whisky should get a trade advantage by being able to use a statement over 8 years on any whisky made prior to 1952.

Actually my company's stock of bulk whisky in the years mentioned is not excessive but I am in favor of increasing the bonding period because I don't believe we should be at a disadvantage as far as other countries are concerned and also I feel a serious price war which the 1951 force-outs might bring about if the bonding period is not increased.

From what I learn in the trade I guess you are hearing a great deal more about the pros and cons of this issue than you would like but I thought I would send along my views.

Yours respectfully,

THOMAS H. MCCARTHY.

HIRAM WALKER & SONS, INC.,
Detroit, Mich., July 10, 1958.

Re H. R. 7125

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: It is my understanding that the Committee on Finance, in view of its heavy schedule, is holding shorter hearings on H. R. 7125 than originally anticipated. With the view of conserving the committee's time, I am submitting this letter, in lieu of requesting the privilege of tsetifying in person, summarizing the views of this company and its affiliates on the provisions of the

bill dealing with the extension of the bonding period for distilled spirits. I would appreciate your inclusion of this letter in the hearings on the proposed legislation.

Efforts have been made to misrepresent the Hiram Walker position, and I should like to put on record our position so that no one can misunderstand it. At the outset I wish to emphasize that Hiram Walker is not opposed to legislation lengthening the period in which whisky may remain in bond before payment of the excise tax is required. Our position briefly summarized is this:

1. With respect to whisky produced after the effective date of bond extension legislation, there is no need whatever for a limitation on the bonding period. The proposed 20-year term contained in H. R. 7125, however, would be satisfactory.

2. With respect to whisky produced prior to the enactment of bond extension legislation, any retroactive application of the provisions to grant relief to such whisky should restrict the label age of such whiskies to an 8-year maximum. Unless this restriction on label age is provided, a few distillers who have not maintained reasonably balanced inventories would be given, in addition to postponement of tax payment, a completely unwarranted competitive advantage over the vast majority of companies which have kept their inventories within reasonable balance. There is no novelty in understatement of label age; in fact, the practice is recognized and provided for in current regulations. Far from violating any policy or legal principle, a restriction on label age is plainly required so that the legislation will be fair in its application to all members of the industry. Since the pending Forand bill (H. R. 7125) does not contain this needed restriction on label age, it should be amended in this respect.

In short, Hiram Walker favors bond extension. We are opposed only to retroactive application of bond extension to current stocks of whisky, unless there is the needed restriction on the label age of such relief whisky. Otherwise, the extension would give a marked benefit to a few distillers who have deliberately chosen to risk the hazard of force-out under the present 8-year period.

The members of your committee undoubtedly realize that under the present law a distiller who overproduces whisky can avoid or greatly diminish any problem of force-out by regularly bottling his oldest whisky first rather than bottling younger whiskies and allowing his older stocks to approach the 8-year force-out age. If a large distiller with numerous brands has permitted a serious force-out problem to develop, it seems inescapable that he must have deliberately accumulated older whiskies for competitive advantage by obtaining bond extension legislation without label-age restriction for whisky already in existence. Any distiller who advocates bond extension on existing stocks of whisky without restriction on label age is not alone concerned with freedom from force-out which the industry desires; a major concern of his is to obtain an unfair competitive advantage to the detriment of all those distillers who have maintained reasonably balanced inventories. We respectfully submit that any proposal such as H. R. 7125 in its present form, which does not contain a restriction on age claims for current stocks, is therefore completely unfair.

Our company is a member of the Distilled Spirits Institute and, as such member, supports the institute recommendations regarding H. R. 7125 which are presented in the statement of Mr. Dan L. Street, the institute's chairman.

Respectfully yours,

HOWARD R. WALTON, *President.*

AMERICAN HOME LAUNDRY MANUFACTURERS' ASSOCIATION,
Chicago, Ill., July 9, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Washington, D. C.

MY DEAR SENATOR: The American Home Laundry Manufacturers' Association in May, 1957, communicated to the Forand subcommittee its position with regard to excise tax computation.

Now it is our desire to modify that statement as follows:

1. We favor prompt and favorable action on H. R. 7125.

2. We are withdrawing our previously stated position that excise taxes should be computed (pursuant to sec. 115) on the lowest price charged

distributors, rather than the highest price as now included in the bills wording.

However, one of our members, the Maytag Co., has a special problem that requires certain corrective language which we understand to have minor or insignificant revenues effect but vital importance in equitably handling that particular problem. The company will present the details itself.

Subject to the above, AHLMA endorses H. R. 7125 and urges its prompt enactment.

Very truly yours,

QUENTHER BAUMGART, *President.*

SUNNY HILLS AQUATIC CLUB,
Walnut Creek, Calif., July 1, 1958.

Re H. R. 7215

Hon. HARRY F. BYRD,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: I am writing to you as president of the Sunny Hills Aquatic Club, a voluntary organization of some 125 Walnut Creek families who have constructed themselves a community swimming pool.

The membership of our organization are concerned with Senate passage of H. R. 7125, the Excise Tax Technical Changes Act of 1957, and particularly with section 132 (c) thereof. This section recognizes the community nature of family pools such as ours, as distinguished from commercial athletic clubs and entertainments, and specifically exempts noncommercialized community pools from the Federal amusement tax.

We are, of course, anxious to see section 132 (c) become law. Our family pool is not a commercial amusement on which an excise tax rightfully should be levied. In fact, our land-use permit specifically prohibits any commercialization of any kind. No person makes any profit from the operation of our swimming facility. We share the operating costs and have completed most of the construction work by our own voluntary nonpaid efforts.

There are more than a dozen community pools such as ours in the Contra Costa County area, many with large membership, all interested in this problem. We would appreciate any effort you desire to make toward a solution of this problem and toward expediting the passage of section 132.

Yours very truly,

HOWARD F. RHEA.

(Whereupon, at 12:15 p. m., the hearing was recessed, to reconvene at 10:20 a. m. Thursday, July 17, 1958.)

EXCISE TAX TECHNICAL CHANGES ACT

THURSDAY, JULY 17, 1958

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

The committee met, pursuant to recess, at 10:20 a. m., in room 312 Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Kerr, Douglas, Martin, Flanders, Malone, Bennett, Carlson, and Jenner.

Also present: Senator Morton.

Elizabeth B. Springer, chief clerk.

The CHAIRMAN. Please come to order.

You may proceed.

STATEMENT OF DAN L. STREET, CHAIRMAN OF THE BOARD OF DIRECTORS; ACCOMPANIED BY JOHN D. McELROY, ASSISTANT DIRECTOR, REPRESENTING THE DISTILLED SPIRITS INSTITUTE, INC., WASHINGTON, D. C.

Mr. STREET. I have been requested by various members of the committee to supply certain information for the record, and with your permission I would now like to do that.

First, I have here a list of the active members of the Distilled Spirits Institute. (See p. 225.)

Also, I have the board of directors of the Distilled Spirits Institute, indicating the officers of the institute at the present time. (See p. 212.)

I was asked to obtain and have obtained a list of the registered distilleries in the United States as issued by the Treasury Department and have indicated on this list whether that distillery is owned by a member of the Distilled Spirits Institute, so that you will know those companies that are members of the institute and the distilleries that they own and control. (See p. 226.)

There is one public record with respect to whiskies stored in warehouses in this country, and that is the Liberty Bank report with respect to Kentucky storage. (See pp. 230, 287.)

Senator KERR. You mean the storage that is just within the State of Kentucky?

Mr. STREET. Within the State of Kentucky only, Senator Kerr, and there is no public record with respect to storage of whiskies outside of Kentucky.

The CHAIRMAN. What is the Liberty Bank report?

28384—58——18

Mr. STREET. The Liberty Bank report has been put out for more than 20 years and it gives information that is obtained from the State of Kentucky with respect to whiskies stored in Kentucky warehouses.

The CHAIRMAN. Is that a State institution, the Liberty Bank?

Mr. STREET. It is a bank in Louisville, Ky. It is not a State institution—just the Liberty National Bank. I would like to file the latest of those reports of December 31, 1957, which shows all of the companies operating in Kentucky and the whisky that they own and had in warehouses on that date.

Senator KERR. In Kentucky?

Mr. STREET. In Kentucky.

The CHAIRMAN. Is that the only State that makes public that information?

Mr. STREET. That is correct, sir. If additional information is desired by the committee with respect to storage in other States that would have to be obtained from the Alcohol and Tobacco Tax Division because it is not available to us and I cannot supply it to you at this time. But this does cover the Kentucky storage and for the last 5 or 6 years some 65 to 70 percent of all of the whisky manufactured in the United States has been manufactured in Kentucky.

Senator KERR. That much of the stored whisky is stored in Kentucky?

Mr. STREET. The storage runs slightly over 5 percent, so 65 to 70 percent is manufactured there.

Yesterday I was asked concerning the relative standing of the different companies insofar as the amount of business transacted is concerned. The only public record that we have on that is the report of the Tariff Commission and I would like to file at this time a statement of the Tariff Commission as to the 7 top companies in this country in volume of business and the order of their rank, as found by the Tariff Commission in its recent investigation. That is the only public record that we have available as to the amount of business transacted by these various companies.

Senator, there was some confusion created yesterday by me, I think, and with your permission, I have a short additional statement that I would like to read, since I think it would clear up some of the misunderstanding that I created yesterday.

The CHAIRMAN. You may proceed.

Mr. STREET. Under present law whisky is taxpaid as the owner has a market for its sale, with the one exception that at the end of 8 years whisky must be taxpaid regardless of whether a market exists for its sale. The tax is $10.50 a gallon and if it is presumed that 40 million tax-gallons of whisky will be forced out of bond at the end of 8 years, the holders of the whisky will have an additional investment of $420 million with no immediate prospects of a sale to get a return of this investment.

This presents a tremendous financial problem which the owners cannot undertake and which would force them either to export the whisky or redistill the goods into neutral spirits at a considerable loss.

Some confusion seems to have arisen as to the proposals of the Distilled Spirits Institute which would prevent the owners from having to taxpay the whisky at 8 years of age and I would like to attempt to clear up that confusion.

As the law now stands when whisky is made it is put into a barrel and the barrel is stored in a Government-supervised warehouse. No tax is paid at this point.

The tax of $10.50 per gallon is paid when the whisky is withdrawn from the warehouse. However, the law further provides that at the end of 8 years the barrel must be withdrawn from the warehouse and the tax of $10.50 per gallon paid whether or not a market exists for the whisky.

The proponents of the retroactive provision of H. R. 7125 suggest that the law be changed so that the barrel may stay 20 years instead of 8, and that this apply to whisky already made as well as whisky made in the future.

As we have stated, the Distilled Spirits Institute agrees that the 8-year period be extended to 20 years but that this apply only to future production so as not to give a commercial advantage to such companies as have a large inventory of aged whiskies. Some companies do have a large supply of whisky that is becoming 8 years of age and they cannot meet the taxpayments when due.

To relieve the distress of such companies the Distilled Spirits Institute makes two suggestions: The first is the suggestion that a company be allowed to commingle whiskies with the resulting product taking the age of the younger whisky so commingled.

Senator KERR (presiding). Would it be so marked?

Mr. STREET. It would be.

Senator MALONE. What do you call that; is there a name for it?

Mr. STREET. We call it commingling of whisky.

Senator BENNETT. This is not blending?

Mr. STREET. It is not blending.

Senator MALONE. What is the difference between blending and commingling?

Mr. STREET. The two whiskies would be put together in a barrel.

Senator JENNER. You put them together, an 8-year old and a 4-year old.

Senator MALONE. What is blending?

Mr. STREET. Blending of whisky for the most part in this country results from a mixture of neutral spirits or alcohol and whisky.

Senator MALONE. Is there any difference in the age of the alcohol and the whisky—does it make any difference?

Mr. STREET. Alcohol does not have to be aged, while whisky does.

Senator MALONE. Why does whisky have to be aged if you wanted to sell it? I have seen whisky sold that was not aged at all.

Senator JENNER. You are right.

Senator MALONE. No law that makes you do that, is there?

Mr. STREET. No, sir; for practical purposes, whiskies do not mature until 4 years of age; and, therefore, practically all of the whisky sold in the country, that is legal whisky, sold is over 4 years of age.

Senator JENNER. I am glad you qualified that last statement.

Senator MALONE. It may be created illegally—it may be sold legally but created illegally?

Mr. STREET. Beg your pardon?

Senator MALONE. Sold legally but created illegally?

Mr. STREET. I do not know how that could be.

Senator MALONE. I understand that you live in Washington—you wouldn't know anything about the country.

Mr. STREET. To illustrate, a company can take a barrel of whisky almost 8 years old and mix it with a barrel of 4-year-old whisky. The resulting 2 barrels would both be 4 years old and there would be no forecout problem to result. Practically all companies needing relief would utilize the commingling proposal, since that proposal is simple to apply and easy to administer.

Senator MALONE. Let me ask you another question about the blending, what is the result in the taste? Would that be different if you blended it or commingled it? It would have an average age if you commingled, an average age of 8 and 4?

Mr. STREET. That is correct.

Senator MALONE. There would be a difference in the taste of the 4- and 8-year-old whisky. What would be the difference if you blended it?

Mr. STREET. The new whisky would have a different taste than either one of the two separate whiskies put together in the barrel.

Senator MALONE. The commingling would be different than the blending?

Mr. STREET. That is correct.

Senator MALONE. An average 4-year old, and an actual 4 years old, the difference between them. What would be the difference? Which would be the better?

Mr. STREET. Senator, when you mingle 8- and 4-year-old whiskies together then you would have a new whisky which would be a result of that mixture which would be different from either of the two whiskies that were mixed together.

Senator JENNER. But it would be a 4-year-old whisky?

Mr. STREET. It would be a mixture of 4 and 8.

Senator JENNER. Why do you call it 4 year?

Senator KERR. The proposal is to do that for tax purposes?

Mr. STREET. For tax purposes is our proposal.

Senator JENNER. There is no tax now on 4-year-old whisky.

Senator KERR. If he put the 8-year-old whisky in it and it became officially 4-year-old whisky there would be no tax.

Senator JENNER. You do not pay tax on 4-year-old whisky?

Mr. STREET. There would be no tax to be paid.

Senator KERR. Until you take it out of the bonded warehouse?

Mr. STREET. That is correct.

Senator BENNETT. You referred to mixing barrels. Would it be possible to take 45 gallons of 8-year-old whisky and put in 5 gallons of 4-year-old whisky and call it 4-year-old whisky; in other words, in your commingling proposal, are you talking about equal quantities?

Mr. STREET. No sir. There is a limitation in the proposal that at least 10 percent of the whisky would have to be one age or the other.

Senator BENNETT. Thank you.

Senator MALONE. That would be like 1 horse and 1 rabbit. [Laughter].

Let me clear up a question I asked in the beginning which you did not answer.

Mr. STREET. I am sorry, sir.

Senator MALONE. When you put the 8-year-old whisky in with the 4-year-old whisky you have sort of an average of age of whisky, don't you, whatever it might be?

Mr. STREET. You can term it that way. It is a new product.

Senator MALONE. Suppose you call that 4-year-old whisky——

Mr. STREET. That is our proposal.

Senator MALONE. Suppose it is 6 years old which would be the average. Then you have a 6-year-old blend. What would be the difference in the taste of that whisky?

Mr. STREET. Senator, I have tried to explain and obviously have not made myself clear that when you take an 8-year-old whisky and 4-year-old whisky and mix them together then you would add up with a new and different tasting product than either of the 2 products that went into the barrel.

Senator MALONE. You do not claim that it would be as good as a blend 6 years old?

Mr. STREET. That would depend upon the whisky and the circumstances of the blend because most blends in this country, Senator, have in them neutral spirits and they are not straight whisky blends. There are some straight whisky blends, but they are limited in number.

Senator JENNER. If some companies took 8-year-old whisky under your proposal, it only required 10 percent of the 4-year-old whisky, there would be a difference in taste between, we will say, 90 percent 8 year old and 10 percent of 4-year-old whisky or 80 percent of 8-year-old whisky and 20 percent 4-year-old whisky and right on up—there would be a difference in all of those cases?

Mr. STREET. There would be a difference depending upon the ratios of the whiskies commingled. I think that would be true.

Senator MALONE. You could not call it more than 4-year-old whisky?

Mr. STREET. That is our proposal for tax purposes, solely, in order to postpone payment of the tax.

Senator KERR. To postpone the payment of the tax?

Mr. STREET. Yes.

Senator MALONE. What you are proposing is to prevent someone to have more than 8-year-old whisky on the market. That is what your whole proposal is?

Mr. STREET. No, sir.

Senator MALONE. Explain why.

Mr. STREET. What our proposal is——

Senator MALONE. Why don't you want the lid taken off—you don't want it taken off—you said it 3 or 4 times, unless I misunderstood it.

Mr. STREET. That is correct.

Senator MALONE. Well, then, what I am trying to find out is if you don't put the other companies behind the eight ball you make them go back to 4-year-old whisky and put all of that 8-year old in it. Just explain why is that.

Mr. STREET. Senator, they would have the option of merchandising and commingling it, doing anything they want to. This would be a method whereby the tax would not have to be paid at 8 years of age.

Senator MALONE. I understand that, but they question about who was behind the eight ball, that is it.

Mr. STREET. I don't think that.

Senator MALONE. If commingling—I don't know anything about it—you have explained it now is that you can take the 8-year-old whisky which is better than 4-year-old whisky and mix it with the 4-year-old whisky and call it 4-year old?

Mr. STREET. That would be at the option, you understand, of the company if it so desired to do that, and so that the tax would not have to be paid on the 8-year-old whisky.

Senator MALONE. All I am trying to show is—and I think it is amply shown by your statement—that what you do not want is any whisky over 8 years old on the market?

Mr. STREET. Not of the present stocks, no, sir.

Senator KERR. Will you yield?

Senator MALONE. Yes.

Senator KERR. He is not opposed to having whisky that is more than 8 years old on the market. What he is opposing is changing the law now in effect which compels them to do one of these things: pay the tax on it, and take it out; redistill it and start over again, or export it.

His suggestion is a fourth alternative that would be available. If he didn't want to do one of these other things, then they could commingle and thus postpone the date of the required payment of the tax.

Senator BENNETT. He has another alternative method.

Mr. STREET. I have another alternative here.

Senator MALONE. What I wanted to point out is this, under any of these proposals the general public would be getting whisky they think is better, whether it is or not.

Senator KERR. This whisky on the market now you and I being teetotalers know that it is advertised that you can buy 16-year-old whisky, if you want to pay for it.

Senator MALONE. What brand?

Senator KERR. Give us the brands. I am familiar with the fact but not the identity.

Mr. STREET. I do not at the moment recall any domestic brand of whisky being sold as 16 years of age. There have been some.

Senator KERR. Are there some men here that can answer that question? What are the brands on the market in this country available to purchasers of whisky over 8 years of age?

Mr. STREET. There are imported brands.

Senator KERR. I understand, what are they?

Mr. STREET. They are Scotches—I named one yesterday, the Chivas Regal which is sold at 12 years of age. Ballantyne has one.

Mr. AVIS. My name is Mr. Avis. I am a director of the Alcohol and Tobacco Tax Division.

There are some brands of domestic whisky on the market that are more than 8 years old. The tax is paid on the basis of the 8-year age.

Senator KERR. And such brands are so advertised?

Mr. AVIS. Yes, sir.

Senator KERR. How about domestic brands?

Senator JENNER. What are the names?

Mr. AVIS. Beam has one.

Senator KERR. Do not put him in the position of giving a commercial here. [Laughter.]

Do not put him in that position.

Senator JENNER. How about the imported whisky? There are a lot of those, aren't there, that are over 8 years old?

Mr. AVIS. There are some. There are some. I would not say a lot. But there are a few.

Senator MALONE. What is this imported whisky, is it Scotch or bourbon, or both?

Mr. STREET. It is Scotch.

Senator MALONE. Is there any rye imported, and sold more than 8 years of age?

Mr. STREET. Not to my knowledge at the moment. I do not know of any imported rye whisky that is over 8 years of age.

I cannot say.

Senator MALONE. Isn't there a lot of rye whisky imported?

Mr. STREET. No, sir.

Senator MALONE. There is not?

Mr. STREET. No, sir.

Senator MALONE. You could furnish the record of rye imports, couldn't you?

Mr. STREET. I could get that from Mr. Avis and put it into the record. I would not have that information available.

Senator MALONE. Will you do that?

Mr. STREET. Yes, sir.

(The information referred to is as follows:)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, July 21, 1958.

MRS. ELIZABETH B. SPRINGER,
Clerk, Committee on Finance,
United States Senate, Washington, D. C.

DEAR MRS. SPRINGER: With reference to the questions asked by Senator Malone of the witness Dan Street at the public hearings on H. R. 7125 concerning the quantity of 8-year-old rye whisky imported into the United States from Canada, my inquiries disclose that there are no official statistics available relative to the age of whiskies imported into the United States.

Very truly yours,

DWIGHT E. AVIS,
Director, Alcohol and Tobacco Tax Division.

Senator CARLSON. Before we proceed any further, I have this one point. There was not only testimony yesterday but there was placed in the record advertisements showing what advantage might accrue to those who would have liquor over 8 years of age and sell it on that basis. If I understand this commingling would it not be possible for those same companies to advertise that they had commingled liquor that is over 8 years of age, 4 years, and 6, and still get a competitive advantage?

Mr. STREET. No, sir; because the provision is that the whisky would take the younger age for all advertising and force-out purposes.

Senator KERR. Unless you changed the law and they were advertising whisky that was more than 8 years old and it had not been paid at 8 years it would create a tax liability retroactively by their own action.

Senator JENNER. Why could they not advertise a 7-year-old whisky?

Senator KERR. They could.

Senator JENNER. How do you arrive at the figure of 4?

Mr. STREET. It is simply a proposal in order that the tax need not be paid. This is purely at the option of the distiller to do that. We are not trying to compel him to do it.

Senator JENNER. He could advertise the 7-year-old whisky if he wanted to?

Mr. STREET. Not if he had 4-year-old whisky in it. Not under the regulations as they exist.

Senator JENNER. If he had 90 percent of 8-year-old whisky and 10 percent of 4-year-old whisky he could not advertise it as average age of 7 year?

Mr. STREET. No.

Senator JENNER. My mathematics are bad then.

Senator KERR. It isn't a question of mathematics. It is a question of the effectiveness of the law.

Senator JENNER. Something has 90 percent of 8 years of age and something has 10 percent 4 years old, why should you advertise it as 4 years old?

Senator KERR. Because they would not have to commingle it with 4 year. If they wanted to advertise it as 7-year whisky they could commingle it with 7-year whisky.

Senator JENNER. But they still have to say 4-year-old?

Senator KERR. If they commingled with 4-year-old they would have to call it 4-year?

Mr. STREET. That is the proposal.

Senator KERR. They could commingle it with 6-year and 7-year-old under his proposal, but then they would have to take it out in 1 year instead of the additional 4 years.

Senator MALONE. In other words, if they took it out at 8 years of age, and next year they could call it 9-year-old whisky?

Senator KERR. Just pay the tax and take it out—no, no, they could not do that.

Senator MALONE. They could under the House bill.

Senator KERR. I do not know about the House bill. Whenever you take that out and and bottle it, it ceases aging.

Mr. STREET. Yes.

Senator BENNETT. They could take it out and leave it in the barrel, pay the tax—leave it in the barrel and then it becomes 9-year-old or 10-year-old whisky?

Mr. STREET. That can be done under the law as it exists today. Under the present law.

Senator JENNER. The present law?

Senator MALONE. It can be done under the House bill, too.

Mr. STREET. Yes. The difference between the House bill and the present law is that now you have to pay the tax at 8 years. And under the House bill you would not have to pay any tax.

Senator MALONE. That is exactly what you are for. You want to set the other back so they could not have 9-year-old whisky to advertise?

Mr. STREET. That is correct.

Senator DOUGLAS. I think the Senator from Indiana raised a very important question yesterday when he asked why you could not have the tax at the time of sale, rather than prior to the time of sale or any stated period.

I have checked with the staff, and subject to their check, I think that all of the manufacturers' excise taxes that I know of, at least, are levied at the time of sale. That is true of automobiles, true of tires which we heard about yesterday, of durable consumer goods, and of tobacco.

Why is not this a sound principle for distilled spirits as well?

Mr. STREET. We concede that to be a sound principle for production of whisky. Our only contention here is that in order to make that provision retroactive it would give a competitive advantage to certain companies that have large inventories of old whisky, whereas others do not. Therefore, we object to the retroactive application of it.

Senator DOUGLAS. If it is just, then what is the objection to its being just even though it may favor one company?

Mr. STREET. You would by legislation then confer an economic benefit on a few companies to the exclusion of all other companies in that industry.

Senator KERR. He takes the position that legislation that would favor 1 company, 1 unit of 1 group, and discriminate against others, would not be just.

Mr. STREET. That is not a just solution to this problem.

Senator DOUGLAS. Can we expect any law to affect all people equally?

Mr. STREET. It does up to the present time.

Senator JENNER. How about the prohibition law—how did that compare as to the domestic and foreign distilleries? Was that justice?

Let us be honest about it.

They put us out of business and the other companies went on making. Was that an unfair advantage?

Mr. STREET. I think so.

Senator JENNER. The kettle should not call the pot black.

Senator MALONE. It is customary to favor all foreign nations over American; isn't it?

Mr. STREET. No, sir; not in all things.

Senator KERR. The witness may proceed.

Mr. STREET. On the other hand, there may be a few instances where a company does not have younger whisky to commingle with the whisky approaching 8 years of age. This is, of course, our alternate proposal.

To meet this situation, the Distilled Spirits Institute made its alternative proposal which could be utilized in the following manner:

When a barrel of whisky becomes 8 years old it would have to be measured and the contents determined. That measure would fix the amount of tax that will have to be paid on that barrel whenever it is withdrawn from bond. However, instead of making the owner pay the tax at that moment, as the present law requires, we have suggested that he be allowed to defer payment until he is ready to market the whisky.

Undoubtedly the point that is confusing the committee is the difference between retroactive bond extension and our alternate suggestion and the answer is this:

Whisky always evaporates in a barrel. When the barrel is measured at the end of 8 years and the tax determined, that is the amount of tax that must be paid whenever the barrel is taken out. Therefore, since the barrel will suffer evaporation losses the owner will want to remove it at the earliest possible opportunity. Otherwise his evaporation loss will be at a rate not simply of the cost of manufacture alone but at the cost of manufacture plus the $10.50 per gallon tax. This incentive is great enough to cause the distiller to remove the whisky and sell it at the earliest possible date.

Incidentally, the question has been asked as to why bond extension is suggested at 20 years rather than have no time limit at all.

The suggestion of 20 years does not come from the distilling industry but as a Treasury Department proposal and as a practical matter whisky could hardly be left in the barrel after 20 years.

As to the alternative proposal which we have suggested, we have drafted legislation which would accomplish that purpose and with the permission of the committee I would like to offer this alternate legislation at this time.

Senator KERR. You may do so.

(The amendment is as follows:)

AMENDMENTS TO H. R. 7125 DESIGNED TO REQUIRE 8-YEAR REGAGE AS TO EXISTING STOCKS

1. Amend IRC section 5008 (a) (4), page 134, as follows:

"Designate present text as subparagraph '(A)' and add subparagraph '(B)' to read as follows:

"'(B) In the case of distilled spirits (other than distilled spirits which on July 26, 1936, were 8 years or more old and which were in bonded warehouses on that date) on deposit in an internal revenue bonded warehouse, or in transit thereto, on the date of enactment of the Excise Tax Technical Changes Act of 1957, no tax shall be abated, remitted, credited or refunded under this subsection in respect of losses of distilled spirits sustained by reason of leakage, evaporation or absorption while stored in wooden containers where such loss occurred after the expiration of 8 years from the date of original entry for deposit of such spirits.'"

2. Renumber present bill sections 207, 208, 209, 210, and 211 (beginning on p. 417) as sections "208, 209, 210, 211 and 212" respectively, and add new bill section 207 to read as follows:

"SEC. 207. LIMITATION ON LOSS ALLOWANCES

"Section 5011 (a) is amended by adding thereto paragraph (5) to read as follows:

"'(5) LIMITATION.—No tax shall be abated, remitted credited or refunded under this subsection in rspect of losses of distilled spirits (other than distilled spirits which on July 26, 1936 were 8 years or more old and which were in bonded warehouses on that date) sustained by reason of leakage, evaporation or absorption while stored in wooden containers, where such loss occurred after the expiration of 8 years from the date of original entry for deposit of such spirits.'"

Senator KERR. If there are no further questions you are excused.

Senator MALONE. I would like to ask a question.

Senator KERR. Proceed.

Senator MALONE. You have talked about imported whisky and domestic production. Take the whisky that is imported; you said you didn't think there was very much rye whisky imported, didn't you?

Mr. STREET. That is correct.

Senator MALONE. Is there very much bourbon whisky imported?

Mr. STREET. None that I know of.

Senator MALONE. Well then, it is mostly Scotch that is imported—from where?

Mr. STREET. From Scotland.

Senator MALONE. And Canada?

Mr. STREET. No, sir; I do not know of any Scotch whisky that is imported from Canada into this country. It all comes directly from Scotland.

Senator MALONE. Well then, whenever it comes here at what price generally speaking at the present time in the case of Scotch whisky, what price is paid—what do they pay in tariff on it?

Mr. STREET. It isn't paid on the price. It is paid on the gallonage.

Senator MALONE. Yes.

Mr. STREET. Both the tariff and excise tax are paid on the gallonage. And the prices of whisky would have nothing to do with it.

Senator MALONE. You are correct.

Well now, tell me what is the modus operandi of the method of importing this whisky? Is it brought in by the Scotch company?

Mr. STREET. No, sir. It is brought in by importers who hold import licenses granted by the Alcohol and Tobacco Division of the Treasury.

Senator MALONE. Now then, the American company then imports it?

Mr. STREET. That is correct.

Senator MALONE. Is there any other transaction in between the owners in Scotland and the American importer—is there any other in-between transaction?

Mr. STREET. No, sir. The whisky is shipped to the American importer by the Scotch producer.

Senator MALONE. Directly?

Mr. STREET. Directly; yes, sir.

Senator MALONE. There is no in-between operation, no third company or third organization has anything to do with it?

Mr. STREET. No, sir.

Senator MALONE. You are sure of that?

Mr. STREET. Yes, that is the law, Senator, because the law would require that the whisky be shipped to some company in this country holding an importers' license and it could not be handled in any other manner.

Senator MALONE. There is no in-between transaction to another company that might hold the license—it would be legal if a third person held a license?

Mr. STREET. If that third company had an importer's license. It could be shipped to any company that had an importer's license.

Senator MALONE. That is all I want.

Senator KERR. Thank you very much, Mr. Street.

Mr. STREET. Thank you.

Senator FLANDERS. Mr. Chairman, I wonder if I might intervene at this point, not to read but to place on the record a series of letters and depositions relating to other elements of this H. R. 7125, which I feel should get into the record. The persons themselves will not be here.

Senator KERR. You may, sir.

Senator FLANDERS. I would like to present them, Mr. Chairman. The first is a proposed amendment to the bill to provide a termination date for the excise tax on communications. This is received from Mr. J. A. Williams, of the New England Telephone & Telegraph Co.

Next I would like to present a statement of Mr. Murray B. Nelson, general attorney of the Maytag Co., Newton, Iowa, who on account of a different plan of distribution from other of the laundry equipment manufacturers suffers somewhat the same handicap that the direct distribution to retailers of the automobile tires manufacturers has as compared with those who deal through wholesalers.

Senator KERR. The gentleman from Maytag Co. appeared and made a statement.

Senator FLANDERS. I will omit that, then.

Senator KERR. If it is a different statement, it will be put in the record.

Senator FLANDERS. If it is the same statement, it does not go into the record. All right.

The next is a letter from Mr. Carroll Rikert, who is the business manager of Middlebury College in the State of Vermont, who asked to have technical changes in the bill, the exemption for manufacturers in retail excise taxes, transportation and communications, applied to privately supported institutions as well as publicly supported institutions.

And then a letter from Mr. Lester E. Waterbury, vice president, General Foods Corp., with relation to the excise duties on no par value shares as compared with shares having a par value.

A similar question relating to excise taxes on market value versus par value, will be brought up by Mr. Besse, the president of the Boston Stock Exchange in a telegram communication which is underway.

And I would next like to introduce into the record a telegram from Mr. Merrill Griswold, honorary chairman of the advisory board of the Massachusetts Investors Trust, with regard to the question as to whether the tax on the issue of shares of stock should be based on market value instead of par value. He believes that a special consideration should be given to the regulated investment trusts.

I likewise have a telegram from the Amory Parker, Inc., investors, of Boston, Mass., to the same effect. They are interested in the same matter.

I also have a statement which I am presenting on behalf of the American Association of University Women asking that the excise tax be not imposed on entertainment, or other undertakings used for raising funds for scholarships in colleges. That is one of their major activities, is in providing scholarships for women in universities and I would like to have that entered in the record.

And I would, also, like to have entered in the record a letter from Ted Anderson, a paraplegic, in support of an amendment introduced by Senator Knowland—this, I think, is not for this bill—this is for another bill, so I will lay that one aside.

Senator MARTIN. We will be glad to have you support that.

Senator FLANDER. I am in support of that.

And I wish to include also a communication from Harry Lee Coe.

Senator KERR. They will be made a part of the record.

(The documents referred to follow:)

PROPOSED AMENDMENT OF J. A. WILLIAMS, OF NEW ENGLAND TELEPHONE & TELEGRAPH CO.

AMENDMENT Intended to be proposed by Mr. ——— to the bill (H. R. 7125) to provide a termination date for the excise tax on communications, viz:

(a) The taxes imposed under subchapter B of chapter 33 of the Internal Revenue Code of 1954 (relating to the tax on communications) shall terminate as of midnight, June 30, 1959, subject to the provisions of subsection (b).

(b) (1) IN GENERAL.—Subject to the provisions of paragraph (2), subsection (a) shall apply with respect to amounts paid on and after the first day of July 1959.

(2) AMOUNTS PAID PURSUANT TO BILLS RENDERED.—Subsection (a) shall not apply with respect to amounts paid pursuant to bills rendered before July 1, 1959. In the case of amounts paid pursuant to bills rendered on and

after July 1, 1959, for which no previous bill was rendered, subsection (a) shall apply except with respect to such services as were rendered more than 2 months before July 1, 1959. In the case of services rendered more than two months before July 1, 1959, the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1954 in effect at the time such services were rendered shall apply to the amounts paid for such services.

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1. Excise taxes were imposed for the first time on local telephone service and transportation of property and persons at the beginning of World War II. Existing excise taxes on other communications services were increased manifold. The imposition of these new and increased taxes was to discourage use of services in scarce supply and essential to the war effort.

2. Members of Congress have acknowledged that these were wartime taxes which should be repealed. For example: Representative Doughton (Congressional Record, November 24, 1943, p. 9913); report of Senate Finance Committee (No. 1085, March 19, 1954); Senator Douglas (Congressional Record, June 20, 1958, p. 10724); Representative Hemphill (Congressional Record, June 26, 1958, p. 11182).

3. Congress has repealed (*a*) the tax on electrical energy and (*b*) the tax on transportation of property. Communications excise taxes are the only excise taxes on utility services that have not been repealed at least in part.

4. Telephone service is the only household utility service which is subject to Federal excise tax.

5. There is grave danger that the tax on communications service will become embedded in the permanent tax structure of the Federal Government. The failure of Congress to provide relief while repealing other taxes makes this danger more apparent.

6. Congress should place a termination date on the communications tax to show that it is still intended to be an emergency period tax—not a permanent tax.

7. A termination date would not affect Government revenues at this time. Congress could always extend the tax to the extent required by the Nation's welfare.

8. The argument that an expiration date has an adverse effect on sales does not apply to communication services. These services are a day-to-day necessity of both 38 million households and 6 million business establishments.

9. The present excise tax on telephone users is burdensome—about one-third of the average $51 tax borne annually by each telephone subscriber of the Bell System is for Federal excise taxes.

10. The tax is also discriminatory—no similar tax is paid by other services (except on transportation of persons).

MIDDLEBURY COLLEGE,
Middlebury, Vt., July 9, 1958.

Re college housing program bill, S. 4035, and excise tax technical changes bill, H. R. 7125.

Senator RALPH E. FLANDERS,
Washington, D. C.

DEAR SENATOR FLANDERS: On behalf of Middlebury College, I am writing to let you know how very greatly interested we are in each of the two above-captioned bills. I understand that H. R. 7125, which would extend to private colleges the exemption from manufacturers' and retailers' excise taxes, transportation tax, and communications tax has already passed the House of Representatives, for which we are very grateful, and awaits Senate action. Passage of this bill in the Senate would greatly assist us in spreading our already overstrained budget resources to meet the constantly rising costs which the inflationary economy is forcing upon us. We understand that this exemption currently applies to publicly supported institutions, and believe that in fairness it should be extended to include the privately supported institutions as well.

The college housing program bill, S. 4035, does apply equally to privately as well as publicly supported institutions. We have already benefited from this housing program through the construction of Stewart Hall Dormitory and the renovation of Hepburn Hall Dormitory, currently in progress on our campus. I hope very much that if you are in this vicinity and have not seen these projects

you will give us the pleasure of showing them to you. We have in prospect another application for a dining hall-student center building; and are obviously very much interested in seeing this program continue on the same basis which it has in the past.

Thanking you in advance for your interest and consideration, I am,

Yours sincerely,

CARROLL RIKERT, JR., *Business Manager.*

GENERAL FOODS CORP.,
White Plains, N. Y., June 27, 1958.

Re H. R. 7125.

Hon. RALPH E. FLANDERS,
Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR FLANDERS: I am enclosing herewith a copy of a letter I am sending today to Senator Byrd bespeaking favorable action by your Finance Committee on the above bill which, if it becomes law, will end the longtime discrimination against no-par shares of stock in favor of shares carrying a stated, but generally quite meaningless, par value.

It is, of course, our hope that what has been said in the letter to Senator Byrd will persuade both you and him that this bill should be reported favorably to the Senate by your committee.

Sincerely,

LESTER M. WATERBURY.

GENERAL FOODS CORP.,
White Plains, N. Y., June 27, 1958.

Re H. R. 7125.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR BYRD: Recent press reports have indicated that the Forand bill, H. R. 7125, for revision of excise taxes, may be scheduled for early consideration by your committee. It is hoped that this is so. While other legislative proposals may appear to be of greater near-term importance, this bill is such in nature and purpose as to merit early consideration with a view to the enactment of many, if not all, of its provisions prior to the expiration of the 85th Congress.

Before it was passed by the House of Representatives and referred to your committee last year, the provisions of H. R. 7125 had been the subject of study by the House Ways and Means Committee and its Forand subcommittee for a period approaching 2 years, and extended hearings had been held during that period. The bill represents the first coordinated effort since 1932 to effect a comprehensive revision of the excise-tax law, with emphasis upon clarification and improvement of administrative and technical provisions. According to the report of the Ways and Means Committee (H. Rept. 481), its enactment would result in a small revenue loss which, in the view of that committee, would be more than compensated for by increased fairness and equity and better administration of excise taxes.

Many, if not most, of the provisions of the bill are based upon recommendations submitted jointly by the staffs of the Joint Committee on Internal Revenue Taxation and the Treasury Department to the Forand subcommittee in January 1956, and are recognized as desirable by taxpayer groups. As good examples of such essentially noncontroversial provisions, I wish to mention two in which many of my business friends and associates share my interest. They are to be found in section 141 of the bill, which would amend sections 4301 and 4321 of the Internal Revenue Code so as to make the actual value of shares or certificates of corporate stock the base for the documentary stamp taxes imposed by those sections upon original issues and transfers, respectively, of such shares or certificates, and thus abolish the distinction now made between par-value and no-par-value stock in imposing such taxes.

The distinction between par-value and no-par-value shares should be abolished. It has been maintained without interruption since it was initially adopted in the Revenue Act of 1917. At that time, it was unusual, if not extraordinary, for a par value share to be issued for a subscription price or paid-in property value appreciably exceeding its par value. Since then, however, the situation has

gradually changed, so that nowadays shares, of common stock especially, are frequently issued at par values representing a fraction only of the subscription prices or property values paid in for them. It is not unusual for a stock of $1 per share par value to be issued or transferred for $25, $50, or more per share. Par value, in other words, has become a wholly artificial concept bearing no logical relation to the real values involved.

We are convinced that this development has been caused partly, perhaps primarily, by the documentary-stamp-tax distinction between par-value and no-par-value shares. The discriminatory effect of the distinction is manifest. For example: The tax upon the original issue of 100 shares at $100 per share would be 11 cents if the shares carry a par value of $1, and $11 if the shares are of no par value; and the tax upon the sale of such 100 shares at $100 per share would be 0 cents if the shares carry a $1 par value, and $6 if the shares are of no par value. Thus, even though the shares in each case have the same actual, i. e., market value, the tax imposed on the original issuance or transfer of the no-par-value shares would be 100 times that imposed with respect to the $1 par-value shares.

General Foods Corp., which was incorporated in Delaware in 1922, is one of a diminishing group of corporations which have their common stocks listed on national securities exchanges and which have not yet taken steps to change from no-par-value to par-value shares. Primarily because of the stock-transfer tax, however, we frequently receive inquiries from shareholders and others as to why we do not change to shares of a par value of $10, or $5, or even $1 per share. We have heretofore resisted proposals for such a change, not only because of our view that the transfer-tax levy upon a base keyed to par value has become outmoded and should be discontinued but, perhaps more important, because we think the assignment of a fixed par value to shares of stock, particularly common stock, involves grave and unnecessary risks of confusion and deception since the assigned value is totally unrelated to either market value or the value on the corporation's books.

The provisions here discussed are only two of the many provisions of the bill which are noncontroversial in nature and would unquestionably increase the fairness and equity of existing excise-tax levies. The study of such levies made by the Ways and Means Committee and its Forand subcommittees during both the 84th and the 85th Congresses has resulted in a voluminous record of their hearings and reports. It would be regrettable indeed for the bill to fail of enactment during the current session of the 85th Congress. My associates and I therefore urge that your committee consider and report the bill to the Senate, with or without committee amendment, but without delay.

Sincerely,

LESTER E. WATERBURY.

BOSTON, MASS.

Senator RALPH E. FLANDERS,
Senate Finance Committee,
Senate Office Building, Washington, D. C.:

Reference is made to H. R. 7125 and particularly to that section which provides for a revision of the method under which Federal stock transfer taxes are assessed. Adoption of the section in its proposed form will correct the long established but inequitable process of levying stock transfer taxes on the basis of par value. Proposed substitution calls for a charge of 4 cents a share for each $100 of market value. This procedure will not only be much fairer to all concerned but is estimated to increase the revenue from this sources to the Treasury Department by approximately 6 percent. I believe I speak for the investors of New England when I urge your committee to disapprove any proposal to raise the rate from 4 cents per $100 of value to any higher figure.

HARRY W. BESSE,
President, Boston Stock Exchange.

BOSTON, MASS., *July 14, 1958.*

Senator RALPH E. FLANDERS,
Senate Office Building, Washington, D. C.:

I understand there will be a meeting of the Senate Finance Committee, Tuesday, July 15, on H. R. 7125, regarding increasing excise taxes on investment company shares. Massachusetts Investors Trust feels strongly that the technical change

in H. R. 7125, which provides that the tax on the issue of shares of stock should hereafter be based on market value instead of par value should not apply to shares issued by regulated investment companies. This change would prejudice the interests of the many small shareholders in regulated investment companies, since it triples the amount of taxes payable.

In 1935, you will recall that President Roosevelt sent a message to Congress recommending higher estate and gift taxes and higher taxes on corporations and individuals. In this message he stated that investment companies which submitted to public regulation and performed the function of permitting small investors to obtain the benefit of diversification of risk should receive special tax treatment.

In 1936, a new revenue act was passed. It provided that regulated investment companies, if they distributed all their earnings, would be exempt from Federal income tax. In consequence, the tax burden on regulated investment companies, provided they distributed all their earnings, is no greater than it is on persons who invest in other savings mediums, such as savings banks (to the extent they distributed earnings), revocable trusts whether operated by individuals or by banks, or common trust funds operated by banks, or investors who use investment counsel firms. All these savings methods should be treated the same. Regulated investment companies, unlike these other mediums, have always been subject to the burden of the issue tax on their shares based on par value, but as they all have very low par values, they never felt that this was sufficiently discriminatory to warrant protest.

This proposed change of the basis from par value to market value will, however, impose a very substantial increase burden on them. It would increase the burden of taxes on the shareholders of the industry by more than threefold or from about $500,000 per annum to over $1,500,000. In the case of Massachusetts Investors Trust alone the difference may amount to as much as $100,000 a year. This is substantial discrimination and unfair in view of the fact that other savings mediums are not subjected to this burden. For example, section 4303 of H. R. 7125, expressly and properly exempts the issue of shares or certificates by a common trust fund operated by a bank.

We think it would be only fair for section 4303 also to exempt the shares of regulated investment companies. If this is not practical, however, at this late stage, we urge that the tax, in the case of regulated investment companies at least be not increased and therefore that it be specifically provided that the tax imposed on the issue of shares by regulated investment companies be based on par value rather than market value.

MERRILL GRISWOLD,
Honorary Chairman, Advisory Board, Massachusetts Investors Trust.

BOSTON, MASS., *July 14, 1958.*

RALPH E. FLANDERS,
Senate Office Building, Washington, D. C.:

Excise tax bill H. R. 7125 throws real monkey wrench into investment company industry unless their shares are exempted from proposed tax. Our shares are our only product and this new tax schedule would at least treble tax on our shares. Strongly urge caution in applying this tax to investment companies.

AMORY PARKER, INC., *Investors.*

WASHINGTON, D. C., *July 15, 1958.*

Senator RALPH E. FLANDERS,
Washington, D. C.

DEAR RALPH: Attached is information suggested yesterday in connection with our request for relief from the excise taxes assessed on bicycle tires and tubes.

This tax certainly is inconsistent from every point of view. The bicycles themselves are not subject to excise tax either here or in most countries abroad.

Most of the equipment conventionally used by children is free of such taxes. The amount of revenue which the Government derives from the present tax on tires is relatively small in comparison with the loss of revenue recommended on many items in the present bill which you are considering.

As you know, it is generally conceded that the bicycle industry is gradually being driven out of business due to the difference in cost of manufacturing under our high standard of living as compared with foreign costs. Certainly, it is not asking too much that this situation be corrected.

As mentioned in the attached data, the excise tax on tires was directed primarily to the automotive industry. Exceptions were made for the type of solid rubber tires conventionally used on baby carriages, scooters, velocipedes, etc., but for some reason it was retained on the sizes of tires conventionally used on bicycles.

Also attached is Senate Report 1245 which repealed manufacturers excise tax on motorcycles. The principal argument for such action is based on the difficulties of the motorcycle industry due to declining sales and increased costs which certainly also is characteristic of the bicycle industry today.

You will know best how to get favorable action in amending the present bill while it is in the Finance Committee.

I will be very glad to talk with any of the other members or follow any suggestions which you think might be helpful.

Sincerely yours,

HARRY LEE COE.

To: Senator Ralph Flanders.

Subject: *Removal of excise tax on bicycle tires.*

Ever since the tariff on bicycles was reduced by the full 50 percent authorized at the request of the United Kingdom, effective first in 1939 and again in 1948, the American industry has been faced with destructive and unfair competition from low-priced imports. This continues to exist in spite of the small increase in duty authorized in August 1955 (less than $1 per bicycle on the type traditionally imported from England) which fell far short of restoring the needed balance to compensate for low wage rates abroad.

While domestic consumption of bicycles has increased from 1,258,000 units in 1939 to over 3 million in 1955, the imports have increased from 12,214 units to 1,221,000 units, or 68 percent of the domestic production.

As a result, several of the companies have gone out of business or been absorbed by large groups wishing to diversify their products. The remaining companies are hard pressed to survive in the face of persistent lower priced imports.

The average employment of the 9 principal remaining manufacturers, most of whom are classed as "small business" reached a maximum of 3,954 in 1953. Since the employment has declined to 2,901 in 1954 and 3,088 in 1956. This latter figure is well below the average number of workers in any of the years since 1950 with the exception of 1954.

Due to the loss of a substantial part of the domestic market to these lower priced imports, profits for the industry as a whole dropped to 1.9 percent of net sales in 1954. Profits in 1955 and 1956 were less than in any of the other recent years except 1954, 4.8 percent as compared to 10.1 percent for all manufacturing industries. Operations of 2 of the 9 companies resulted in a net loss both in 1955 and 1956. (The source of the above data is from official Tariff Commission reports.)

With an industry in such a precarious position, all unfair-price discrimination should be eliminated. The United States manufacturers have to pay an excise tax of 5 cents per pound on tires and 9 cents a pound on tubes. This tax is assessed under section 4071 of the Internal Revenue Code drafted specifically to apply to automotive vehicles and should not have applied to bicycles conventionally used by children.

A sharp distinction should be drawn between the tires and tubes on bicycles on the one hand and those mounted on automobiles and trucks. In the case of bicycles the tire and tube constitute a substantial portion of the total material cost—over 20 percent—while on automobiles this cost is less than 4 percent. The excise tax on bicycle tires and tubes therefore is of much greater relative importance to this industry and should not be included in an excise tax on automobile tires.

There is no excise tax assessed against the tires and tubes by the British and consequently all the tires mounted on bicycles coming into the United States from that source have that advantage over our manufacturers since the tariff on imported bicycles does not reflect such a tax. This obviously is a discrimination in favor of a foreign manufacturer and against the American manufacturer.

In an effort to establish fair competition between manufacturers the subcommittee of the House Ways and Means Committee, in numerous cases, has recommended removal of excise taxes on certain items which would have little

or no revenue significance. Electric floor polishers and waxers carries an excise tax while vacuum cleaners in competition paid no such tax. The removal of the excise tax from the floor polishers caused a decrease of about $500,000 which the committee stated "is small." The tax on bicycles last year was about $400,000 which is even smaller but this amount would contribute materially to the earnings of the small bicycle manufacturers.

One of the purposes of the legislation now before the Finance Committee, namely, H. R. 7125, is to adjust excise taxes to establish fair competition in the American market.

We therefore urge that consideration be given to the following changes in the existing statute:

"AMENDMENT

"That section 4073 of the Internal Revenue Code of 1954, Public Law 591, chapter 736, be amended by adding at the end thereof the following new subsection:

"(c) TIRES SOLD FOR MOUNTING ON BICYCLES BY MANUFACTURERS.—The tax imposed by section 4071 shall not apply to tires composed of rubber in combination with fabric or other reinforcing element, or tubes, not exceeding 26 inches in diameter and 2.125 inches cross section.

"(1) Primarily designed or adapted for use on bicycles.

"(2) Sold to a bicycle manufacturer or producer for use in connection with bicycles manufactured or produced by such person and in due course so sold.

"(3) The amendment made to section 4071 of this act shall apply with respect to tires and tubes sold to bicycle manufacturers or producers on or after the first day of the first month which begins more than 10 days after the date of enactment of this act."

[S. Rept. No. 1245, 84th Cong., 1st sess.]

REPEALING THE MANUFACTURERS' EXCISE TAX ON MOTORCYCLES

The Committee on Finance to whom was referred the bill (H. R. 5047) to repeal the manufacturers' excise tax on motorcycles, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

"PURPOSE OF BILL

"This bill removes motorcycles from the base of the 10 percent manufacturers' excise tax on passengers cars, etc. This is accomplished by striking out the term 'motorcycles' in section 4061 (a) (2) of the Internal Revenue Code of 1954. This change is to be effective as of the first of the month beginning more than 10 days after the enactment of this bill.

"REASONS FOR BILL

"Your committee believes that the repeal of the excise tax on motorcycles is desirable primarily because the industry is a depressed industry, which in the past several years at least has been faced with declining sales. Profits of the three leading manufacturers in the industry (presently accounting for more than 90 percent of domestic sales) show a declining trend since 1947. In that year profits amounted to nearly $3.5 million, in 1948 they had declined to $2.8 million, and by 1950 they had shrunk to approximately $1.4 million. In 1951 the profits of the 3 producers amounted to only $300,000 and since that time they have generally declined until the 3 producers were faced with a loss of slightly over $400,000 in 1954. During this 8-year period when the profits of the entire domestic industry exceeded $1 million in only 3 years, the excise tax payments exceeded a million dollars in all but 2 years of these and even in those 2, the excise payments were only slightly under a million dollars.

"Sales of the 3 leading domestic producers shrunk from over $29 million in 1948 to slightly under $16 million in 1954, a decline of 45 percent in the 7-year period. Employment of these three producers also decreased steadily in this period.

From a level of about 8,800 workers in 1948, their employment declined to a level of slightly under 1,900 in 1954.

"Your committee believes that where there is a general and steady decline in an industry during a period of generally rising profits, it is undesirable to ask the industry to pay special excise taxes. Moreover, the fact that the aggregate amount collected from the motorcycle industry is not large, makes it possible to make this reduction without seriously impairing the revenues.

"It is understood that nearly half of the motorcycles purchased are used by individuals seeking an economical means of transportation. Moreover, such use by individuals, coupled with the use made of motorcycles by small commercial businesses, are believed to account for over two-thirds of all purchases.

"It is estimated that this bill will decrease revenues by approximately $1.5 million in a full year of operation. This takes into account both domestic production and imports.

"This bill has been reported unanimously by your committee."

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

"SECTION 4061 OF THE INTERNAL REVENUE CODE OF 1954

"SEC. 4061. IMPOSITION OF TAX.

"(a) AUTOMOBILES.—There is hereby imposed upon the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to the specified percent of the price for which so sold:

"(1) * * *

"(2) Articles taxable at 10 percent except that on and after April 1, 1955, the rate shall be 7 percent—

"Automobile chassis and bodies other than those taxable under paragraph (1).

"Chassis and bodies for trailers and semitrailers (other than house trailers) suitable for use in connection with passenger automobiles.

"[Motorcycles.]

"A sale of an automobile, trailer, or semitrailer shall, for the purposes of this paragraph, be considered to be a sale of the chassis and of the body."

STATEMENT OF SENATOR RALPH FLANDERS ON BEHALF OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

During the past few months the Nation at large has become conscious of the need to stimulate interest in higher education. Bills are pending before Congress which would authorize the expenditure of many millions of the taxpayers money for educational scholarships. There are many organizations throughout the country at present raising money for scholarships and fellowships. There is no question but their activities in this endeavor would be greatly accelerated by the elimination of the problems involved in collecting and remitting to the Federal Government the admissions tax on tickets sold for benefits to raise such funds. Frequently, these benefits are held in small towns where the people are not accustomed to paying large admissions. Adding the admissions tax to the basic cost of the production makes it difficult to hold these benefit performances.

The American Association of University Women is an excellent example of this type of endeavor. Its membership is scattered throughout the entire United States and numbers approximately 145,000. Everyone of its members holds a college degree. Through its fellowship fund and their activities in support of it they are making available upward of $200,000 a year for fellowships and grants for advanced studies. It is estimated that less than one-third of this sum is raised by the sale of tickets on which an admission tax is charged. If this were eliminated, the loss to the Treasury would be less than $5,000. The elimination of the tax would not only make available this amount of money for fellowships and grants, assuming the charge remained the same, but it would stimulate and encourage all of the 1,400 branches throughout the United States

to sponsor and promote high-grade entertainment which would not only augment the scholarship fund, but would provide the communities with cultural opportunities, which they might not otherwise have.

It is impossible to list all of the activities which come within the scope of this amendment, but they would include theatrical productions, concerts, both professional and amateur, lectures, exhibits, childrens' theaters, and such. Under the amendment the exemption would only apply where all the proceeds enure exclusively to the benefit of a trust or organization described in section 501 (c) 3, which is exempt from tax under section 501 (a) of the Internal Revenue Code, and is organized and operated exclusively to provide scholarships and fellowships for study above the secondary level.

There can be no question but that the loss in revenue which the Government would sustain by the adoption of this amendment would be offset many, many times by the extra funds which would become available for scholarships and fellowships and in which the Government is vitally interested and is now supporting with taxpayers' money.

I hope the committee and the Senate will give favorable consideration to this amendment which is so evidently in the public interest.

Senator DOUGLAS. I ask that a similar courtesy be extended to me to have printed in the record an amendment which I intend to offer today on the floor of the Senate making it clear that the tax on beer does not apply to small quantities of beer produced in the home for purely family use.

Senator KERR. And medicinal purposes?

Senator DOUGLAS. That is a good statement.

Senator KERR. All right.

(The amendment offered by Senator Douglas follows.)

AMENDMENTS proposed by Mr. DOUGLAS to the bill (S. 7125), to make technical changes in the Federal excise tax laws, and for other purposes, viz: On page 104, after line 2, insert the following:

"(d) FAMILY USE.—Subject to regulations prescribed by the Secretary or his delegate, the duly registered head of any family may, without payment of tax, produce for family use and not for sale an amount of beer not exceeding 200 gallons per annum.

On page 104, line 3, strike out "(d)" and insert "(e)".

On page 176, line 12, strike out "who brews beer or produces beer for sale" and insert "who brews or produces beer for sale".

Senator FLANDERS. I wonder whether the same consideration ought not to be given to the production of alcohol by nondistilling practices as is customary in Vermont. We take a barrel or keg of cider, leave it out in the woodshed——

Senator KERR. Who does this?

Senator FLANDERS. It is the Lord who does it.

We leave it out in the woodshed, in 20°-below-zero weather, and under the laws of nature the water freezes and leaves applejack in the center of the keg. The keg is thereupon tapped, the applejack poured out and the ice discarded.

Should not the same consideration be given to that as to homebrew?

Senator KERR. I want to say to the Senator he is very persuasive. Does he want to offer an amendment to that effect?

Senator FLANDERS. If I were seeking reelection I would.

Senator DOUGLAS. I do not think anyone in Vermont ever paid a tax on this stepped-up hard cider, anyway.

Senator MARTIN. I doubt the necessity of an amendment of that kind, because up in Pennsylvania our folks have been doing that for the last 150 years and they don't want to be disturbed.

Senator KERR. The Senator from Vermont wants to make it legal.

(Discussion off the record.)

Senator KERR. Mr. Ralph Heymsfold, vice president of Schenley Industries, is our next witness.

STATEMENT OF RALPH T. HEYMSFELD, VICE PRESIDENT, SCHENLEY INDUSTRIES, INC.

Mr. HEYMSFELD. My name is Ralph T. Heymsfold, I reside in Woodmere, N. Y. I am a vice president of Schenley Industries. I have been employed in the distilling industry since 1933.

Senator FLANDERS. Would you excuse me a moment, Mr. Witness? I omitted one important letter. And I am sorry to interrupt you.

Mr. HEYMSFELD. Very well.

Senator KERR. All right, Mr. Heymsfold.

Mr. HEYMSFELD. I have been employed in the distilling industry since 1933.

Mr. Street handed up to you this morning the Liberty Bank figures showing the distilled spirits in bonded warehouses in Kentucky as of December 31. I thought before coming to my own statement that since I have a more recent statement dated April 30, 1958——

Senator KERR. By the same authority?

Mr. HEYMSFELD. By the same authority. I would hand it up. I should make the explanation——

Senator KERR. Is Mr. Street still here?

Mr. STREET. Yes, I am.

Senator KERR. Would it be acceptable to you to put in this, in place of the one you put in?

Mr. STREET. Yes. That will be acceptable.

Senator KERR. Perhaps we should put both in to clear the record.

(The April 30, 1958, bulletin follows. The December 31, 1957, bulletin appears on p. 230.)

Distilled Spirits in Bonded Warehouses in Kentucky on April 30, 1958

Whisky by various periods of production remaining in bonded warehouses in Kentucky as of Apr. 30, 1958

[Prepared from information obtained at the office of the department of revenue of the Commonwealth of Kentucky]

Distillery	Remaining whisky, number of barrels produced or received, bottled in bond, age, calendar year ending Dec. 31—								Produced and received in 4 months ending Apr. 30, 1958	Total	
	1950	1951	1952	1953	1954	1955	1956	1957		Number of barrels	Percent
Barton Distilling Co., Inc., Bardstown, Ky	2,661	3,650	3,670	2,997	52,279	71,146	79,988	72,554	47,236	342,181	4.55
Jas. B. Beam Distilling Co.:										(280,802)	5.67
Clermont, Ky	434	1,520	7,781	12,028	45,773	41,893	40,119	41,621	14,869	212,638	
Beam, Ky					15,442	25,216	50,712	56,005	19,389	167,764	
J. T. S. Brown's Son Co.:										(132,742)	1.77
Lawrenceburg, Ky	3,287	2,785	42	391	11,626	34,174	28,299	10,852	5,822	97,280	
Early Times, Ky						8,466	5,049	1,100		14,606	
Wilder, Ky								13,892	6,965	20,948	
Brown-Forman Distillers Corp., (3 units) Louisville, Ky	478	1,030	2,707	44,462	103,714	88,910	110,348	122,624	24,543	498,816	6.65
Double Springs Distilling Co., Bardstown, Ky	1,196	2,391	19		48	14,754	21,914	10,199	7,728	58,249	.78
Fleischmann Distilling Corp., Owensboro, Ky	50	4,807	4,067	2,341	36,031	35,563	39,675	59,898	31,687	234,519	3.09
General Distillers Corporation of Kentucky, Louisville, Ky	1,619	846	1,528	1,454	13,566	2,615	5,087	14,005	5,084	45,804	.61
Glencoe Distilling Co., Bardstown, Ky		2	4,970	5,163	14,587	18,672	25,281	21,305	11,935	101,915	1.36
Glenmore Distilleries Co.:										(473,314)	
Owensboro, Ky	13	30,796	46,059	72,384	56,130	53,260	24,192	51,151	30,174	364,159	6.31
Yellowstone, Inc., Louisville, Ky		8,632	16,376	19,427	11,436	13,211	15,796	18,943	6,344	109,156	
Grosscurth Distillers, Inc., Anchorage, Ky	51	582	1,397	1,585	3,919	5,899	7,657	6,294	4,949	32,332	.43
Heaven Hill Distilleries, Inc., Bardstown, Ky	1,615	5,899	6,063	8,737	36,974	44,596	60,983	72,099	25,614	262,970	3.49
Hoffman Distilling Co., Inc., Lawrenceburg, Ky	395	960	693	1,713	3,511	5,464	4,508	6,030	2,987	26,561	.35
Kentucky River Distilling Co., Camp Nelson, Ky	1,432	5,730	1,574	4,903	9,341	96	13,738	12,425	6,547	55,786	.74
Medley Distilling Co., Owensboro, Ky	165	5,955	16,554	18,178	25,816	18,473	25,984	33,196	12,713	156,944	2.09
National Distillers & Chemical Corp.:										(1,577,352)	
Louisville, Ky (3 units)	3,550	20,347	11,416	11,460	96,570	187,049	226,051	153,416	49,973	759,827	21.02
Frankfort, Ky (3 units)	220	481	216	13,873	87,792	178,219	141,969	204,546	69,980	697,276	
Bellows unit, Louisville, Ky		13,859	12,627		16,175		8,601	53,540	15,617	120,419	
Old Boone Distillery Co., Meadowlawn, Ky	1,205	2,958	3,009	3,864	6,896	9,669	8,358	11,326	4,925	52,210	.70
Old Joe Distillery Co., Inc., Lawrenceburg, Ky	575	1,815	61	2,770	5,028	56,630	15,431	11,692	3,223	57,285	.76
Old Jordan-T. W. Samuels Distillery, Deatsville, Ky	4,588	6,887			4,965	10,361	15,153	23,316	7,257	72,527	.97

Schenley Industries, Inc.:												
Associated Kentucky Distilling Co., Ekron, Ky		5,073		22,549	1,900	14,467	11,922			(1,885,796)		
Bernheim Distilling Co., Louisville, Ky	31,165	37,173	39,495	81,473	50,979	68,761	51,760	65,342	24,744	55,951		
Dant Distillery Co., Gethsemani, Ky	387	846	36	6,485	10,694	12,551	6,938	13,640	4,323	450,902	25.13	
Park & Tilford Distillers of Kentucky:										54,900		
Louisville, Ky	1,649	20,376	15,762	15,651	19,406	17,909	28,924	17,674	2,751	131,102		
Midway, Ky	6,371	4,055	16,10	2,049	4,757	981		10,173		39,986		
Jas. E. Pepper & Co., Lexington, Ky	17,553	3,176	13,273	23,423	15,641	26,859	25,085	17,893	6,244	149,147		
Schenley Distillers, Inc.:												
Burgin, Ky		6,344	450	11,999	472	2,891				22,265		
Loretto, Ky		6,475			11,269	2,717	9,734	4,755		34,970		
Stamping Ground, Ky	325	1,195	4,276	7,852	2,907	5,424	3,570	1,400	2,092	29,041		
The Geo. T. Stagg Co.:												
Bardstown, Ky	11,235	27,913		15,422	10,043	17,706	18,700	7,324	9,570	117,913		
Frankfort, Ky	4,138	105,347	52,365	81,801	66,672	88,282	95,183	118,915	54,600	667,313		
Lebanon, Ky		17,052	2,300	24,522	8,358	17,758	7,404	13,290		98,504		
Limestone Springs, Ky		15,288	7,600	16,762		5,200	800	2,920	3,052	51,612		
Jos. E. Seagram & Sons, Inc.:												
Julius Kessler Distilling Co.:												
(2 units) Louisville, Ky	20,193	64,354	40,691	26,063	20,489	70,404	19,477	33,627	25,363	(716,280)	2.55	
Fairfield, Ky	233	2,539	3,348	2,153	1,076	5,126	2,038	1,363	1,100	328,552		
St. Francis, Ky	4,958	7,408	4,486	3,383	1,334	2,270	1,164	3,496	1,476	18,976		
Calvert Distilling Co., Lawrenceburg, Ky	88	5,955	7,451	10,279	4,743	7,948	4,718	192		29,974		
Carstairs Bros. Distilling Co., Cynthiana, Ky	1,043	14,619	9,149	8,446	16,472	9,712	7,768	6,167		41,380		
Four Roses Distillers Co., (2 units) Louisville, Ky	10,393	31,113	25,281	44,999	22,391	27,334	3,534	4,366	4,444	23,674		
Hunter-Wilson Distillery Co., Athertonville, Ky	2,504	24,309	5,958	1,260	6,149	7,462	3,125	4,332	6,951	170,155		
Star Hill Distilling Co., Loretto, Ky					2,463	2,348	1,619	3,219	1,925	62,970		
Stitzel-Weller Distillery, Inc., Louisville, Ky	1,802	12,288	18,231	26,050	31,198	38,409	38,036	45,253	12,585	11,574	.16	
"21" Brands Distillers Corp., Frankfort, Ky	344	2,441	250	590	2,585	2,496	4,012	7,957	6,198	223,982	2.98	
Waterfill & Frazier Distilling Co., Bardstown, Ky	2,456	5,114	2,548	3,415	6,482	9,181	6,302	12,000	3,419	26,903	.36	
Willett Distilling Co., Bardstown, Ky	116	601	1,066	685	2,528	5,119	7,761	7,747	3,656	50,906	.68	
Total each year Apr. 30, 1958	140,477	542,886	396,455	694,951	978,966	1,354,683	1,325,136	1,485,159	584,929	28,289	.39	
Total all years Apr. 30, 1958												
Total Apr. 30, 1957	514,232	823,736	535,386	1,075,113	1,065,361	1,389,485	1,373,763	604,547		7,505,623		
Total Apr. 30, 1956	963,736	1,237,783	711,695	1,123,967	1,069,891	1,396,939	588,633			7,040,523		
Total Apr. 30, 1955	1,479,773	1,570,386	729,710	1,127,118	1,076,789	466,247				7,202,965		
Total Apr. 30, 1954	2,009,992	1,638,722	733,974	1,128,766	441,457					6,908,688		
Total Apr. 30, 1953	2,184,828	1,643,126	735,772	380,606						7,006,345		
Total Apr. 30, 1952	2,203,111	1,652,940	376,171							6,951,189		
Total Apr. 30, 1951	2,276,207	655,136								7,222,504		
Total Apr. 30, 1950	913,207									6,533,120		
New England Distilling Co. (Rum), Covington, Ky				15	50	60	110	56	532	5,948,338		
										824		

Reconciliation of whisky in warehouses in Kentucky for 4 months ending Apr. 30, 1958

Distillery	Total barrels in warehouses, Dec. 31, 1957	Barrels received from out of State	Barrels produced in Kentucky	Barrels received from warehouses in State	Total number of barrels in bond	Barrels Government tax paid [1]	Barrels transferred to warehouses in State	Other withdrawals in 4 months ending Apr. 30, 1958	Total number of barrels withdrawn	Total number barrels remaining in warehouses, Apr. 30, 1958
Barton Distilling Co., Bardstown, Ky	309,151	821	47,065	8,800	365,837	17,732	5,423	551	23,706	342,131
James B. Beam Distilling Co.:										
Clermont, Ky	204,692	5,054	14,452	16,830	241,028	27,828	100	62	27,990	213,038
Beam, Ky	154,738		19,369	95	174,222	248	6,210		6,458	167,764
J. T. S. Brown's Son Co.:										
Lawrenceburg, Ky	91,239	1,430	12,836	10,031	115,536	2,653	9,851	4,543	18,247	97,289
Early Times, Ky	14,340			674	15,014		498		498	14,516
Wilder, Ky	7,972	1,473		11,404	20,849			1	1	20,848
Brown-Forman Distillers Corp. (3 units), Louisville, Ky	525,158	55	24,574	48,491	598,278	49,148	50,256	58	99,462	498,816
Double Springs Distilling Co., Bardstown, Ky	56,056	993	7,719	833	65,601	2,206	4,347	899	7,382	58,219
Fleischmann Distilling Corp., Owensboro, Ky	212,280	471	30,658		243,409	11,148	760	42	11,890	231,519
General Distillers Corporation of Kentucky, Louisville, Ky	43,014	236	5,084	4,092	52,426	335	6,051	236	6,622	45,804
Glencoe Distilling Co., Bardstown, Ky	92,119		11,925	13,057	117,102	2,170	13,017		15,187	101,915
Glenmore Distilleries Co.:										
Owensboro, Ky	365,445	1,896	35,653	7,836	410,830	39,296		7,375	46,671	364,159
Yellowstone, Inc., Louisville, Ky	110,446		6,344		116,790	4,780	2,655		7,435	109,155
Grosscurth Distillers, Inc., Anchorage, Ky	28,374	505	5,098	69	34,037	1,041	93	581	1,715	32,322
Heaven Hill Distilleries, Inc., Bardstown, Ky	248,881	204	24,970	6,199	280,144	12,703	4,421	50	18,174	261,970
Hoffman Distilling Co., Inc., Lawrenceburg, Ky	25,326	175	2,573	250	28,324	1,867	115	81	2,063	26,261
Kentucky River Distilling Co., Camp Nelson, Ky	54,202		6,547	3,047	63,796	3,455	4,403	182	8,040	55,756
Medley Distilling Co., Owensboro, Ky	156,878	10	12,703		169,591	7,779	4,868		12,647	156,944
National Distillers & Chemical Corp.:										
(3 units) Louisville, Ky	761,281	3,909	74,156	45,197	884,543	56,960	58,385	9,351	124,796	759,747
(3 units) Frankfort, Ky	666,396	3,710	81,451	24,466	776,022	39,609	23,946	15,201	78,747	697,276
Bellows unit, Louisville, Ky	107,770			15,617	123,387		2,968		2,968	120,419
Old Boone Distillery Co., Meadowlawn, Ky	49,390		4,925	108	54,423	2,159	54		2,213	52,210
Old Joe Distillery Co., Inc., Lawrenceburg, Ky	55,534		3,323	508	59,365	2,080			2,088	57,285
Old Jordan—T. W. Samuels Distillers, Deatsville, Ky	69,500		7,257		76,757	2,301	1,929		4,230	72,527
Schenley Industries, Inc.:										
Associated Kentucky Distilleries Co., Ekron, Ky	58,110				58,110	275	1,884		2,159	55,951
Bernheim Distilling Co., Louisville, Ky	445,092		30,547	7,087	482,726	25,961	5,823		31,784	450,942
The Dant Distillery Co., Gethsemani, Ky	52,933		13,093	7,994	74,020	10,350	8,770		19,120	54,900
Park & Tilford Distillery of Kentucky:										
Louisville, Ky	132,312			2,751	135,063	2,392	1,569		3,961	131,102
Midway	30,887				30,887		891		891	29,996
Jas. E. Pepper & Co., Lexington, Ky	160,745		9,772		160,517	329	9,614	1,436	11,378	149,147

Schenley Distillers, Inc.:										
Burgin, Ky.	22,565				22,565		[illegible]		[illegible]	[illegible]
Loretto, Ky.	40,270				40,270	1,570	[illegible]		[illegible]	[illegible]
Stamping Ground, Ky.	29,132			2,092	31,224	1,710	473		2,153	29,941
The Geo. T. Stagg Co.:										
Bardstown, Ky.	113,920			9,570	123,490	231	5,346		5,577	117,913
(2 units) Frankfort, Ky.	650,839	436	54,600	10,187	716,052	41,800	6,514	425	48,739	667,313
Lebanon, Ky.	90,745				90,745	1	150		151	90,594
Limestone Springs, Ky.	50,969			3,052	54,021	225	2,184		2,409	51,612
Jos. E. Seagram & Sons, Inc.:										
Julius Kessler Distillery Co.:										
(2 units) Louisville, Ky.	316,347	2,055	22,201	7,723	348,326	24,147	2,965	953	27,775	320,551
Fairfield, Ky.	18,994		900	200	20,094	667	451		1,118	18,976
Juniper Springs, Ky.	17,278				17,278	1,045	16,233		17,278	
St. Francis, Ky.	30,536		1,176	300	32,012	804	1,234		2,038	29,974
Calvert Distilling Co., Lawrenceburg, Ky.	42,385			5,503	47,888	5,215	1,283		6,498	41,390
Carstairs Bros. Distillery Co., Cynthiana, Ky.	74,738			7,082	81,740	5,372	2,694		8,066	73,674
Four Roses Distillers Co., Louisville, Ky.	174,770	2,152	17,196	4,097	198,145	8,282	5,476	14,332	27,980	170,165
Hunter Wilson Distillery Co., Athertonville, Ky.	55,307		9,527		74,534	5,307	2,381	2,676	12,764	61,770
Star Hill Distilling Co., Loretto, Ky.	9,648		1,926		11,574					11,574
Stitzel-Weller Distillery Co., Inc., Louisville, Ky.	215,972		12,395	4,130	232,717	8,855			8,855	223,862
"21" Brands Distillers Corp., Frankfort, Ky.	22,013	164	6,075		28,252	1,389			1,389	26,863
Waterfill & Frazier Distilling Co., Bardstown, Ky.	54,456		3,419	300	58,075	1,747	5,342		7,089	50,986
Willett Distilling Co., Bardstown, Ky.	28,003		3,666		31,669	1,412	12	1,056	2,480	29,189
Total	7,349,139	25,739	625,585	289,443	8,289,906	441,566	285,630	59,039	786,364	7,503,542
New England Distilling Co. (Rum), Covington, Ky.	294		1,295		1,589	1		764	765	824

[1] Includes some whisky on which State ad valorem taxes have been paid, but not the Federal excise tax.

NOTE.—Fractional barrels reduced to 1 full barrel. Storage does not necessarily represent ownership.

Compiled by Liberty National Bank & Trust Co., of Louisville.

Spirits by various periods of production remaining in bonded warehouses in Kentucky as of Apr. 30, 1958

Distillery	Remaining spirits (number of barrels) produced or received, calendar year ending Dec. 31—								Produced and received in 4 months ending Apr. 30, 1958	Total number of barrels
	1950	1951	1952	1953	1954	1955	1956	1957		
Barton Distilling Co., Inc., Bardstown, Ky										
Jas. B. Beam Distilling Co., Clermont, Ky	13							347	220	687
J. T. S. Brown's Son Co., Lawrenceburg, Ky									122	126
Brown-Forman Distillers Corp., Louisville, Ky						35			47	82
Double Springs Distilling Co., Bardstown, Ky							8	1,774	1,662	3,444
Fleischmann Distilling Corp., Owensboro, Ky								5	76	81
Glencoe Distilling Co., Bardstown, Ky									221	221
Glenmore Distilleries Co., Owensboro, Ky									26	26
Medley Distilling Co., Owensboro, Ky								8,915		8,915
National Distillers & Chemical Corp., Louisville, Ky									119	119
Old Joe Distillery Co., Inc., Lawrenceburg, Ky									1,115	1,115
Old Jordan—T. W. Samuels Distillery, Deatsville, Ky								9	25	34
Schenley Industries, Inc.:										
New England Distilling Co., Covington, Ky									69	69
The Geo. T. Stagg Co., Frankfort, Ky										
Jos. E. Seagram & Sons, Inc.:	29						3,982			3,982
Julius Kessler Distilling Co.:										29
Louisville, Ky										
Fairfield, Ky		2	4,697	6,139	25,054	3,971	11,948	52,814	28,271	122,896
St. Francis, Ky								747		747
Calvert Distilling Co., Lawrenceburg, Ky				37						37
Carstairs Bros. Distilling Co., Cynthiana, Ky				96						96
Four Roses Distillers Co., Louisville, Ky										
Hunter-Wilson Distillery Co., Athertonville, Ky		177	223	252	31	889	11,469	2,745		2,745
"21" Brands Distillers Corp., Frankfort, Ky								24,926	8,282	48,252
Waterfill & Frazier Distilling Co., Bardstown, Ky								1,847	676	2,523
									225	225
Total for Apr. 30, 1958	42	179	4,920	6,515	25,085	4,895	27,399	93,129	33,288	195,288

Reconciliation of spirits in warehouses in Kentucky for 4 months ending Apr. 30, 1958

Distillery	Total barrels in warehouses, Dec. 31, 1957	Barrels received from out of State	Barrels produced in Kentucky	Barrels received from warehouses in State	Total number of barrels in bond	Barrels Government tax paid [1]	Barrels transferred to warehouses in State	Other withdrawals in 4 months ending Apr. 30, 1958	Total number of barrels withdrawn	Total number of barrels remaining in warehouses Apr. 30, 1958
Barton Distilling Co., Inc., Bardstown, Ky.	1,285	635			1,920	1,025		226	1,252	
Jas. B. Beam Distilling Co., Clermont, Ky.	237	295			532	224		172	396	
J. T. S. Brown's Son Co., Lawrenceburg, Ky.	88	62		1	151	54		15	69	
Brown-Forman Distillers Corp., Louisville, Ky.	2,666	2,032			4,698	864		370	1,234	
Double Springs Distilling Co., Bardstown, Ky.	150	157			307	145		81	226	
Fleischmann Distilling Corp., Owensboro, Ky.	282	1,591			1,873	282		1,370	1,652	
Glencoe Distilling Co., Bardstown, Ky.	18	71			89	18		35	53	
Glenmore Distilleries Co., Owensboro, Ky.	12,624				12,624	3,709			3,709	
Kentucky River Distilling Co., Camp Nelson, Ky.	1				1	1			1	
Medley Distilling Co., Owensboro, Ky.	83	368			451	83		258	341	
National Distillers & Chemical Corp., Louisville, Ky.	1,513	3,428			4,941	1,513		2,313	3,826	
Old Joe Distillery Co., Inc., Lawrenceburg, Ky.	51	25			76	42			42	
Old Jordan-T. W. Samuels Distillery, Deatsville, Ky.	56	70			126	56		10	66	
Schenley Industries, Inc.:										
New England Distilling Co., Covington, Ky.	4,929				4,929		1,635	1	1,636	
The Geo. T. Stagg Co., Frankfort, Ky.	29			1,035	1,064	1,035			1,035	
Jos. E. Seagram & Sons, Inc.:										
Julius Kessler Distilling Co.:										
Louisville, Ky.	129,894	1,277	21,091	9,546	161,808	26,607	4,765	6,549	37,912	
Fairfield, Ky.	747				747					
St. Francis, Ky.	37				37					
Calvert Distilling Co., Lawrenceburg, Ky.	86				86					
Carstairs Bros. Distilling Co., Cynthiana, Ky.	2,746				2,746					
Four Roses Distillers, Louisville, Ky.	45,092	2,704	12,652	5,620	66,068	6,978	10,631	2,286	19,917	
Hunter-Wilson Distilling Co., Athertonville, Ky.	2,029		265	533	2,827		304		304	
"21" Brands Distillers Corp., Frankfort, Ky.	34	300			334	199			199	
Waterfill & Frazier Distilling Co., Bardstown, Ky.	16	103			119	16		69	85	
Total for Apr. 30, 1958	204,693	13,118	34,008	16,735	268,554	42,781	16,735	13,670	73,186	195,368

[1] Includes some whisky on which State ad valorem taxes have been paid, but not Federal excise tax.

Cases bottled-in-bond whisky in warehouses in Kentucky on Apr. 30, 1958

Distillery	Cases in warehouses Dec. 31, 1957	Cases received from out of State	Cases received from warehouses in State	Total number of cases in bond	Cases tax paid [1]	Cases transferred to warehouses in State	Other withdrawals in 4 months ending Apr. 30, 1958	Total number of cases withdrawn	Number of cases remaining in warehouses Apr. 30, 1958
Barton Distilling Co., Inc.	6,961		64,608	71,569	6,913		61,396	68,309	3,260
Jas. B. Beam Distilling Co.	2,409		8,954	11,363	1,443		5,547	6,990	4,373
J. T. S. Brown's Son Co., Lawrenceburg, Ky.	7,718		41,271	48,989	4,620		38,527	43,147	5,842
Brown-Forman Distillers Corp.	214		5,469	5,683	214		5,357	5,571	112
Double Springs Distilling Co.	1,925		17,652	19,577	1,515		10,125	11,640	7,937
General Distillery Corporation of Kentucky	578		4,814	5,392	384		2,403	2,787	2,605
Glencoe Distilling Co.			3,352	3,352		925		925	2,427
Glenmore Distilleries Co., Owensboro, Ky.	1,190		1,175	2,365	939		1,021	1,960	405
Medley Distilling Co.	4,840		34,551	39,391	3,705		29,761	33,466	5,925
National Distillers & Chemical Corp.:									
Louisville, Ky.									
Frankfort, Ky.	52			52					52
Old Boone Distillery Co.	17,872	561	211,346	229,779	16,774	28,673	158,781	204,228	25,551
Old Joe Distillery Co., Inc.	976		2,190	3,166	510		1,496	2,006	1,160
Old Jordan—T. W. Samuels Distillery	3,294		4,208	7,502	3,106		2,000	5,706	1,796
Schenley Industries, Inc., Bernheim Distilling Co.	9,540		9,946	19,486	7,854		7,802	15,656	3,830
Dant Distillery Co., Gethsemani, Ky.	2,141		76,847	78,988	1,354	12,972	60,506	74,832	4,156
Park & Tilford Distilleries of Kentucky, Louisville, Ky.	2,905		155,188	158,093	2,905		152,491	155,396	2,697
Schenley Distillers, Inc., Louisville, Ky.	112			112	112			112	
Star Hill Distilling Co.			12,972	12,972			7,582	7,582	5,390
Stitzel-Weller Distillery, Inc.	18			18			15	15	3
"21" Brands Distillers Corp.	6,985		5,226	12,211	1,769		2,325	4,094	8,117
Waterfill & Frazier Distilling Co.	117		250	367	367			367	
Willett Distilling Co.	200		16,955	17,155	200		11,068	11,268	5,887
	999		7,345	8,344	999		6,977	7,976	368
Total Apr. 30, 1958	70,966	561	684,319	755,846	55,653	42,570	565,812	664,035	91,811
Total Apr. 30, 1957									82,197
Total Apr. 30, 1956									119,988
Total Apr. 30, 1955									76,047
Total Apr. 30, 1954									85,422
Total Apr. 30, 1953									108,222
Total Apr. 30, 1952									98,449
Total Apr. 30, 1951									107,297
Total Apr. 30, 1950									97,319

[1] Includes some whisky on which State ad valorem taxes have been paid, but not the Federal excise tax.

Mr. HEYMSFELD. This statement contains the whiskies stored in various Kentucky warehouses. It does not indicate, nor does it purport to indicate what the ownership of that whisky is, nor is it a record of Kentucky whisky which might be stored in States other than Kentucky. That is only one of the confusions among others which I will come to later which we get into dealing with some of the statistical material.

Senator KERR. Is it your statement, then, here where it shows Frankfort, Ky., Distillery, cases in warehouses, December 31, 1957, 17,872, that that might be in their warehouse but not belong to them?

Mr. HEYMSFELD. Yes, sir. Reference was made to the fact that we bought Park & Tilford. As a matter of fact, when we bought that company we found stored in the warehouses of that company somewhere between sixty and seventy thousand barrels of whisky which were not the property of that company. Twenty-seven thousand barrels were the property of Seagrams.

Senator KERR. Like a windfall?

Mr. HEYMSFELD. Sir?

Senator KERR. It did not cost you; it was a windfall?

Mr. HEYMSFELD. No, sir. And to indicate to this committee that whisky stored in Kentucky is owned by the pepole in whose warehouses it is stored and to make statistical computation which conclude, in a statement, that whisky is owned by certain people, when the fact is that they only stored it in their warehouses, I do not think is an accurate representation of the facts. And with that, sir, with your permission, I would like to go to my statement.

Senator KERR. You have that permission.

Mr. HEYMSFELD. Now, the statement which we are filing consists of 10 pages, not all of which I shall read.

Attached to it is a letter of opinion which was written by Mr. Roswell Magill. Mr. Magill is a former Under Secretary of the Treasury. We consulted Mr. Magill not as an advocate but in order to get an independent opinion as to the revenue consequences of the present 8-year limitation and of the revenue consequences of the changes which are proposed. We asked him to give us his independent opinion because we wanted it for our information and, when the document was completed, we thought it would be of interest to the committee and, therefore, we have attached it to this statement.

Also, attached to our statement, are two letters dated July 7, 1958, from the Department of National Revenue Customs and Excise, Ottawa, and since there is no other explanation of these letters, which appear at the very end of the statement, I should like to indicate to the committee why they are attached and what they signify.

The letter comes from the director of excise duty of the department of national revenue customs and excise and it is addressed to Canadian Schenley, Ltd., which is our Canadian subsidiary, and it says:

GENTLEMEN: Receipt is acknowledged of your letter dated July 4 in which you request permission to redistill 97,000 proof-gallons of American whisky.

Enclosed please find letter which has been forwarded to all excise officers in charge of distilleries in Canada, which is self-explanatory.

The enclosure says:

This letter is to inform you that from this date on, no departmental authority will be given for American spirits to be "taken for reducing by distillation" in maturing warehouse account.

Please advise licensee.

We introduced these letters because they indicate two things we think which are of significance to this hearing.

First, they indicate that it frequently happens that changes take place in regulations, which affect the previous procedures of the industry. In this instance, specifically, the American industry which heretofore has been able to export some of its spirits to Canada and which for a large number of years has done so, and has in Canada been permitted to use them in a certain way, was preemptorily advised on July 7 that it would no longer be permissible.

Reference was made yesterday to the Canadian interests in Canada of Schenley. Schenley represents approximately 5 percent of the Canadian business in Canada, of which somewhat over 90 percent is represented by the Seagram Co. which, incidentally, is the largest distillery in the United States and does the largest business in the United States, and the Hiram Walker Co., which does a large business in the United States.

We have not had the opportunity to find out whether this particular document was issued to us after consultation with any portion of the industry, which would be normal custom, not only in Canada or in the United States, except I may say to this committee that we were not consulted. The net effect of this is that a use which we were permitted to make of our whisky previously has been foreclosed to us in Canada.

We do not know from our own Canadian experience that the proposed use of something which the Canadian Government permits to Canadian distilleries—and while I realize that this is not the forum for many aspects of that issue, I think it is significant for this committee to know that in Canada the rules were just changed, shall I say, on us rather suddenly and it has, I think, somewhat, I shall be frank to say, of an atmospheric effect for this committee in understanding what the nature of the total situation is.

Senator KERR. This is a privilege that is available to you in the United States?

Mr. HEYMSFELD. I should state, Senator, that under the American law this privilege would not be permitted to us either for American whisky of domestic manufacture or foreign whisky, but in Canada, as I understand the law, it is a privilege which has always been extended to whiskies, whether produced in Canada or in the United States, and so far as I know it has not been taken away from the Canadian distillers but has just been taken away from the Canadian distillers who want to use American whisky similarly.

Senator KERR. I had thought under our law you could redistill whisky here that was in bonded warehouses and thus put it in the status of beginning the period available for it for storage in bonded warehouses. Is that not true?

Mr. HEYMSFELD. That is true at very substantial losses.

Senator KERR. I understand.

Mr. HEYMSFELD. But those losses would not occur under the Canadian procedure in Canada.

Senator KERR. You mean you can redistill in Canada without losing volume?

Mr. HEYMSFELD. Without losing the age; whereas in this country you lose the age and that is the essence of this whole discussion.

Senator KERR. I see.

Senator MALONE. Let me ask at this point, What does it cost in the tariff or excise tax, or otherwise, when you ship American whisky into Canada?

Mr. HEYMSFELD. You pay a duty, which is refunded, to the extent of 99 percent, if you reexport the whisky from Canada within a period of 3 years from the date of its importation into Canada.

Senator MALONE. Suppose it is going to be utilized in Canada?

Mr. HEYMSFELD. You do not get a drawback if it is.

Senator MALONE. What is it, then, what is the excise?

Mr. HEYMSFELD. I shall have to supply that. I don't have the exact figure.

Senator MALONE. Do you have any idea what it is? More or less than our own coming into this country?

Mr. HEYMSFELD. I prefer not to guess. I have the figure. It just does not come to my mind.

Senator MALONE. You can get it for the record?

Mr. HEYMSFELD. Yes, sir; I may have it among this collection of papers here.

Senator MALONE. Go ahead and furnish it before you finish your testimony.

Mr. HEYMSFELD. Yes, sir; I will.

(Information referred to follows:)

The duty is $1 and the drawback is $0.99. The Canadian excise tax is $12 per British proof-gallon (which is equivalent to 1.37 United States gallons. Therefore the equivalent Canadian tax on a United States proof-gallon is $8.75.

Senator KERR. I want to ask one more question. You said you did not lose the age?

Mr. HEYMSFELD. Yes, sir.

Senator KERR. Actually, that is a matter of form, not of substance—I mean if you redistill here you do it in the same mechanical manner. When it comes out, insofar as the record is concerned, it is new whisky, and there if you redistill it, it is just as new as if it would be redistilled here but you do not call it new, you can still attach to it the designation of the number of years it had been aged prior to redistillation?

Mr. HEYMSFELD. The number of years since the date of its original distillation; yes.

Senator KERR. So that the mechanical process in either country is the same. The effect that you refer to as being different is in connection with how it is identified or designated?

Mr. HEYMSFELD. That is right, sir. And the Canadian regulations have just been changed so that the same punitive consequence which exists in the United States on this situation has now been somewhat extended to what was one of the outlets for this whisky; that is, Canada.

Senator MALONE. Let me ask another question. That brings another question to my mind.

What is the effect on the whisky itself of the redistillation? Does it taste the same as the old whisky?

Mr. HEYMSFELD. No, sir; it does not.

Senator MALONE. It really is a new whisky?

Mr. HEYMSFELD. Sir?

Senator MALONE. It really is a new whisky?

Mr. HEYMSFELD. It it a new one in one sense and not the other.

Senator MALONE. What is the other?

Mr. HEYMSFELD. In the sense that it is a reprocessed product. I guess you could, if you wanted to, use a certain kind of definition, which I don't think is fully informative for the consumer as our regulations are. You could go back to its original date of distillation and say "That is the age of the product" even though it has been reprocessed and even though some of the essential characteristics which its aging in a barrel have created have been removed by that process of redistillation.

Senator MALONE. You have an 8-year-old whisky, we will say, you redistill it or you pay the revenue tax.

Mr. HEYMSFELD. That is right.

Senator MALONE. Suppose you redistill it, then you do not have to bring it out?

Mr. HEYMSFELD. Yes, sir.

Senator MALONE. Or if you do bring it out, you only pay the tax when you use it. What does it taste like? Is it as good as when you first took it out before you redistilled it or is it a new whisky, really?

Mr. HEYMSFELD. It does not have the same taste as when you first took it out.

Senator MALONE. Do you lose the quality?

Mr. HEYMSFELD. You lose many qualities.

Senator MALONE. Not all of them.

Mr. HEYMSFELD. Which are associated with aged whisky.

Senator MALONE. But you do not lose all of them; is that it?

Mr. HEYMSFELD. You don't lose all of them, depending on how you conduct the process.

Senator MALONE. I understood you to say in Canada if you redistill an 8-year-old whisky—did you say that—and keep it another year it is a 9-year-old whisky?

Mr. HEYMSFELD. That is right.

Senator MALONE. But here it would be a year-old whisky?

Mr. HEYMSFELD. That is right. If I may turn to this statement——

Senator JENNER. You will put the whole statement in the record, of course?

Mr. HEYMSFELD. It has been submitted for the record; yes, sir.

Schenley urges the adoption of title II in the form in which it passed the House and now is before this committee. We are addressing ourselves in our statement specifically to the matter of the bonded period from 8 to 20 years, and there are 4 points which are covered in our statement, the first of which deals with this matter of commingling of whisky in bond which was the subject of some discussion this morning.

The second is the demonstration that under the law and under previous congressional precedent there is certainly no element of retroactivity in the situation, except that the dog is being called by a bad name.

The third is that restriction on the ability to market and correctly label whiskies over 8 years old would continue a discrimination against the United States producers and benefit solely Canadian producers who are advocating the restriction.

And, finally, that the bill as written provides benefits for the industry as a whole. And in that connection, we give the information which we have available to us as to the inventories of United States whiskies which we obtained from the Tariff Commission report. We show how, according to the Tariff Commission report, those whiskies are distributed in warehouses throughout the country. Again, ownership is not reflected in those statistics. And we conclude that the quantity is so large and that it is so distributed through the trade that any company which felt that it had a shortage could easily meet that shortage by purchase in the open market and that, in fact, almost all companies have in relation to the size of their business fairly good quantities of that whisky with the possible exception of those companies who by deliberate choice have limited themselves to the production of 4-year-old whisky.

In other words, companies like Brown Forman which by business decision decided that they did not want to compete in whiskies over 4 years old. They some years ago described those whiskies as senile. Mr. Dan Street testified under oath before the——

Senator KERR. Senile?

Mr. HEYMSFELD. He used the word "senile."

Senator KERR. Are the whiskies senile?

Mr. HEYMSFELD. No, sir; we don't think they are senile at all. We think that they improve and mature and grow with age.

He, also, testified under oath before the Tariff Commission insofar as Brown Forman whiskies are concerned they did not improve after 6 years. We don't think that a company in that position has particular status in objecting to the desire of other companies to market older whiskies, whether older whiskies are 7 or 8 or 10 years old or any other age.

Senator KERR. I did not understand he was objecting to that. I think he said they had as much taste, before the committee, as you do.

Mr. HEYMSFELD. Yes, sir. I think, sir, that it is a question—you see, he said yesterday, which caught my attention, that he had a very small percentage of whisky over 6 years old. I felt that it would be of some value to the committee to know why that might be so. In other words, a company which limited itself to selling whiskies 4 years old, naturally, would not have whiskies in any substantial quantity 6 years old.

On the other hand, he challenged Schenley for having large quantities of 7- and 8-year-old whiskies, and he did not state for the record, as I shall shortly do, that Schenley has regularly marketed whiskies 7 and 8 years old, and therefore, would be expected to have those whiskies in its warehouses.

The House Ways and Means Committee, after 2 years of work and extended public hearings decided that the bonding period extension was necessary.

It ascertained that the Treasury Department has no objection to the extension and that no loss of revenue would ensue.

As a matter of fact, any semblance of order in the industry brings greatly increased revenue to the Treasury through corporation and personal income taxes. And that is a matter which is covered in Mr. Magill's opinion and I am not going to repeat that.

The Ways and Means Committee decided that the equitable way to do this thing was to extend the bonded period without limitation from the present age to 20 years.

Senator Jenner asked yesterday why the period should not be unlimited. And I would like, if I may, to answer that question as I understand the answer.

The position of the Treasury Department since 1894 has been that so far as they were concerned, it ought to be unlimited. And they have always been willing to have the period fixed at such an elongated period of time that for all practical purposes it would be unlimited. But they feel that in aid of the enforcement of their Treasury laws and in order to avoid certain technical difficulties which they foresee, if you expressed it as being unlimited, that the payment of the tax should be due on some date, no matter how far in the future. Indeed, in 1894, the Commissioner of Internal Revenue said that for all practical purposes this was unlimited when they made it an 8-year period because at that time the average age of whisky sold was 3 years, and, therefore, you have the industry 5 years beyond the normal marketing date to hold its whisky in case difficulties of the kind we are talking about now arose.

So that the fact that the House committee made it 20 years was done, as I understand it, by the committee at the request of the Treasury Department which felt that some period of time, some specification of time was necessary for the sheep to be finally counted.

It had nothing to do with collecting tax at any particular date.

The Distilled Spirits Institute now holds that the 8-year bonded period is, and I quote, "An onerous limitation, emphatically so, because of the present high rate of excise tax." And that is a statement that Mr. Street made before the Tariff Commission on January 21, 1958.

The Distilled Spirits Institute, on the other hand, while admitting that this is an onerous provision and particularly so, because of the present high rate of excise tax, is now before this committee saying that some of these punitive restrictions ought to be continued. And I think it is a natural question to ask, why?

Senator KERR. Are you a lawyer?

Mr. HEYMSFELD. I am a lawyer by profession, yes, sir.

Senator KERR. What is a "punitive restriction"?

Mr. HEYMSFELD. A punitive restriction is a restriction which is imposed for the purpose of punishing and as I understand it the concept——

Senator KERR. Now, is it your contention that a provision in the law which has been there since 1894—that you can have the privilege of keeping whisky bonded for 8 years without having to pay tax, but that if you want to keep it longer than that that you must pay a tax—is a punitive restriction?

Mr. HEYMSFELD. That is precisely my position. It has become punitive through acts and events which were not foreseen when the law was made 8 years. And, as said by Mr. Justice McElwain in the case which we brought and which was referred to yesterday——

Senator KERR. That which as enacted for your benefit has become a punishment or a penalty?

Mr. HEYMSFELD. Yes, sir. The circumstances have turned the then provision into a penalty and that they are circumstances which, certainly, were not foreseen in 1894 when this law was first enacted.

Senator KEAN. It is a fact that the 8 years was enacted as a benefit to the distiller, the 8-year delay, is it not?

Mr. HEYMSFELD. It certainly was, sir.

Senator KEAN. Understand, I am just trying ot get your position.

Mr. HEYMSFELD. Yes, sir.

Senator KEAN. I have heard you use the word "punitive" 2 or 3 times.

Mr. HEYMSFELD. Yes.

Senator KEAN. This is the first time I have heard it indicated that a law which was passed and which the Congress has maintained under the assumption that it was something that a group of taxpayers wanted as a privilege and benefit, I am a little bit surprised to hear it referred to as "punitive." I am not disputing it. I am trying to get your viewpoint.

Mr. HEYMSFELD. Yes, sir.

I would like, if I may, to explain, to the best of my ability.

When the law was originally enacted it provided that the tax should be paid 8 years after the whisky was first put in warehouse. That was, undoubtedly, from a legal standpoint, the extension of a privilege in a sense.

Senator KEAN. So that it could not be taken out earlier?

Mr. HEYMSFELD. But it would remain there for 8 years. The tax was a dollar ten cents a gallon. Whisky was withdrawn in a normal 3-year period. For a number of years the industry could accommodate itself without serious disadvantage to that 8-year limitation.

Looked at from one point of view, it is the extension of a privilege because it appears to say "You have 8 years to pay the tax." But actually, sir, this tax was never intended to be anything but a tax on consumption. It may, for purposes of legal form, be treated as a tax on distillation but in its economic effect and in its intention, and, indeed, under all of the laws that have been enacted by the Congress, trying always to maintain the technical framework of the tax on distillation, for a period of many, many years this tax has been adjusted to make it truly a tax on consumption and, indeed, it would have to be a tax on consumption, in the sense that the consumer would ultimately pay it, because no distiller can pay $10.50 a gallon on something which costs him 50 cents a gallon to produce. In other words, if the Congress said, "We are going to compel you to pay $10.50 a gallon and make you pay it at the moment of distillation," the amount of distillation that occurred in this country that would be legal distillation, that is, would be greatly reduced. So that when the Congress said, "You have 8 years in which to pay the tax," they were doing the same thing that they are now doing or will be doing under the House bill if they say "You have 20 years to pay the tax." That is, they would say to you, "You pay the tax on the number of gallons which you send to market." That is the basic principle.

And our statement shows the precedents for it, which the law creates.

It is true that the courts have disagreed with us in our position that this ought to be viewed for all purposes as a tax on consumption.

We have gone through the circuit court of appeals and we now are headed to the higher court. There can be no doubt, sir, that anyone who has ever looked at this tax——

Senator KERR. You are looking at a man that has looked at it. [Laughter.]

Mr. HEYMSFELD. Anybody in the Treasury, anybody in the industry that looks at this tax——

Senator KERR. You are the first witness who has ever been before this committee who has referred to this provision as a "punitive" provision.

Mr. HEYMSFELD. It has become punitive. And I would now like to read what Judge McElwain said in the district court. He threw us out of court but here is what he said:

> The effect of the law today and, especially, the so-called force-out provision may place the plaintiffs in an unfortunate position in which they cannot compete with foreign producers, in effect being discriminated against. However, if there be any discrimination against them, the orderly way to eliminate this would be by legislation and not a court decision.

That is why we are in this forum. We are now in a forum which can give us relief and when I say "us" I am speaking only for Schenley, but I think the inference that this is a bill just for Schenley's relief is something that is not accurate, that there are many companies that are seeking the same relief.

Senator KERR. You can say that you can disagree with it without saying it is accurate.

Mr. HEYMSFELD. I can say it is not accurate.

Senator KERR. I am offering you a sort of way out.

Mr. HEYMSFELD. I must be forgiven a mild amount of feeling on certain aspects of this situation. There was a statement in the newspapers yesterday to the effect that a member of the Distilled Spirits Institute, yesterday morning, presented a brief to this committee in which he takes a position which is different from the position of the institute, and yet I have heard the representative of the institute say that he spoke for its entire membership.

Further on the question of the punitive elements, this is what Judge Goodrich said in the circuit court of appeals:

> This situation may, as plaintiffs assert, result in loss of taxes to the Government. Whisky poured down the drain to avoid tax payments certainly does not help the United States Treasury. And a hard-pressed, money-losing distillery cannot pay the Government as much in taxes as those running at a profit. Granted all this is so, the solution of it is one for the Congress, and not for the courts.

That is why, sir, I have used the word "punitive."

There has been a certain amount of controversy running throughout this situation as to exactly whose position the DSI was——

Senator KERR. Who is DSI?

Mr. HEYMSFELD. Meaning the Distilled Spirits Institute. There is no doubt that the two Canadian companies are large and substantial contributors to the institute, and I believe that the Seagram Co. is the largest.

The Tariff Commission was asked by this Senate Finance Committee to look into the status of the competition between the United States and the foreign industry and the Tariff Commission went into this question and went into a lot of other questions, all of which are

covered in the report which was filed. And I have here indicated in a footnote what the opinion of the Tariff Commission is as to where the sources of controversy might be in this industry. It is on page 3, and this is not Schenley talking, it is the Tariff Commission:

It is in the area of regulatory control that decided differences have developed within the domestic industry during the period since repeal of prohibition in 1933. The Federal regulations have been adopted or changed only after hearings at which the various segments of the industry have presented their views but because of conflicting interests it has rarely been possible to secure unanimity within the industry with respect to important changes in the laws and regulations.

One factor which has given rise to conflicting interests in the domestic industry is that two of the largest domestic producers of whisky are subsidiaries of Canadian-owned holding companies and are the major importers of Canadian whiskey marketed in the United States. These two important members of the industry, because of their operations relating to both domestic and Canadian whiskies, frequently have interests that differ from those of their concerns in the United States industry.

Senator KERR. Of "other concerns"?

Mr. HEYMSFIELD. Excuse, me, "of other concerns." There has been some question raised here as to whether this matter of the bonding period was truly a matter of competition between the United States and the Canadian industry or whether the Canadian industry operated in its own area and the United States industry operated in its own area. And again I would like to quote the Tariff Commission report. This is on page 4:

The Federal laws and regulations which have an influence on the conditions of competition between domestic and imported whisky——

Senator KERR. I cannot find that.

Mr. HEYMSFELD. It is in the report of the Tariff Commission. It is not in the statement.

Senator KERR. I thought you said it was on page 4.

Mr. HEYMSFELD. On page 4 of the Tariff Commission report.

Senator KERR. Start over again.

Mr. HEYMSFELD (reading):

The Federal laws and regulations which have an influence on the conditions of competition between domestic and imported whisky and which have given rise to controversy within the domestic industry relate primarily to the storage of whisky and the bonding period—

in other words, here is the Tariff Commission saying that the bonding period is one of the elements which have an influence on the conditions of the competition between the domestic and imported whisky.

I would like now to quote the testimony of Mr. Howard Walton, and this is on page 4 of my statement.

Senator KERR. Of what?

Mr. HEYMSFELD. Of my statement. I am back on that.

Mr. Howard Walton, president of Hiram Walker-Gooderham & Worts., Ltd., a member of DSI was questioned before the Tariff Commission concerning his complaint of competitive disadvantage.

His statment was that his company would not be at a competitive disadvantage.

Senator KERR. Under what circumstances?

Mr. HEYMSFELD. If the law were passed as it is.

Senator MALONE. As it came from the House.

Mr. HEYMSFELD. As it came from the House, yes, sir.

He stated that his company would not be at a competitive disadvantage. He was unable to name any other company that would be under a competitive disadvantage. He said simply that he was 'talking about some smaller companies that I think would be adversely affected competitively," but stated, also, that he had "no particular companies in mind."

Now, certainly, the larger companies have made no claim or showing of disadvantage and the smaller companies include many which in proportion to their requirements have heavy stocks of older whiskies. And I will not repeat what I said before that a company which, as a matter of policy, markets 4-year-old whisky and chooses not to compete at all in the market for all ages cannot claim disadvantage as to an area of the market from which it has by choice excluded itself.

I have tried to state very simply what the issue is before this committee, and I think that the events of the last 2 days come pretty much down to what our statement is, which is simply this: That the quantity of whisky aging in a barrel diminishes continuously through soakage and evaporation and the issue is whether a taxpayer under any circumstances should pay the tax on gallons lost through soakage and evaporation which the trade calls "outage losses," or whether he should pay the tax only on the gallons which enter into consumption. During the 19th century as has been stated there were certain restrictions imposed on the allowable outage loss but that was in aid of enforcement. If A went to a distillery and slipped in the warehouse at night and using a straw took some of the whisky out of the barrel——

Senator KERR. That was for medicinal purposes, I take it?

Mr. HEYMSFELD. It was. And then saying that he had lost that quantity of whisky through soaking and evaporation. So the regulations were set up in such a way that normal soakage and evaporation was determined by the experience of the industry and then the Congress enacted a statute which allowed losses up to that amount.

But continuously those outage limitations were liberalized. And finally, in 1950, the Congress removed the outage limitations entirely. And adopted the principle that a taxpayer was entitled to get full outage of allowances on all of the whisky; in other words, that he should pay the tax only on the number of gallons withdrawn.

When that law was enacted no one came before this committee, no representative of the institute or anyone else, and said "That is retroactive. You are changing the rules in the middle of the game. You are allowing more outage losses than before because you are removing the limitations."

And our contention is that the present situation is precisely the same. We say that the effect of extending this bonded period from 8 to 20 years simply means that in the period after 8 years the taxpayer will not have to pay tax on whisky which disappears by normal process of evaporation.

The other sides' position is that is fair, but for all of the whiskies presently in bond, and that is a total of some 700 million gallons, we should continue to pay tax on those gallons which would evaporate after 8 years. That is, in effect, the issue, even though it can be stated and has been stated in much more complicated language.

The simple fact is that whisky in a barrel does not know there is an act of Congress which says "After 8 years you are supposed to take it out." That whisky continues, the quantity of whisky in that barrel continues to get less and less.

Senator KERR. You say that the barrel with whisky in it does not know there is an act of Congress? What is it that has whisky in it that does know? [Laughter.]

Is that a limited comparison or a common effect?

Mr. HEYMSFELD. We know it was an act of Congress. That has been forcibly impressed upon us.

To return to the statement, we deal first with the question of commingling of whisky in bond. And I say that those provisions are not and are not intended to be a solution of the force-out problem.

To begin with, those provisions require that you take the older whisky and mingle it with younger whisky. Some of the consequences of——

Senator KERR. I didn't understand it to be a requirement. I understood it to be an alternate privilege.

Mr. HEYMSFELD. In the sense that you wanted to avoid what I have identified as a "punitive restriction," you have this privilege. This is the same as saying that if you do not want to lose all of your property, you can lose part of it by taking your 8-year whisky and converting it by this act of Congress, the result of using the privilege granted by the act of Congress, into 4-year whisky. We consider that a partial destruction because 8-year whisky——

Senator KERR. It was not the suggestion that that be compelled on you?

Mr. HEYMSFELD. No, sir.

Senator KERR. It was a suggested alternative available to you?

Mr. HEYMSFELD. That is right. The issue is whether that alternative gives you reasonable relief from the burden which everybody now recognizes.

Senator KERR. If it had been not to make it a 20-year provision but to leave it at the 8 year, as it is in the present law——

Mr. HEYMSFELD. Yes, sir.

Senator KERR. If that had been the decision then would you still not want the commingling privilege granted?

Mr. HEYMSFELD. Then we would not want the commingling—then we would be advocating that the commingling privilege be taken out of the law.

Senator KERR. That is, if that had been another alternative to those now in the law that——

Mr. HEYMSFELD. No, sir.

Senator KERR. Was available to the taxpayer?

Mr. HEYMSFELD. That is right. Commingling has a legitimate and an illegitimate use. The legitimate use of commingling is that a distiller who takes whisky comparable—and as a matter of fact, the present statute requires that they be of the same kind and produced by the same distiller at the same distillery, in other words, the whiskys are comparable—that he would be permitted to consolidate his barrels of whisky. As has been told this committee, at the end of a certain period of time the whisky has evaporated and so there is empty space in the barrel. If that empty space is 25 percent of the

barrel and the distiller is in a position to consolidate barrels, which would be a much more precise statement of what we are talking about, consolidation of barrels, it means that he can take the contents of 4 barrels and put them into 3 barrels so he has in effect saved at that stage 25 percent of his warehouse space. That in and of itself is a valuable privilege, but we would be utterly opposed, and it would be a fraud on the public to permit commingling to be used in the manner in which it is proposed to this committee that it be used—that is, that 8-year whisky be commingled with 4-year whisky, 90 percent of 8-year whisky, 10 percent of 4-year, or any other percentage, and then have it go out to the public labeled as though it were the younger age, because our whole scheme of legislation and our whole scheme of regulation is in the direction of informative labeling.

The reason we do not have any objection to the commingling provision in the proposed law is that if you are going to extend the bonded period from 8 to 20 years nobody would have the motive for that kind of misuse, and, therefore, it would be used in the normal course of business, but the DSI position is that it be used abnormally, to begin with——

Senator KERR. What is the difference whether you do it normally or abnormally, if you do the same thing?

Mr. HEYMSFELD. Because you would not be normally combining 8- and 4-year-old whisky.

Senator KERR. Might you not, if it were made in the same distillery and same warehouse?

Mr. HEYMSFELD. If you did it today and marketed it you would have to call it a blend of whiskys, 4 and 8 years old, which is an exact and precise definition. You have to so label it.

Under this proposal you would not have to so label it. Therefore, the proposal is completely disruptive of everything that this industry has built itself on, and which the Government regulations have been built upon, and that is informative labeling to the consumer.

The actual purpose of the mingling is that again the United States industry be kept from competing in this over-8-year market because the frank purpose of it is that by holding the club of the tax over your head, which you cannot pay because you could not afford to pay the tax on whisky that was going to evaporate—by keeping that club over your head, you would then be compelled to reduce the age of your whisky by this mingling process.

Senator KERR. That is the designation of the age?

Mr. HEYMSFELD. That is right, both the designation——

Senator KERR. The designation of the age.

Mr. HEYMSFELD. You would be forced to manipulate your whiskys in a way which you would not normally want to do it.

There is another question that arises and that is to what extent would this be available to all owners of whisky? If I am a distiller and I have a warehouse full of whisky, 8, 7, 6, 5, 4, 3, 2 and 1 year old, which is envisaged in this proposal it is simple for me. I can take the 8 year, as was said and I can mix it with 4-year whisky under their proposal. It distresses me to think that whisky would then go to the market labeled "straight whisky" which it certainly, could not do under the existing regulation. But let us assume that I were in a

position to do it. There are many holders of whisky in the United States who do not own distilleries, who do not own warehouses, who do not own younger whiskys and those people would have no access to this privilege.

This will be an empty privilege for them. That is why the Whiskey Brokers Association who are people who trade whisky—they are essentially the small business of this industry, and carry on an active market in bulk whisky—they realize that this provision would be no benefit to them, and that is why they have said to this committee that the law ought to be passed as is because this mingling alternative would create a special privilege for a particular number of distillers, it will be a kind of custom tailored benefit which some could enjoy and others could not.

The heart of this problem has always been that all of the so-called compromise proposals have had these difficulties. They have involved false labeling or they haven't worked with reasonable equality. And that is why our company has contended that where you have got a provision on the books which is wrong, you remove it. And you let the competitive situation take its course.

I will admit to this committee that if this were a situation which a single company stood to benefit from, as has been indicated that, of course, would be an utter absurdity for us to be seeking relief, although we might very well be entitled to it in any case, if something worked unjustly even for a single taxpayer. I do not know why a single taxpayer isn't entitled a relief.

Senator KERR. I do not either.

Mr. HEYMSFELD. But we are not the only company as is perfectly clear from the entire record.

I would like to get down to this question of retroactivity for a brief moment because I think it is easily disposed of. As a matter of tax law, an excise law taxes an event. This is the first——

Senator KERR. Taxes what?

Mr. HEYMSFELD. An event, or transaction. The event or transaction which is going to be taxed is the withdrawal of this whisky from bond if the Congress passes the law as it has been passed by the House. That is the taxable act. There is no retroactivity in that. You might just as well say that when you impose an estate tax you ought to exempt all of the property that a man had up to a date that the tax was enacted—that that property ought to be exempt from the estate tax. It ought to be applicable only to after acquired property. There is no such principle in our law. It is an absolute misuse of the word "retroactivity."

But beyond that precise procedure which is being followed in the House bill has been followed on previous occasions by the Congress, because as I have said before, what we are discussing is a liberalization of the allowable outage.

Senator KERR. What others are there?

Mr. HEYMSFELD. In 1950, the Congress removed these outage limitations, and they said, the Ways and Means Committee—

The bill proposes to collect the tax on the actual quantity only of distilled spirits which are removed from bond at the time of tax payment. Presently, distilled spirits lost while in bond (during storage prior to tax payment) by reason of normal leakage and evaporation are taxable if such losses are in excess of the quantity prescribed in the statutory schedule of allowances, even though the losses did not result from the fault or negligence of the taxpayer.

That was the purpose of the 1950 act.

Senator KERR. Are there other instances in which the Congress has done what you are seeking here?

Mr. HEYMSFELD. I am coming to that.

Senator KERR. I am interested in that, if there is a precedent.

Mr. HEYMSFELD. There are a whole series of precedents and they are outlined on pages 7 to 10 of this statement.

In 1880 when the Congress first adopted a schedule of permissible outage, that schedule applied to spirits already in storage. And Representative Carlisle was the author of the bill and he said:

> The whole purpose of that section is to place the distillers and owners of distilled spirits in precisely the same situation with reference to the payment of the tax which the manufacturers of all other articles subject to internal-revenue tax now occupy under the law.

In 1894 they increased the bonding period from 3 to 8 years, and they made provision for extending the outage allowance to 48 months.

Senator Lucas referred to that yesterday as a penal limitation. We don't think that in fact it was, because if you look at the facts of the age of whisky, as it was then withdrawn, the record shows that the average age of withdrawal at that time was about 3 years. So giving you outage for a 48-month period actually gave you an additional year, but, however that may be, it was very shortly thereafter in 1899 that the Congress further extended the outage loss limitation.

And here is what the Ways and Means committee report said on that bill:

> Justice would seem to demand that no tax should be levied on what can never be sold for consumption. If every gallon of spirits on which the tax is paid is sold and the purchase price paid by a consumer the distiller or dealer has no cause of complaint, for in that case an equitable distribution of burdens arranges itself by the laws of trade; but if the tax is exacted on what has previously evaporated and gone into the air, the owner is out just that much without the possibility of recovery, and equally without the possibility of ever getting a price for it.

That is the same issue that we have here.

When that bill was passed it related specifically to spirits as appears at the top of page 9, in existence at the time of its passage.

In 1903 the 7-year-outage provision was made applicable to all distilled spirits in storage as well as future production.

Then we got to the prohibition period, which I do not refer to in the statement but it came up yesterday. Of course, during that period the outage limitations were removed completely and even today any spirits that were distilled during that period still have no bonded-period limitation on them.

Senator KERR. According to your testimony and others, the barrel has no spirits, either.

Mr. HEYMSFELD. By this date, that is right, sir. That is right.

Likewise, when chapter 226, of the acts of the 77th Congress, was enacted in 1942, it extended loss allowances and applied to all distilled spirits then in bond.

Then in 1950 the outage limitations were completely removed from the laws, and this removal was applicable to all stocks in bond.

There was nobody that came before the committee in 1950, or went anywhere else and said, "This is retroactive—this is unfair—this is applicable to stocks in bond. And this ought not to be done."

We have a record of 80 years of legislation in which outage-loss limitations have been steadily liberalized. And in each instance the liberalization has been made effective as to existing stocks in bond.

Senator KERR. As I understand, though, correct me if I am in error, they apply to how much tax would be paid, seeking to limit the tax paid to the quantity present, not determining or changing the time at which or in which the tax might be paid.

Mr. HEYMSFELD. The two are identical, Senator.

Senator KERR. Identical or otherwise, is my observation correct?

Mr. HEYMSFELD. Your observation is correct, sir. I believe, at least, it is my purpose——

Senator KERR. I mean, it would seem to me——

Mr. HEYMSFELD. Yes, sir.

Senator KERR. I will say to you that my practice of law was limited in respect to your experience, but it would seem to me that there would be a difference in determining how much a taxpayer owes and determining when he would pay it.

Mr. HEYMSFELD. Yes, sir. But in this instance, this determination of the time when he would pay it becomes in effect a determination of how much tax he owes, because it isn't saying "We owe a tax of $10 and we pay it on a certain date"; it is rather saying, "On a certain date we are going to determine how much tax you owe"; which is just slightly different from the case which you have put to my hypothetically. In other words, to be precise, we would have to say, sir, that we are going to determine by the existence of a certain set of facts on a certain date how much tax you owe.

Senator KERR. I am talking about acts of Congress.

Mr. HEYMSFELD. That is right, sir.

Senator KERR. I am talking about acts of Congress, I repeat, with reference to the outage limitation.

As I understand it, they had been more or less in the nature of arbitrary legislation, saying, that if it had been in a certain period of time that the law would presume that there had been a certain amount of reduction in volume. I believe you called it evaporation and soakage——

Mr. HEYMSFELD. Soakage——

Senator KERR. And that these changes that you refer to have gradually or did gradually move to the posture of where the Congress said, "We will not make any arbitrary limitation which would penalize you, if yours had been greater, or give you a windfall if experience proved that yours was less," but that the Congress says that "We will just measure it and see what it is, and let the volume thus determined be decisive in the matter of computing the tax."

Mr. HEYMSFELD. That is precisely correct.

The issue here is and the DSI proposal indicates it, that when you say that we are going to take the quantity which exists at 8 years even though you may not withdraw it until it is 10, 11, or 12 years old, you have in effect been limited in your outage allowances by the 8-year period.

Senator KERR. That is quite true.

Mr. HEYMSFELD. That is my point.

Senator KERR. As I understood it, that was an alternate proposal of theirs; was it not?

Mr. HEYMSFELD. No, sir—well——

Senator KERR. Wasn't that a proposal of an additional alternate?

Mr. HEYMSFELD. That is right. That was an additional alternate. And that alternate has the same objection as the present law has, which is that you are taking an arbitrary period of time, that is, 8 years, and saying from that date forward——

Senator KERR. It would seem to me, with my limited understanding, that, rather than that being identical with either of the others, it would be separate or different from either, in that it would be a combination of the two; that, in reality, when we inject that into it we are talking about three things. No. 1, the determination of the amount on which the tax is paid——

Mr. HEYMSFELD. That is right.

Senator KERR. No. 2, the determination of the date when the tax is to be paid.

Mr. HEYMSFELD. Yes, sir.

Senator KERR. But that their alternate proposal would be that you determine the quantity on the basis of what it actually was, but then fixed the payment date at a different time, although the amount might be less than that on which the tax was determined—might be less.

Mr. HEYMSFELD. That is right, sir. Absolutely right, and, therefore, the outage-loss allowances have been limited by the eighth anniversary and, from that date on, you would not get credit for future evaporation.

Senator KERR. But, in view of the fact that it was proposed as an alternate, I will have difficulty in deciding it to be punitive. It is not mandatory.

Mr. HEYMSFELD. The punitive element——

Senator KERR. But an alternate which would prevail only upon the choice of the taxpayer.

Mr. HEYMSFELD. That is right. We would then be left in this situation——

Senator KERR. They said you would be left in a situation where you would have a strong incentive to sell it as soon as you could.

Mr. HEYMSFELD. We would be left——

Senator KERR. You agree with that?

Mr. HEYMSFELD. We would be in a situation where the industry would continue to have very substantial losses of the kind which we are suffering under the existing law, and that is why it is an empty proposal.

Senator KERR. I did not know that you were suffering under the existing law with reference to that except in bond no longer than 8 years, because I felt when you took it out you paid tax on what you took out.

Mr. HEYMSFELD. We are only talking about the amount that remains in bond.

Senator KERR. Afterward?

Mr. HEYMSFELD. Yes.

Senator KERR. We understand each other.

Mr. HEYMSFELD. Yes.

Senator MARTIN. Do you have statistics as to the amount of liquor that was distilled during the prohibition period—you mentioned that a moment ago—that was not subject to any limitation? Do you happen to have the statistics as to the amount?

Mr. HEYMSFELD. Yes, sir. Incidentally, that had to do not only with whisky distilled during the prohibition period but which was in the bonded warehouses at the beginning.

Senator MARTIN. I was going to ask you about that; if that was not also true.

Mr. HEYMSFELD. I will put that figure in the record. I am confident it is in the Tariff Commission report.

(The material referred to follows:)

Inventory and production during prohibition years—1920-33

[In millions of gallons]

	INVENTORY		PRODUCTION
1920	50, 550	1920	235
1921	30, 002	1921	753
1922	30, 589	1922	316
1923	33, 151	1923	0
1924	30, 005	1924	0
1925	26, 841	1925	0
1926	23, 814	1926	0
1927	20, 904	1927	0
1928	17, 970	1928	0
1929	15, 127	1929	0
1930	14, 787	1930	1, 989
1931	15, 179	1931	2, 426
1932	15, 204	1932	1, 711
1933	18, 443	1933	4, 910

Source: Figures from Alcohol and Tobacco Tax Division, Internal Revenue Service.

Senator KERR. Not all of that whisky ceased to exist by evaporation and soakage, though, did it?

Mr. HEYMSFELD. As a matter of fact, it was during that period we had experience with 16- and 17-year-old whiskies, and the consumer found them acceptable. And, after repeal, many companies who had prohibition stock sold those whiskies at their advanced age, and they were found acceptable to the consumer.

Senator KERR. And did well by it?

Mr. HEYMSFELD. And did well, sir.

Senator MALONE. They sold them at an increased price?

Mr. HEYMSFELD. They sold them at an increased price; yes, sir.

Senator MALONE. Then, at that point, Scotch that comes in from Canada or some other nation, like Scotland, is it sold at an increased price if it is more than 8 years old?

Mr. HEYMSFELD. Yes; it is.

Senator MALONE. How much of an increased price over 8-year-old whisky is a 12-year-old Scotch sold on the market?

Mr. HEYMSFELD. Here are a number of imported brands sold over 8 years old, and their prices, and I will stop whenever you ask me to.

Senator JENNER. Put it all in the record.

Mr. HEYMSFELD. Corby Park Lane, 10 years old, sold in the United States—that is, brought into United States by Hiram Walker—sold at $9.75.

Senator MALONE. That is the retail price?

Mr. HEYMSFELD. Yes.

Senator MALONE. What is the retail price of the Canadian Club whisky?

Mr. HEYMSFELD. The retail price of Canadian Club—I don't know that there is an 8-year whisky—I don't have one on it, but Canadian Club, 6 years, produced by the same company, that is several dollars a bottle less.

Senator JENNER. How much?

Mr. HEYMSFELD. Several dollars.

Senator JENNER. A bottle less?

Mr. HEYMSFELD. Yes, sir.

Senator MARTIN. Can you secure for the record the exact amount?

Mr. HEYMSFELD. Yes. I have, and I will supply for the record, a list showing import brands sold over 8 years old and domestic brands sold over 8 years and the prices at which they are sold.

(Information referred to follows:)

Whisky brands sold over 8 years' old

Registered by—	Brand	Age	Proof	Price Now York ⅕ quart bottle
	Scotch whisky:	*Years*		
Alpine W. & L. Corp.	Highland Park	22	86.0	11.92
	Duggan's Dew	12	86.0	7.00
	Scotland's Ripe Age	27	80.8	13.99
Austin Nichols & Co.	Grant's Best Procurable	12	86.0	8.62
	Grant's Own Ancient Reserve	20	80, 91.4	12.95
James Barclay	Grand MacNish	18	86.0	12.00
Barton Distillers	House of Stuart	12	86.0	5.79
	do	15, 16	86.0	6.89
	Sheffield's (imported whisky)	12	80.0	4.99
Browne-Vintners	Mackie's Ancient Scotch	12	86.8	7.73
The Caledonian Corp.	Blended Old Grantian	12	86.0	7.74
	Malcolm Fraser's	12	86.0	7.74
	do	20	86.0	12.47
Carillon Importers	Auld Dram	20, 22	86.0	7.99
	do	15	86.8	6.59
	Stuart's Rare Old Scotch	15	86.0	8.59
	Scot's Aristocrat	22	86.0	9.95
	do	20	86.0	7.99
	Glen Grant Glenlivet	12	86.0	8.66
	King's Favourite	30	80.0	21.50
	King's Pride	15	86.0	6.99
	Prime Vat	30	86.0	21.50
	do	20	86.0	9.99
	Rare and Royal Scotch	15	86, 86.8	7.75
Dreyfus-Ashby	The Glenlivet	10, 12	91.0	10.59
	do	15	91.0	13.32
	Hodges & Butler	12, 14	86.8	5.85
Empire Liquors	MacKinley's	12	86.8	7.58
Mason-Burrows	MacAllan Glenlivet Malt	15	86.0	9.88
McKesson & Robbins	Highland Queen Grand	15	86.8	9.25
	Martin's DeLuxe	12	86.8	8.60
	Martin's Fine & Rare	20	86.8	11.10
Jules Ortelg	Sterling	12	86.0	6.99
Paddington Corp.	Justerini & Brooks	12	91.0	8.52
	do	20	91.0	12.47
Peerless Importers	Hankey Bannister	12	86.0	8.27
Popper Morson	King Charles	12	86.8	16.89
Quality Importers	Ambassador	25	86.0	16.50
	do	20	86.0	13.85
	do	12	86.0	8.69
Roberts Imports	Fairbridge	10	86.0	7.45
Seggerman-Slocum	S. S. Pierce	12	86.8	7.91
	John Crabbie	12	86.0	6.21
Service Liquor	Heather Cream	20	86.0	11.99
Standard Food Products	Cream of the Barley	21	86.8	11.92
	do	12	86.8	7.49
	Gold Thistle	12	86.8	5.50
	David Sandeman's S. O. H	22	86.0	9.99
Star Liquor	Glen Grant	10	86.0	9.43
	Hartley's	20	86.0	7.39
	MacLachlan's Iona	12	86.0	7.46
	Stuart's	10	86.0	7.52
	do	12	86.0	8.35
	do	20, 22	86.0	11.99
W. A. Taylor	Gaelic Old Smuggler	18	86.0	12.00

Whisky brands sold over 8 years old—Continued

Registered by—	Brand	Age	Proof	Price New York ½ quart bottle
	Scotch Whiskey—Continued	*Years*		
"21" Brands	Ballantine's Liqueur	17	86.0	12.00
	do	30	86.0	15.45
Excelsior Wine & Spirits	Glen Graeme	10	86.0	5.24
	Le Cafe Chambord	22, 23	86.8	6.00
Foreign Vintages, Inc	Robert Bruce	12	86.8	7.65
Gooderham & Worts	Lauder's Special Reserve	12	86.0	6.69
Houblein	Bell's Royal Vat	12	86.0	8.52
	Bell's Royal Reserve	20	86.0	12.18
General Wine & Spirits	Royal Salute	21	86.0	25.00
	Chivas Regal	12	86.0	8.60
Hudson's Bay Co	Hudson's Bay 1670	15	86.8	9.95
Imported Brands, Inc	Red Hackle	20	86.0	10.95
	do	22	86.0	15.34
	do	15	86.0	8.49
	do	25	86.0	12.82
The Kobrand Corp	Glen Grant	11, 12	86.0	7.99
Kraus Bros	Keith's K. C. B	12	86.0	8.08
	Keith's Glenlivet	10	86.0	7.67
	do	15	86.0	9.74
	do	17	86.0	10.72
	McClelland's Old Highland Malt	20	86.0	12.20
	Old Worthy	25	86.0	13.04
	Old Worthy Pinch	18, 20	86.0	10.86
	Old Worthy	17	86.0	8.85
	do	15, 28	86.0	13.69
	do	30, 32	86.0	15.50
	do	40	86.0	21.47
	Tomatin Liqueur	11	86.8	6.75
Major Liquor Distributors	Glen Grant Glenlivet	15	86.0	10.00
	Laphroaig	10, 14	91.4	6.79
Wayne Liquor	Whyte & MacKay's	21	86.0	10.95
Webster, Lawrence & Co	Ellis's 99	10	86.0	6.95
Frederick Wildman & Sons	Catto's Gold Label Deluxe	12	86.0	8.25
	Canadian whisky:			
James Barclay	Corby's Park Lane	10	86.8	9.75
Schenley	25th Anniversary Pack (not regularly merchandised, anniversary item only).		86.8	8.60
	Irish whisky:			
Austin Nichols	Paddy's Old Irish	10	86.0	6.75
Carillon Importers	Avery's Supreme	13	86.8	4.49
	do	24	86.0	5.49
Kraus Bros	Daly's	9	86.0	4.94
	do	11	86.0	5.38
	do	12	86.0	5.89
	Dublin Cream	13	86.0	4.85
	do	14	86.0	4.90
	do	15	86.0	4.95
Peerless Importers	Royal Irish	10	86.0	4.99
	do	25	86.0	7.39
Quality Importers	Old Bushmill's	9	86.0	7.16
W. A. Taylor	John Jameson Liqueur	12	86.0	7.02
	Specialties:			
Foreign Vintages, Inc	Agewood (finest) (straight bourbon imported from Panama).	18	86.0	11.75
	Straight domestic whisky:			
Excelsior Wine & Spirits	Collector's Item	14	93.0	12.25
Foreign Vintages, Inc	Beam's Pin Bottle	10	86.8	10.98
	do	12	86.8	14.48
	Beam's Anniversary Pack	[1] 169	86.0	20.54
	Beam's Golden Carafe	[1] 135	86.0	20.54
	Beam's Royal Reserve	10	86.0	12.39
	do	12	86.8	14.48
	Beam's Royal DiMonte	[1] 110	86.0	15.50
	Colonel James B. Beam	10	93.0	11.54
Henry Kelly	Very Old Fitzgerald	10	100.0	11.06
	Weller's Antique	9	110.0	10.41
Kobrand Corp	T. W. Samuels	11	103.0	8.98
Schenley	Schenley Grand Champion	12	86.0	9.95
	Schenley Kentucky Straight Bourbon	12	86.0	9.95
	Bottled-in-bond domestic whisky:			
National Distillers	Bourbon DeLuxe	15, 16, 17	100.0	[2] 15.48
	Mt. Vernon Rye	12	100.0	[2] 15.48
	Special Old Reserve Kentucky Straight Bourbon.	15, 16, 17	100.0	[3] 10.95

[1] Months.
[2] Quarts.
[3] Pints.

Senator MALONE. What is the oldest whisky sold that is imported——

Mr. HEYMSFELD. Well——

Senator MALONE. Twelve years old?

Mr. HEYMSFELD. On this list there is Ballantine Scotch, that is 30 years old, that is the oldest.

Senator MALONE. What do they get for it?

Mr. HEYMSFELD. That is $15.45 a bottle.

Senator MALONE. How much is the 6-year old?

Mr. HEYMSFELD. I haven't got that, sir. I think it is around $6 a bottle.

Senator MALONE. That is quite a bit of difference in cost. There is a sale for this Ballantine, is there not, on the market?

Mr. HEYMSFELD. Apparently, yes.

Senator JENNER. I would not know where.

Senator MALONE. But there is a difference. And it was testified here yesterday that there is very little difference in the quality of whisky in aging it. Do you know anything about aging whisky; what it does to the whisky itself?

Mr. HEYMSFELD. Yes, I think I do.

Senator MALONE. I could not get the answer yesterday. Will you tell us?

Mr. HEYMSFELD. I know it not from personal observation alone, but because I have had opinion studies made on the question and that, too, was introduced in the record of the Tariff Commission, and it shows that whisky continued to alter in quality and it is apparent from the fact that the consumer is willing to pay these prices that the consumer considers that those alterations are improvements.

Senator MALONE. Is it in the taste or the effect or what is it?

Mr. HEYMSFELD. It is in the taste. The effect so far as anyone knows in the present state of scientific knowledge, is due entirely to the alcoholic content.

Senator MALONE. But the taste is different?

Mr. HEYMSFELD. The taste is different.

Senator MALONE. What is the difference?

Mr. HEYMSFELD. Well, there are various adjectives which have been applied to it. Some call it mellower.

Senator MALONE. It does not bite as much?

Mr. HEYMSFELD. It is smoother going down. There are many slogans like "Time does wonders," and all of the rest.

Senator MALONE. Let me ask you something that I asked a witness this morning.

Senator JENNER. Let me ask a question. There is one thing I am interested in this whole whisky picture and that is this. You keep talking about retroactivity. There has been a lot of discussion about it here. How many times has the tariff been cut on importation of whisky into this country?

Mr. HEYMSFELD. Three times.

Senator JENNER. What did the tariff used to be on imported?

Mr. HEYMSFELD. Five dollars a gallon.

Senator JENNER. What is it now?

Mr. HEYMSFELD. It is $1.27 on Scotch and $1.25 on Canadian.

Senator JENNER. Is there any retroactivity taken into consideration, so far as the domestic manufacturers are concerned when they cut it from five to something less?

Mr. HEYMSFELD. The answer is "No." I have never heard that the tariff reduction should not go into effect until the existing stocks had been disposed of.

Senator JENNER. I don't like it.

You can do anything you want to with American industry, it seems.

Senator MALONE. I might ask you, too, what would be represented, if the tariff were to be adjusted by the Tariff Commission under the 1930 act which is still in existence and would take over if we do not extend the 1934 Trade Agreements Act which is on the floor at the present time—and they adjusted the tariff on whisky to an equalization of cost—that is the way it is defined in the tariff act, that is, the difference, the reasonable difference in the cost of manufacture of a certain brand and a certain grade here and in foreign nations, chief competing nations—what do you think the tariff would be to represent that difference?

Mr. HEYMSFELD. You mean on whisky?

Senator MALONE. Yes.

Mr. HEYMSFELD. I don't think it would be substantially different.

Senator MALONE. You think it would still be about $1.17?

Mr. HEYMSFELD. In order not to make my answer misleading, Senator——

Senator MALONE. I am talking about Scotland where the wages are lower.

Mr. HEYMSFELD. In order not to make my answer misleading, I will have to go into something which was developed at some length before the Tariff Commission which is that the problem that arises in the premium market for the American distiller is not due solely to the difference in cost. It is due to the fact that these imported whiskies are permitted to be labeled in accordance with the laws applicable in the home country, more or less; in other words, if they meet the definition we will say, of "Canadian whisky" in the home country, they can come into this country labeled "Canadian whisky" and carry the badge "imported." And, therefore, certain advantages accrue in the sale of that whisky because the consumer attributed to the product a certain value.

If those same whiskies were produced in the United States the cost differences might not be substantial, but if those same whiskies were produced in the United States they would have to be labeled in such a way under our regulations that when they got to the consumer he would associate them with a group of items which sell for much lower prices.

Senator MALONE. That is not my question. My question is they make this whisky, we will say, in Scotland, where the wages are probably one-fifth or one-tenth of what they are here—what would be the difference in making the same grade of whisky in the United States?

Mr. HEYMSFELD. You mean if you made exactly the same product in the United States?

Senator MALONE. The same product.

Mr. HEYMSFELD. I could not answer that.

Senator MALONE. That is what the Tariff Commission would have to know.

Mr. HEYMSFELD. The difference might very well be less than the amount of the present tariff difference.

Senator MALONE. You think it would not be very much?

Mr. HEYMSFELD. No.

Senator MALONE. Many of us favor that method of fixing the tariff, otherwise it is a punitive tariff, if it is more than that cost. If it is less, why, of course, it is verging on a free tariff.

Mr. HEYMSFELD. Yes. I tried to answer it directly, but the answer is a little bit more complicated because for us to do the same thing in the United States we would have to make large investments in warehouses, and so on, which the Scotch people have done, but if you adjusted the tariff to a cost of production difference, in my opinion, this tariff would not be raised from where it is now.

Senator MARTIN. Will you yield there?

Senator MALONE. Yes.

Senator MARTIN. Of course, you do not take into consideration tax on the product. We are just simply taking the actual cost of the product without consideration of tax.

Mr. HEYMSFELD. The tax falls equally on both products, Senator. In other words, when an imported whisky comes into the United States it pays the same excise cost.

Senator KERR. The cost observations you were making were as total cost of production and not the tax on it?

Mr. HEYMSFELD. That is right. The tax falls equally on both.

Senator MARTIN. That is what I was getting to.

Senator MALONE. Let me ask a question I asked this morning and I did not get an answer to. When you import whisky across the Canadian border, across any border, is there any company or method involved other than the company in Scotland, we will say, or the Government itself, importing it here, and the importing company organized under the American laws—is there any sleight of hand or different intermediate company involved or intermediate method involved?

Mr. HEYMSFELD. As we understand it, it is possible under the Canadian law, and I think the same thing is true since recently under the English law, that concerns engaged solely in foreign commerce are permitted to tax advantages on business even though they maintain offices in Canada or in England as the case may be, provided that that business is transacted wholly outside of the home country.

Senator KERR. What home country?

Mr. HEYMSFELD. In the case of Canada that would be Canada and the same for England. The home country does not attempt to tax any of the profits derived from that export business when that is done.

Therefore, it might be possible for a company to produce whisky in that country, sell the whisky to an intermediate company, let us say, at point of export—I don't want to belabor this by technicalities, but title would pass, we will say, at point of export. The profit derived in the export transaction from the instant of export to the time that it was resold, would belong to this intermediate foreign business company. That company would not be subject to tax by the home government since that part of that transaction or the whole of it took place outside of the United States.

Senator MALONE. Even though next to the border?

Mr. HEYMSFELD. It might not be subject to any United States tax, either, because the United States Government attempts to tax only the profit which is earned by the transaction which takes place in the United States.

Senator MALONE. Do you know of your own knowledge of any of these negotiations that take place?

Mr. HEYMSFELD. I have no personal knowledge at all, sir, on that subject.

Senator KERR. The Senator from Illinois.

Senator DOUGLAS. I will have to leave for the floor very shortly and I wondered if the witness would object if I asked a few questions about a subject not directly concerned with the testimony just given.

You have been giving most interesting answers. My questions are not directed to the subject matter of what you have been saying but about the economic realities of the present situation.

Do I understand that you have 40 million gallons, approximately, of whisky, approximately 8 years of age in stock?

Mr. HEYMSFELD. No, sir. You may have understood that from the testimony of other witnesses. That is not my testimony.

Senator DOUGLAS. Will you state how much you do have?

Senator KERR. You mean directly or indirectly?

Mr. HEYMSFELD. Since you ask the question on the subject it anticipates what I was going to say to the committee on that subject, but I will say it now.

On yesterday certain statements were made, I think, one witness characterized the ownership as representing 50 percent, another witness characterized it as being 40 and the figure of 40 million gallons was used.

Then certain evidence was introduced having to do with the storage of stocks in Kentucky. I think in the colloquy that followed that it was suggested to the witness that the figures be supplied and there was a comment made that the figures had been supplied to the Tariff Commission. The only figures supplied to the Tariff Commission were figures of Canadian ownership. No figures were supplied as to the American ownership. The figures used by the Tariff Commission as to American stocks were derived from the Alcohol and Tobacco Tax Division, they are table 10 of the Tariff Commission report, and they are referred to in my statement.

Those figures indicate what is stored at various warehouse locations in the United States.

Of the companies mentioned, the Tariff Commission classified the information in three different groups when it published it. It showed the 4 biggest companies, the next 3 companies, and then it showed the remaining companies which we estimate to be as many as 50 in number.

Those figures show, and they are referred to in my statement, that the total inventories—and, of course, the amendment proposed by DSI would relate to all of this whisky—was 736,971,000 and original proof gallons.

Senator DOUGLAS. That is of all ages?

Mr. HEYMSFELD. I come down to your point just two paragraphs below, but I thought we ought to see what the total figure is, because

the DSI proposal relates to all of this whisky, to all of the 730 million gallons now in bond. Those gallons were divided—and talking now only of warehouse locations not of ownership—492 million gallons in the warehouses in the 4 largest companies, 95 million gallons in the warehouse of the next 3 companies, Publicker, Brown-Forman, and Glenmore, and the remainder, the 140 million gallons.

Senator DOUGLAS. This is the gallonage?

Mr. HEYMSFELD. Yes. Since December 11, 1957, which is the date as of which the Tariff Commission figures speak, 14 million gallons of whiskies produced in the spring of 1950 season were exported, redistilled or otherwise disposed of. They were 8 years of age prior to June 30, 1958.

Of the remaining whiskies, that is the whiskies that would reach 8 years of age, that is between now and December 31, 1960, the total holdings shown by the Tariff Commission report were 180,025,562 gallons. These were whiskies produced between July 1, 1950, and the end of 1952.

The distribution of this quantity of older whiskies, 136,088,087 gallons were held in the warehouses of Seagrams, Schenley, National Distillers, and Hiram Walker.

Senator DOUGLAS. That is a composite figure?

Mr. HEYMSFELD. Yes.

Senator DOUGLAS. You show on one side Hiram Walker, and I assume that is National Distillers on the other. Could you break that figure down into the number of gallons that you hold and the number of gallons that these other three hold?

Mr. HEYMSFELD. I cannot tell you what the other companies own, but I was going to say that we will give to Mr. Stam figures as to our ownership, not only stored in the warehouses but what we actually own in order for Mr. Stam to make a proper evaluation I would assume that he would desire the same information from the other companies.

Senator DOUGLAS. You will furnish it to a member of the staff, but not to the committee, are you suggesting.

Mr. HEYMSFELD. I was suggesting that there was some comment made yesterday that possibly these production figures could be made available to the committee in such a way that their confidentiality would not be impaired.

Senator DOUGLAS. And not to state it in a public hearing?

Mr. HEYMSFELD. We are willing to make them public if everyone else will make them public, but if others will not make them public—we certainly will make our figures available to the committee without regard to what anyone else does.

Senator DOUGLAS. Let me ask you this, is it true that you hold a very substantially larger amount of 8-year-old whisky in stock than the other companies, without showing how much larger?

Mr. HEYMSFELD. I would have to make, to answer your question, guesses which may have misled yesterday's witnesses. The only figures I could work with are those showing what is stored in the warehouses. It is possible for customers to own whiskies stored in the warehouses of others. Schenley owns some. There are some who own——

Senator DOUGLAS. What I am trying to get at is: What is all this shooting about? You obviously want this House provision. The

other group does not. They say it helps you. It does not help them as much. You are saying it helps everybody. I am trying to find out just what the area of disagreement is here and the conflict of interest.

Mr. HEYMSFELD. I will answer that question as best I am able. And I spent more years of my life thinking about it than I like at the moment to think about. The issue is this: At the present time, no one will deny that there is a very huge amount of this whisky which is dispersed throughout the industry, and many people hold it.

Senator DOUGLAS. But you hold large quantities of it?

Mr. HEYMSFELD. We hold large quantities, and other people hold large quantities. And I could say that, based on certain calculations which I have made, at least one of the other large companies may own a percentage point more than we do.

Senator DOUGLAS. Is that Hiram Walker?

Mr. HEYMSFELD. No, sir; but it would be misleading for me to make a statement of that kind, because I have no access to any figures of ownership. You ask me what this dispute is about. It is about something which, I think, is rather simple. Admittedly, there was an overproduction of whisky in this industry——

Senator DOUGLAS. Around 1950 and——

Mr. HEYMSFELD. And 1951. As a matter of fact, while Schenley has been accused of being solely responsible for that overproduction, that is an utter absurdity, because the quantity in bond at the present time completely disputes any concept that Schenley alone produced it, and Schenley alone hung onto it. That is not so.

I am going to state publicly, and it is in the statement, that we, in fact, produced less than our percentage of the whisky that we tax paid in the particular years that we are talking about. In other words, in 1950 and 1951, our new production in those years in relation to the total production of the entire industry was less than the percentage of business we are doing in the industry.

Senator DOUGLAS. Your volume of sales was a larger proportion of your volume of production?

Mr. HEYMSFELD. That is exactly correct. That was true for 1950 and 1951—both years. We make that statement on this record, and it is in our statement. If I may conclude my thought. Some companies in the industry were caught with excess stocks. There were other companies in the industry who considered their position would be favored by keeping the companies that were in difficulty over the barrel, and, from 1953 to the present time, some of the witnesses who——

Senator DOUGLAS. The other companies tried to keep Schenley over the barrel?

Mr. HEYMSFELD. Schenley, Publicker, and a whole string of companies, some of whom have since lost everything they had, some of the smaller companies. Every company in the industry has been affected in one way or another. In 1953, the witnesses came before the House Ways and Means Committee and testified that it was unseemly that a matter of this kind could be even submitted for legislation. They were not saying it was a burden and restriction. Particularly in the light of the $10.50 tax, which is what Schenley was saying. They said it is an unseemly matter to even bring it before the committee. Anyone who reads the total record, as someone who is a can-

didate for a doctor of philosophy degree, may someday find it interesting to do, will reach some conclusions that are completely different from what has been said by others here.

Senator DOUGLAS. Whoever holds this large quantity which is rapidly approaching the 8-year limit will have to pay at the end of the 8 years $10.50 a gallon tax, if the law is not changed?

Mr. HEYMSFELD. If he holds the whisky?

Senator DOUGLAS. That is right.

Mr. HEYMSFELD. Which he will not do.

Senator DOUGLAS. What is that?

Mr. HEYMSFELD. Which, on the record, he will not do. He will either destroy or sell it, or export it, because he can't pay it. And we have millions of dollars of losses that have been caused in the past, not only to the industry but to the Treasury, because companies are unable to pay the tax, have engaged in these manipulative procedures. This Congress passed an act in 1954 which permitted the destruction of this whisky. And it was stated at that time that one of the purposes of that act was to avoid bankruptcy and other problems of the industry.

Senator DOUGLAS. Unless the law is changed, there would be pressure upon the industry, and, particularly, from those companies that hold large quantities, to sell these stocks of whisky produced in 1950 and 1951 and, possibly, 1952—because of evaporation and carrying charges, there would be pressure to sell them.

Mr. HEYMSFELD. That is right.

Senator DOUGLAS. What effect would that have on the market?

Mr. HEYMSFELD. It would be destructive. It is today true.

Senator DOUGLAS. Would it disrupt the market merely for the brands of the distillers who have large stocks, or would it decrease the price for all whiskies, including rival brands?

Mr. HEYMSFELD. We don't have to guess at that. At the present time, there are very substantial drops in prices on brands of all companies in the industry due to this on the market.

Senator DOUGLAS. If the tax was imposed more at the point of sale, which the Senator from Indiana suggested, which gives you a longer period of time in which to work off these excess stocks which if sold in the next year or so, would it help?

Mr. HEYMSFELD. Exactly right.

Senator DOUGLAS. Have I been able to get at what the shooting is about, or, partially, what the shooting is about?

Mr. HEYMSFELD. I believe so; yes, sir.

Senator DOUGLAS. Thank you very much.

Senator KERR. Proceed.

Mr. HEYMSFELD. Now, I said at the outset of my statement that the position of the Distilled Spirits Institute reflected the position of Canadian companies. And I say in my statement that what is proposed by the Distilled Spirits Institute will continue to favor those Canadian companies in their competition against the United States companies.

Senator KERR. I have had trouble understanding that.

Mr. HEYMSFELD. Well, Senator, only in last night's newspaper there is a little article entitled "Canadian Rye Forges Ahead in Whisky War." This story comes out of Toronto.

It's whisky galore and a whisky war now that Canadian rye has taken the offensive against Britain's Scotch and America's Bourbon.

We were told yesterday this is a very little thing, a small percentage of whisky coming in here.

Canadian producers say whisky has become the world's "smart set" drink. They cite France, where today it is considered tres chic——

Senator KERR. Wait a minute.

Mr. HEYMSFELD. I was going to spell that for the reporter. T-r-e-s c-h-i-c——

to serve whisky despite that country's store of cognacs and wines and despite the French Government's efforts to save foreign currency by slapping hefty taxes on British, American, and Canadian whisky imports.

Competition is keenest for the richest whisky market in the world—the United States. Canada is exporting 10½ million gallons south of the border, three times the prewar figure. During the same period scotch imports into America from Britain have doubled to about 13½ million gallons yearly.

Known to Canadians simply as "rye," Canadian whisky has been quietly but effectively breaking into the markets long dominated by scotch and bourbon. Now more than 1 million cases of rye a year go into the foreign markets outside North America. In 1939, the figure was 15,000 cases.

Senator KERR. How much vodka comes in?

Mr. HEYMSFELD. Vodka is produced in the United States mainly.

Senator KERR. Mainly?

Mr. HEYMSFELD. Yes, sir.

Senator KERR. No imported vodka?

Mr. HEYMSFELD. There is a very slight amount of it.

Senator KERR. In other words, the vodka consumed here is domestic.

Mr. HEYMSFELD. Yes, sir.

And this newspaper piece ends with

The two Canadian distillers who make most of this country's rye last year between them had consolidated net sales of $1,142,000,000.

Senator KERR. Does it name the two companies?

Mr. HEYMSFELD. No, sir, but it must obviously relate to Seagram and Hiram Walker. The two large Canadian distillers do 80 percent of the Canadian whisky business in the United States. They are heavy financial supporters of the DSI.

In proposing that the 20 years should apply only to future production, DSI in effect suggests that present benefits accruing to these producers be continued for at least another 10 to 12 years, while still being denied to the United States producers. This would give the foreign companies such as Seagram and Hiram Walker a continuing clear field for older whiskies without United States competition.

Seagram presently markets 12-year Scotch in the United States and Hiram Walker markerts a 10-year-old Canadian whisky—aided by over $87 million of added profits derived from tariff reductions in 1948 and 1951 which were not passed on to the United States consumer.

Senator KERR. That is where our country reduced the tariff and importers increased their business, they did not pass on that reduction to the American consumer?

Mr. HEYMSFELD. That is $87 million would have gone into the United States Treasury that went to the Canadian producers.

Senator KERR. To the companies?

Mr. HEYMSFELD. Paid by the American consumers, yes.

Senator KERR. When you get through with that clipping, I want it.

Mr. HEYMSFELD. There it is.

Senator KERR. Are you through with it?

Mr. HEYMSFELD. Yes, sir. At the same time that this has been going on, Seagram and Hiram Walker achieved a dominating position in the United States market for premium priced whiskies. They have, also, substantially increased their production of Canadian whiskies.

Senator KERR. Where is that statement about the amount that they saved and did not pass on?

Mr. HEYMSFELD. That is in my written statement.

Senator KERR. That is not in this?

Mr. HEYMSFELD. No, sir; it is in my statement.

Senator KERR. Where is that statement, in this statement of yours?

Senator JENNER. In your statement?

Mr. HEYMSFELD. On page 13.

Senator KERR. I would like to have you repeat that now that the chairman is here.

Mr. HEYMSFELD. I made the statement, Mr. Chairman,

> The two large Canadian owned distilling companies, who do 88 percent of the business in Canadian whisky in the United States, are heavy financial supporters of the DSI.

Senator KERR. That is on page 12?

Mr. HEYMSFELD. I will repeat,

> The two large Canadian owned distilling companies, who do 88 percent of the business in Canadian whisky in the United States, are heavy financial supporters of the DSI. In proposing that the 20-year bonded period should apply only to future production, DSI, in effect, suggests that present benefits accruing to alien producers be continued at least another 10 to 12 years, while still being denied United States producers. This would give foreign companies such as the Seagram Co. and the Walker Co. a continuing clear field for older whiskies without United States competition. Seagram presently markets a 12-year-old Scotch in the United States, and Walker markets a 10-year-old Canadian.

And as I said, sir, that was $87 million which previously had been collected at the customs office and went into the United States Treasury, and thereafter went to the Canadian producer.

Senator KERR. Under the trade program they received these reductions in tariffs, but there has been no corresponding reduction in the price of their product to the consumer in this country.

Mr. HEYMSFELD. That is right.

Senator KERR. So that these two companies have reaped that windfall under the existing trade programs because of the reduction in the tariff and that money which two important companies got and the people did not.

Mr. HEYMSFELD. That is correct. That is confirmed in the statement of the Tariff Commission.

The CHAIRMAN. What about other companies—did other companies do the same thing?

Mr. HEYMSFELD. No, you see in the case of Scotch, where there were many companies importing Scotch into the United States, the prices did drop somewhat to reflect that tariff reduction. But in the case of this Canadian whisky, 88 percent of which is done by two companies, they do their own importing into the United States. The situation was obviously not as competitive.

Senator KERR. But it would in part apply to anybody that imported during that period?

Mr. HEYMSFELD. You mean the tariff reduction would?

Senator KERR. And the opportunity to make the profit.

Mr. HEYMSFELD. Yes, anyone would have the opportunity but the normal force of the competition takes hold where there is an important change in costs.

Senator KERR. Would you say there would be any instance where the entire reduction in tariff was passed on to the American consumer?

Mr. HEYMSFELD. You mean in the liquor industry?

Senator KERR. Yes.

Mr. HEYMSFELD. There have been such instances, yes, but they are true in the case of Scotch whisky where I say there were more importers, and, therefore, more competition.

Senator KERR. Do you think in that instance they passed it all on or part of it?

Mr. HEYMSFELD. I believe so. If that is an incorrect statement I will correct it on the record.

Senator KERR. All right.

Mr. HEYMSFELD. The hearings before the Tariff Commission, also, indicated that the Canadian whisky inventories have been growing. They have increased from 20 million gallons in the last prewar year, 1939, to 162 million gallons in 1957 or 500 percent plus.

The Canadian producers have said, "We are not marketing any substantial quantities of whisky over 8 years old in the United States, so we have no intention of doing so."

We have no assurance that they won't. They have this whisky accumulating there and under the amendment proposed by DSI, we would be excluded from that market for the next 10 to 12 years. They could pick any time of their own choosing to come into the market, with substantial quantities of those older whiskys.

Apart from this ability to market over 8-year whisky the Canadian producers would, certainly, want to expand their existing position against anything which fell into the premium grade in the American field. As a result of some of the circumstances that Senator Douglas referred to the American industry has been thrown into a kind of turmoil where whiskies 7 and 8 years old are being sold at bargain counter prices because they have got to be. The result is that that portion of the market which normally would be the premium market for the American producer is destroyed because the prices at which these whiskys are sold are, in many instances, at cost, and I have seen figures indicating in some instances they are below cost.

So that what is proposed by this legislation is to guarantee that Canadian whisky will keep secure its position of dominance in the premium whisky market in the United States. And as that article from Toronto indicates, there is some feeling to that same effect up in Canada and they seem rather pleased about it.

Senator KERR. Schenley has no Canadian whisky?

Mr. HEYMSFELD. We have. In 1945, we went up into Canada because we decided that we would compete with them up there. We own a very small percentage of the Canadian whisky business which is growing.

As I have said 88 percent of the business is done by Seagram and Hiram Walker. We will compete. And as I say hope to improve our situation. But in the same way that a majority of our business and profits is done in the United States, they have got very substantial Canadian interests and it is logical, as businessmen, they will try to protect those interests as best as possible. And as I said, at the outset of my statement, that isn't any secret and the Tariff Commission made reference to that fact as one of the causes of the disagreements which exist in the United States industry and specifically on this issue of the bonding period.

Senator KERR. I will tell you what I am looking for as one of the members of the committee. I have nothing against either one of these groups personally. Nor am I interested in the prosperity of either one of them personally, but what I am trying to figure out is how a man can do justice to both of them.

Mr. HEYMSFELD. Well, Senator, if that is a question, I will try and answer it.

Senator KERR. I sure would like to have you answer it. That is what I am looking for.

Mr. HEYMSFELD. Because of the situation which has been crying——

Senator KERR. It would be very hard for me to put a halo on either head. I will tell you that. [Laughter.]

I just do not think any would fit. That does not change the fact that you both are entitled to justice under the law.

Mr. HEYMSFELD. Yes, sir.

Senator KERR. And what I have been trying to find out in this insofar as my position is concerned which is not binding on the committee, I will assure you, is the posture that would produce a result where we would not enact legislation either that would take from anybody the right they have, or favor someone not now favored. That is what I am looking for.

Mr. HEYMSFELD. Yes, sir. I will address myself to that question. It is a very large question but actually it is a burden that I have undertaken in this appearance before the committee to show that what is in the present House bill is just under all of the circumstances.

To begin with, we have a provision of law which everybody—it is a taxing provision—therefore, the first question to ask ourselves is, "Is there anything about this provision that is needed by the revenues—does it help the revenue—is this a burden that the industry ought to carry because of some important revenue purpose of the United States Government?"

Everyone has now said, no, to that question. In other words, the argument here is not about revenue. The argument here is about competitive advantage and disadvantage.

Senator KERR. I suspected that.

Mr. HEYMSFELD. That is right, sir.

Senator KERR. I will say to you, frankly, I am a little bit surprised to learn that you are beng unaffected by it.

Mr. HEYMSFELD. I do not understand—I just fell off the sled then.

Senator KERR. I had supposed that you were appearing here advocating the position of Schenley?

Mr. HEYMSFELD. Which is in the House bill. I am advocating that this committee approve the House bill.

Senator KERR. You told me in answer to my question that broadly speaking that was the solution which provides justice to all.

Mr. HEYMSFELD. Yes.

Senator KERR. I want to say if it does, I never saw a bunch of men more anxious to avoid justice. [Laughter.]

Mr. HEYMSFELD. Senator, the fact——

Senator KERR. I am not agreeing with you. I am not agreeing with them.

Mr. HEYMSFELD. I understand.

Senator KERR. If you do not want to depart from the posture of advocating Schenley's position I would not blame you.

Mr. HEYMSFELD. I am willing to address myself to the broader position because I think I have made Schenley's position clear.

You asked me a broad question and I am willing to address myself to it. Naturally, I have to undertake the representation broader than what I am trying here to do, but I will try to be helpful on it.

Senator KERR. Confidentially, I think this committee will give serious consideration to making some change in this act.

Mr. HEYMSFELD. There are two questions that arise at that point, Senator. One is whether a change can be devised which does not do an injustice. But let us get back to the question of justice for a minute because I think it is an important question.

Senator KERR. I am not prejudiced. I do not know. I know there are men on this committee whose minds are disturbed about what would be the fair thing.

Mr. HEYMSFELD. That is right. What they are disturbed by is a lack of industry unanimity.

Senator KERR. No, I say they would be more disturbed if that were true. [Laughter.]

Mr. HEYMSFELD. That is precisely right. That is why we have always felt that the Treasury in saying that they wanted to stay out of this thing until there was a measure of industry unanimity which was said on a previous occasion, the Treasury position ought to be to say—I do not want to lay down any dogma for the Treasury Department—but the Treasury is concerned with revenue—they ought to tell this committee whether they think that this has any significant revenue effect. We have introduced a statement——

Senator KERR. The Treasury said they thought there were several matters here that should be considered.

Mr. HEYMSFELD. Yes. The Ways and Means Committee found that this provision as enacted has no revenue effect. That is in the report.

Senator KERR. I think I can accept that.

Mr. HEYMSFELD. We have got a bad law here, bad in the sense that it is having an effect which was not anticipated. You have got a multitude of conflicting claims by different people who say they are going to be affected, each in some way or another.

You would find that to be true, and I am sure that we find it to be true every day of our lives. Whenever you change a law on something, people are going to be affected one way or another.

The first thing, it seems to me, that anybody wants to find is what would be the right thing to do, forgetting for a moment any factors of competitive advantage or disadvantage. Because, in a sense, the

Congress cannot be, let us say, like the handicap committee of a golf club; it wants to give everybody the right handicap so that every match comes out precisely even. You just would have to stop all legislation if that is what you are doing.

We know that this is a wrong provision, and, from everything that has been said, it is something which, probably, should not have been in the law in the first place. We know that its continuance in the law will do all kinds of damage.

You have two problems. If you take it out, can you take it out conditionally, and will those conditions make any sense?

None of the conditions that have been proposed make any sense. Certainly, the conditions that have been imposed would work for the benefit of some company and to the detriment of others.

For us to be prohibited from marketing, let us say, 10-year whisky and labeling it correctly is creating a disadvantage for us. So, the whole argument can be turned around.

The one proposal which is suggested as a substitute, as I said this morning, creates all kinds of difficulties and confusion. And, added to this, we have a provision that is simply, in its economic effects, the same thing in almost the same form. There are many small companies in the industry who have said to this committee; they would like the bill as it is. I suspect, I do not know, but I suspect, just from my own evaluation of people and their situations, that there are many companies in the Distilled Spirits Institute, who, if they had to choose between no bill at all and this bill, would rather have this bill than no bill at all.

In your effort to modify this in some way so that we all walk out arm in arm together—

Senator KERR. I just want the record to show that when we walk out somebody will be arm in arm with the committee. That is what I want. I would not like to see us wind up where nobody would speak to us when they saw us.

Mr. HEYMSFELD. If this were a situation where one company had all of this old whisky, you would have one set of facts. But, to the extent that we have available information and these people have come here, my friends, and have said—

Senator KERR. I want to tell you—this is off the record. [Laughter.]

Mr. HEYMSFELD. What the industry needs for peace is to get some piece of legislation on the record which will end the problem the industry has, and if the present situation continues we will continue to have much more serious problems than any of us have had in the light of events of the past week.

Senator JENNER. It would just postpone this fight for the 20-year period, and we would have to go over the same thing.

Mr. HEYMSFELD.. The only published information that we have as to this distribution of whiskies shows us several things which, as business people, we can put some confidence in. To begin with, there is a lot of something. And if it is fairly well distributed, the fact that one fellow has a little bit more than the other may not turn out to be an advantage at all—it may turn out to be a disadvantage.

Senator KERR. I will tell you something. I do not know why it is impossible for this committee to find that out.

Mr. HEYMSFELD. I think they should.

Senator KERR. I just do not know why this committee should be urged to take action on the situation on any other basis than a complete knowledge by the committee of the facts.

Mr. HEYMSFELD. There are facts here.

Senator KERR. I mean all of the facts.

Mr. HEYMSFELD. The Tariff Commission—

Senator KERR. The Tariff Commission does not know who owns how much whisky.

Mr. HEYMSFELD. They know that there is a lot of this whisky and fairly well distributed, and within 24 hours the companies can have in your hands their ownership.

Senator KERR. They have not done that at any time in the last 6 years.

Mr. HEYMSFELD. There are reasons why they did not do it.

Senator KERR. I am not asking them to give this committee anything they do not want to. If you were on this committee, trying to decide this question, do not you feel that you would be in better position to do so, objectively and justly, if you had that information.

Mr. HEYMSFELD. I would feel, objectively, that I had enough information, in what is in the Tariff Commission report and on this page of our statement, to feel at least these things; first, that there is a lot of this whisky. That is the most important factor.

Senator KERR. Did your company buy another 15 million gallons?

Mr. HEYMSFELD. Our company bought the Park & Tilford Co. Reference was made to that yesterday, but, actually, they had brands of their own; I mean, the inference was left with the committee that we took that whisky and we added it to our inventory without having a use for it. As I said this morning to the committee, some of the whisky in the warehouse which was included in the computation of our purchase happened to belong to the Seagram Co. That shows how confused some of this figure situation can get to be.

Senator KERR. You have been describing a situation that I have been trying to tell you about, as to the confusion that exists as to who owns how much whisky.

Mr. HEYMSFELD. There is no confusion as to the total quantity.

Senator JENNER. 736 million?

Mr. HEYMSFELD. The total quantity is 736 million gallons, and the total quantity of the older whiskies is 180,925,000 gallons.

Senator JENNER. How much of that are you supposed to own?

Mr. HEYMSFELD. They said we owned 40 million gallons. That figure is too high. You may not have been here when I said that we would make that information available.

Senator KERR. He has offered to advise the committee as to how much they have got. I was not talking to him about that, primarily, when I said that before.

Mr. HEYMSFELD. We sell 7- and 8-year whisky. Others do not. We would be expected to have some.. The important thing, it seems to me, is: Will there be enough competition in the situation? Because that is going to be, in the last analysis, the answer to the competitive

advantage. If there is a lot of competition in the situation, the fact that you own more rather than less may be a burden. The Tariff Commission said this, and this is most important:

> Furthermore, even if the bonding period is extended, owners of this whisky will be subject to increasing pressure to dispose of the whisky because of the accumulative cost of storage, which may eventually raise the price for the whisky beyond the point at which it can be sold in any volume; with or without an extension of the bonding period, disposal of this whisky will be a problem for the whisky industry in the next few years. An extension of the bonding period will only make the problem somewhat less acute.

The picture that has been painted here that Schenley, with 40 million gallons—and someone said yesterday this was a private bill for the relief of Schenley—that is, on these figures, just not so. I feel, conscientiously, that the quantity of this whisky is available; the fact that, as you continue to carry it, you are incurring increased costs; the fact that, if you are going to market a 12-year-old whisky, you have got to be prepared to advertise it and promote it; the fact that nobody is going to undertake to advertise and promote whisky in any huge quantities unless year after year after year they have got the supplies to back up what they have established. Why establish a market for a 12-year-old whisky if you cannot, within 2 or 3 years from now, ship your customers anything? That would not make any sense. In other words, any businessman knows there is enough by way of competition in this situation to make it sure that this is not a private bill for the relief of anybody. This bill will operate for the whole industry.

There is another point. There is plenty of whisky in the open market. Any small distiller who feels he has not enough can buy some. And he can buy some on most advantageous terms.

Senator KERR. Maybe on credit?

Mr. HEYMSFELD. And on credit, too. Yes, sir.

Senator KERR. If his credit is good.

Mr. HEYMSFELD. I could make a dramatic offer that we would be glad to take care of the needs of any who fell short, but it would be just a gesture, and not an honest gesture because anybody who has the need can meet his requirements. These whisky traders who filed statements with this committee know that there are huge quantities of these whiskies around. They have to be disposed of. And these other companies are not suddenly going out of business. They will continue to sell their brands. How much of the market is left for the disposal of these whiskies, 180 million gallons of whisky? So that the only assurance, the fair assurance which this committee ought to have, is that there is going to be enough fundamental competition in the situation to make it sure that the normal business considerations will keep the situation in balance, where you are dealing with a provision of law which everybody says is unfair, burdensome, ought not to be in the law, ought to come off.

Senator KERR. Has Schenley bought any other than Park & Tilford?

Mr. HEYMSFELD. They have bought other, and some has been sold. I will supply to the committee—I have it right here; I will make it available—our purchases. The inference that we have kind of tried to establish a corner on the aged-whisky market by our purchases is just not so. And the facts will disprove it. I have those figures

here, and I will make them available in the same way that our other figures will be made available.

Senator KERR. When you tell this committee that there is 180 million gallons on hand, some people get the idea that in the absence of legislation which not only has been charged to be in the nature of relief, but in which there is a good deal of sentiment, that there be $1,000 million in taxes paid here, for instance, and, if this law is passed, while that tax might be less in the future, you have to look with some considerable degree of logic upon a situation that might produce it in this fiscal year and the next one.

Mr. HEYMSFELD. The answer to that is that the tax can only be paid on the number of gallons that go into consumption. If you collect $10.50 on a gallon, and it goes to the market, that must displace a gallon of 6-year whisky, 5-year whisky, or 4-year whisky. In the end, the Treasury is not going to collect more taxes than on the number of gallons of whisky which goes into the market. While somebody may come in and say, glibly, "If you don't change this law, these fellows are never going to redistill this whisky—the record shows that—they will shove it out of the market," let us assume they did send it to the market. It would displace other gallons of whisky which will, otherwise, go to the market. The American consumers are drinking a certain number of gallons of whisky per year. Whether that is 8-year whisky or 2-year whisky, the amount of tax you will collect will be based on the number of gallons consumed.

Senator KERR. Actually, it is based on the number of gallons you take out of the warehouse.

Mr. HEYMSFELD. It is based on the number of gallons you can sell.

Senator KERR. I can readily recognize that you will not continue very long to take it out of the warehouse and pay taxes on it——

Mr. HEYMSFELD. You cannot.

Senator KERR. At any greater rate than you sell it.

Mr. HEYMSFELD. It is impossible. There is not enough money to do it; 180 million gallons—there isn't enough money in the industry to pay that tax except there is a market for it. That is what this problem is about.

Senator KERR. You, on the one hand, and others, on the other hand, have kind of indicated that there was not complete harmony between you and—what do you call this—DSI?

Mr. HEYMSFELD. Distilled Spirits Institute.

Senator KERR. You are not a member of that?

Mr. HEYMSFELD. No, sir.

Senator KERR. Is it a fact that Schenley helped found that organization?

Mr. HEYMSFELD. Yes, sir; in 1933, we helped found it.

Senator KERR. When did you withdraw from it?

Mr. HEYMSFELD. We withdrew from the organization, I believe, in the early part of 1955.

Senator KERR. In other words, you just got out of it about 3 years ago. You were here, were you not, as a member of this organization in support of the Saylor bill in 1953?

Mr. HEYMSFELD. I, personally?

Senator KERR. No; Schenley.

Mr. HEYMSFELD. Not when the bill was before the Senate Finance Committee. We were a member of the organization, but we advised the committee by telegram of our position on the bill.

Senator KERR. But you did offer a compromise, as I remember it, or a little different or slightly different, than the Saylor bill, in lieu of it?

Mr. HEYMSFELD. I would be glad to give the story on that, if that is what the question is directed to.

Senator KERR. Is that correct?

Mr. HEYMSFELD. We advised the committee that we did not favor the Saylor bill when it was before the committee; that is correct. That was by telegram dated March 2, 1954.

Senator KERR. Then you later advised the committee you did not favor the suggestions which you had made?

Mr. HEYMSFELD. We had not made a suggestion.

Senator KERR. Did you not also suggest something?

Mr. HEYMSFELD. The House Ways and Means Committee, the fact is, stated to the industry as a whole just exactly what kind of a bill they were going to write, and we cooperated with them in drafting their legislation.

Senator KERR. Now, do you know H. R. 5367?

Mr. HEYMSFELD. Not by number, sir.

Senator KERR. That was in 1955, a House bill extending the bonding period. I just cannot remember when there has been a bill that was brought to extend the bonding period.

Mr. HEYMSFELD. Schenley said, as early as 1939, if the United States industry were ever to put itself on a basis of equality of competition with the producers overseas, it ought not to be made to operate with any 8-year period, because producers overseas were producing 12- and 15-year-old whisky. We said that in a public statement. The issue became quite intense in 1951, when the Congress increased the tax from $9 to $10.50 a gallon. At that time, I had the honor and the privilege of making certain representations to the Ways and Means Committee and the Senate Finance Committee on that tax bill.

Senator KERR. I remembered that you had opposed an extension of the bonding—or that Schenley had at one time.

Mr. HEYMSFELD. We never opposed an extension of the bonding period. We opposed the type of restriction on labeling over 8 years old or any other type of punitive restriction, if I can stay with my language as I defined it earlier.

Senator KERR. You stay with it because we just want to understand it, and that helps.

Mr. HEYMSFELD. We objected to the punitive restrictions and still do so. We have never been in the posture of opposing the extension of the bonding period.

Senator KERR. Do you have anything further to say?

Mr. HEYMSFELD. Not unless you have some questions.

Senator KERR. Do you have some questions?

Senator JENNER. I have none.

Senator KERR. I wanted to thank you and all the others who have come here. So far as I am concerned, you have been as responsive as I could ask you to be to the questions propounded to you. I will have to acknowledge to you that I still do not know as much as I

would like to know about what would be the proposal that would be supported by the greatest element of justice.

Mr. HEYSINFELD. The House found the answer to that.

Senator KERR. We have great respect for the House.

Your statement together with the attachment will be made a part of the record at this point.

(Statement referred to follows:)

STATEMENT ON BEHALF OF SCHENLEY INDUSTRIES, INC., TO THE SENATE FINANCE COMMITTEE ON H. R. 7125

H. R. 7125, the Excise Tax Technical Changes Act of 1957, contains in title II an extensive modernization of the Internal Revenue laws as they apply to the alcohol, tobacco and certain other excise taxes.

Schenley Industries, Inc., urges adoption of title II in the form in which it passed the House and is now before this committee. The bill represents many years of competent and diligent work by the Alcohol and Tobacco Tax Division of the Internal Revenue Service and by the congressional staffs.

In addition to supporting the bill in general, we wish to set forth facts which justify adoption without changes of those sections which extend the bonded period from 8 to 20 years, as voted by the House of Representatives and as now before the committee.

We shall show:

1. The provisions permitting commingling of whisky in bond (section 5234 (a) (2)) are not and were not intended to be a solution of the bonded period problem, and are objectionable unless accompanied by a 20-year bonded period. Without such extension, commingling does not afford relief to all owners of force-out whiskies, and by itself depresses values.

2. There is no "retroactivity" involved. The House bill, H. R. 7125, in its application to existing as well as new inventories, follows a long line of sound congressional precedent on similar legislation.

3. Restrictions on the ability to market and correctly label whiskies over 8 years old would continue a discrimination against United States producers and benefit solely Canadian producers who are advocating the restriction.

4. H. R. 7125 provides benefits for the United States industry as a whole. The existing inventories of older United States whiskies are large, the holdings are scattered, purchasers can freely buy their requirements, and the claimed "disadvantages" to any company would arise only from its business decision not to market older whiskies rather than from the provisions of H. R. 7125.

THE HOUSE BILL IS A FAIR SOLUTION

The House Ways and Means Committee, after 2 years of work and extended public hearings, decided again that bonding period extension was necessary. It ascertained that the Treasury Department has no objection to extension, and that no loss of revenue would ensue. As a matter of fact, any semblance of order in the industry brings greatly increased revenue to the Treasury through corporation and personal income taxes. The Ways and Means Committee decided that the equitable way to extend the bonding period was to extend it without limitation from the present 8 years to 20 years.

There is now agreement that the 8-year limitation is unfair, unnecessary and burdensome. In extending the bonded period to 20 years, the House applied a principle recognized for more than 75 years, that distillers "shall pay the tax to the Government only on the quantity which is actually sold and goes into consumption or is withdrawn for sale or consumption in this country" (Representative Carlisle in 10 Cong. Rec. 2835 (1880)).

The Distilled Spirits Institute now recognizes that the 8-year bonding period "is an onerous limitation, emphatically so because of the present high rate of excise tax." (Statement of Mr. Dan Street, president of the DSI, before the U. S. Tariff Commission, January 21, 1958. Transcript of proceedings, p. 23). The efforts of United States companies, ever since the tax increase of 1951 to secure elimination of the 8-year rule, are now shown to have been justified.

The DSI, under the leadership of Canadian-owned companies, has now shifted from its former attack upon the principle of an extended bonded period to

support of crippling amendments to H. R. 7125.[1] The amendments proposed by DSI would mean a continuation of punitive restrictions on all existing inventories as well as shares of companies on public exchanges—all part of the pattern. To remove the onerous limitation without punitive restrictions, says DSI would be "retroactive" and to the disadvantage of a section of the trade. Nowhere does it appear that doing what DSI asks for will benefit the revenue or serve any other public purpose.

The U. S. Tariff Commission, pursuant to the Senate Finance Committee resolution of August 12, 1957, recently investigated into the conditions of competition in the United States between whisky produced in the United States and that produced in foreign countries.

At the Tariff Commission hearings, no company testified that it would be hurt by the proposed House bill. The plain fact is that no company, large or small, would be hurt competitively by the enactment of H. R. 7125.

Mr. Howard Walton, president of Hiram-Walker-Gooderham & Worts, Ltd., a member of DSI, was questioned before the Commission concerning his complaint of competitive disadvantage. He stated that his company would not be at a competitive disadvantage. He was unable to name any other company that would be under a competitive disadvantage. He said simply that he was "talking about some smaller companies that I think would be adversely affected competitively," but stated also that he had "no particular companies in mind." (Transcript of proceedings before U. S. Tariff Commission, pp. 382-385.)

The larger companies certainly have made no claims or showing of disadvantage to themselves. The smaller companies include many which have, in proportion to their requirements, heavy stocks of older whiskies. Certainly a company which as a matter of policy markets four-year-old whisky and chooses not to compete at all in the market for older ages, cannot claim a disadvantage as to an area of the market from which it has by choice excluded itself.

20-YEAR BONDED PERIOD MEANS SIMPLY THAT OUTAGE LOSSES WILL BE RECOGNIZED FOR THAT PERIOD

Stripped of confusing technicalities and irrelevancies, the basic question is quite simple:

The quantity of whisky aging in a barrel diminishes continuously through soakage and evaporation. Should a taxpayer pay tax on gallons lost through soakage and evaporation (known in the trade as "outage" losses), or should he pay tax only on the gallons which enter into consumption?

In the 19th century restriction were imposed, in aid of enforcement, on allowable outage losses. It has always been recognized, however, that any arbitrary limit on allowable outage losses was in conflict with the principle that the tax should be paid only on gallonage sold for consumption.

Accordingly, as improved enforcement permitted, Congress has several times since 1880 enacted laws liberalizing the outage limitations. As recently as 1950, Congress eliminated outage loss limitations. The industry strongly supported that change and no one contended that it was "retroactive" to make it applicable to existing inventories. To extend the bonded period to 20 years means simply that outage losses will be recognized for that period. This is completely consistent with every action taken by Congress with respect to outage over the past 80 years.

1. The provisions permitting commingling of whisky in bond (sec. 5234 (a) (2)) are not, and were not intended to be, a solution of the force-out problem

H. R. 7125 permits the mingling of whiskies approaching the 8-year force-out date with younger whiskies, provided they are of the same kind and produced by the same distiller at the same distillery. The consolidated product then

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[1] The recent report of the U. S. Tariff Commission says (pp. 2, 3):

"It is in the area of regulatory control that decided differences have developed within the domestic industry during the period since repeal of prohibition in 1933. The Federal regulations have been adopted or changed only after hearings at which the various segments of the industry have presented their views, but because of conflicting interests it has rarely been possible to secure unanimity within the industry with respect to important changes in the laws and regulations.

"One factor which has given rise to conflicting interests in the domestic industry is that two of the largest domestic producers of whisky are subsidiaries of Canadian-owned holding companies and are the major importers of the Canadian whisky marketed in the United States. These two important members of the industry, because of their operations relating to both domestic and Canadian whiskies, frequently have interests that differ from those of other concerns in the United States industry."

"assumes" the age of the younger whiskey. This procedure enables any who wish to use it to save storage expenses. But the House, for good reason, did not accept the suggestion that as to existing inventories the "mingling" provision made any other change in the force-out rule unnecessary.

Divorced from a 20-year bonded period, the commingling proposal would simply by another means prevent the United States industry from competing in the over-8-year market.

It would mean the continued destruction of the qualities and values created by aging of whiskies, stopping older whiskies down to younger ages and values.

Beyond this, the "mingling" procedure would not apply equally to all owners. Not all whiskey remains the property of the original distiller. Aging whiskey is bought and sold like any other commodity, and is frequently bottled by holders who have not themselves distilled the whiskey and who do not own distilleries or even bottling facilities.

A company which owned the warehouses in which its whiskies are stored and owned younger whiskies distilled at the same distillery at which the older whiskies were made, would be in a position to take advantage of "mingling." But a company which had no continuity of stocks, nor a warehouse in which to manipulate the whiskies would get no benefit.

2. There is no "retroactivity" involved. The House bill, H. R. 7125, in its application to existing as well as new inventories, follows a long line of sound congressional precedent on similar legislation

On every occasion when the Congress, since 1880 has enacted laws liberalizing the outage limitations, the liberalization has been made applicable to existing stocks as well as new production.

No one ever contended that to do this was improper "retroactive" legislation. Quite the contrary, the industry strongly and affirmatively supported, for example, the most recent change, in 1950, without a single intimation that the change should be applicable only to existing stocks.

THE 1950 ACT REMOVED OUTAGE LIMITATIONS

Up to 1950 the allowance for losses of spirits normally occurring by soakage and evaporation was limited to defined maximum allowances. The 1950 act removed these limitations.

The Ways and Means Committee report on the 1950 act said:

"The bill proposes to collect the tax on the actual quantity only of distilled spirits which are removed from bond at the time of tax payment. Presently, distilled spirits lost while in bond (during storage prior to tax payment) by reason of normal leakage and evaporation are taxable if such losses are in excess of the quantity prescribed in the statutory schedule of allowances, even though the losses did not result from the fault or negligence of the taxpayer * * *

"The purpose of the proposed amendment is to secure relief from tax on all distilled spirits lost or destroyed in bond without the necessity of filing a claim, and satisfactory proof to establish that losses of distilled spirits have not been due to theft, unauthorized destruction, or other questionable causes."

The 1950 amendment was made applicable to existing inventories as well as to future production.

The policy enunciated in the Ways and Means Committee report goes back to 1880 when the Congress adopted a schedule of permissible outage allowances. That schedule applied to spirits already in storage.

Representative Carlisle, author of the bill, explained the purpose of the outage provision as follows in 10 Congressional Record 2835 (1880):

"The whole purpose of that section is to place the distillers and owners of distilled spirits in precisely the same situation with reference to the payment of the tax which the manufacturers of * * * all other articles subject to internal revenue tax now occupy under the law; that is, that they shall pay the tax to the Government only on the quantity which is actually sold and goes into consumption or is withdrawn for sale or consumption in this country."

The 1894 act which increased the bonding period from 3 to 8 years made provision for outage allowance through 48 months (sec. 50, ch. 349, Acts of 53d Cong., 2d sess.)

Shortly thereafter another step was taken toward bringing the outage and bonding provisions into line with the rule that tax should be paid only on the quantity actually withdrawn for consumption. Outage allowances were increased to cover the period of 84 months with respect to all distilled spirits originally gaged for

deposit prior to January 1, 1899 (sec. 1 of ch. 485 of the Acts of the 55th Cong., 3d sess., approved March 3, 1899.)

The Ways and Means Committee stated as follows (H. Rep. 1435, 55th Cong. 2d sess.):

"Justice would seem to demand that no tax should be levied on what can never be sold for consumption. If every gallon of spirits on which the tax is paid is sold, and the purchase price paid by a consumer, the distiller or dealer has no cause of complaint, for in that case an equitable distribution of burdens arranges itself by the laws of trade; but if the tax is exacted on what has previously evaporated and gone into the air, the owner is out just that much without the possibility of recovery, and equally without the possibility of ever getting a price for it. Other countries do not tax what is never sold. The English distillers and the French distillers put their spirits into docks or warehouses, and they remain there indefinitely untaxed until they are sold, and then taxed only on what remains. The injustice of taxing evaporation has long been recognized by those of our laws which partially mitigated it.

"Indeed, if the rule were once established that the tax should be paid only on what goes into consumption, all the uncertainty and injustice now complained of, and which tends periodically to prostrate the trade, would be removed and the legitimate consumption of spirits per annum would still measure the amount of revenue collected. It is error to suppose that anything but consumption ordinarily measures the amount of revenue obtained from distilled spirits. If there are materially more spirits in warehouses than the demands for consumption will justify paying taxes on, it will not be done. On the contrary, the spirits will and necessarily must be exported, for no man can afford to pay $1.10 per gallon on spirits and lay them aside to wait for a purchaser not reasonably expected soon to appear * * *"

This enactment related specifically to spirits in existence at its passage.

In 1903 the 7-year outage provision was made applicable to all distilled spirits in storage as well as future production. (Ch. 184, Acts of 57th Cong., 2d sess., approved January 13, 1903.) This act applied to spirits entered into storage between January 1, 1899, and January 13, 1903, prior to passage of the act.

Likewise, when chapter 226, Acts of 77th Congress, 2d session, which extended the loss allowance tables to cover the full 8-year period was enacted on April 8, 1942, section 2 thereof expressly provided that the law was applicable to all claims for taxes not yet accrued. The extended loss allowances applied to all spirits then in bond.

Then, finally, in 1950, outage limitations were completely removed from the law and this liberalization was, as above stated, applicable to all stocks in bond. loss allowances have been steadily liberalized and in each instance the liberalization has been made effective as to existing stocks in bond. We can find no record of any industry or Treasury contention that these liberalizations were unfairly retroactive. Indeed, the DSI supported the 1950 legislation which eliminated the outage loss limitations in their entirety.

The principle that taxes should be paid only on distilled spirits which enter into consumption is the basis of a number of other changes proposed by H. R. 7125, such as (1) allowance of losses in bottling, (2) permanent provision for refund of taxes to wholesalers and retailers on whiskies destroyed in disaster losses, (3) refunds or credit of taxes paid on distilled spirits which are found to be unsuitable for the purpose for which they were withdrawn, provided that such distilled spirits are destroyed or, in certain instances, returned to bonded premises for reprocessing.

Each of these changes is made applicable to existing inventory.

Dr. Dwight E. Avis, Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, has stated that in each instance the change is based upon the guiding "concept that the tax should be paid by the bottler of distilled spirits who completes the process of manufacture and that, within practical limitations, the amount of tax imposed and collected should be commensurate with the contents of the manufacturer's finished package." (Statement of Mr. Avis to the House Ways and Means Committee Subcommittee on Excise Tax Technical and Administrative Problems, October 1955 (hearings, p. 177).)

"CHANGING RULES IN THE MIDDLE OF THE GAME"

It is also significant to recall that on each of the several occasions on which tariffs on Canadian whisky were reduced, there was no contention that the tariff reduction should wait until existing stores of United States whiskies had

been disposed of. The Canadian companies made no contention that these tariff reductions, against which United States distillers had to compete, were "changing the rules in the middle of the game."

3. Restrictions on the ability to market and correctly label whiskies over 8 years old would continue a discrimination against United States producers and benefit Canadian producers who are advocating the restriction

The Tariff Commission's report to this committee (issued March 31, 1958) clearly states the advantage which foreign producers have:

"The bonding period

"In the United Kingdom and Canada, there is no limit on the storage period for whisky before payment of the excise tax. Foreign distillers, therefore, never face the problem *which now confronts many domestic distillers*, of having to pay the excise tax on whisky for which there is no immediate market. In the United Kingdom and Canada, the absence of a limit on the bonding period enables distillers to age their whiskies indefinitely and thus reap the benefits to be derived from such appeal as labels showing 10, 12, 14, or even 20 years of age may have for the consuming public. In the United States, on the other hand, the necessity of paying the excise tax at the end of 8 years deters the domestic producer from further aging of whisky * * *" (Tariff Commission Report, March 1958, p. 132). [Italic ours.]

The Tariff Commission report indicates that, at the present time, Scotch and Canadian whiskies over 8 years old are being sold in the United States, although in relatively small quantities. The United States producer is under a constant threat that foreign producers could increase their shipments of older whiskies.

The United States Tariff Commission reported further (p. 138):

"Outlet for 'forced-out' whisky

"Domestic distillers that have no affiliation with the Canadian industry do not share in the Canadian outlet for their forced-out whisky to the same extent as do domestic distillers operating both in the United States and Canada. The domestic distillers with Canadian affiliates can export United States forced-out whisky (either their own or whisky bought at distress prices) to Canada and thereby avoid the tax due in the United States at the end of the 8-year bonding period. In Canada, this whisky may be held indefinitely before payment of the Canadian tax, or it may be blended (within certain specified percentages) with Canadian whisky and sold, either in Canada or abroad, as Canadian whisky * * *"

Exports of United States bulk whisky to Canada totaled over 14 million gallons between 1946 and 1958. These whiskies added to the growing Canadian inventories.

The advantage enjoyed by other foreign producers was frankly set forth for the Tariff Commission in a memorandum filed by the Scotch Whiskey Association, which stated that one of the advantages Scotch producers have is that there is no limit to the time during which spirits may remain in bond in the United Kingdom.

The Scotch Whiskey Association memorandum points out that:

"* * * the traditional practice of the industry is not to sell any whisky until it has reached its proper maturity, and this varies according to the distillery at which it is produced from 5 to 10 years *or more*." [Italic supplied.]

THE STATED DSI POSITION CANNOT BE THE VIEW OF ALL OF ITS MEMBERS

The stated DSI position against applying bonding-period extension to existing stocks cannot be the view of all its members, since at least half the members of DSI, who are whisky producers (eliminating subsidiaries), have advised us that they have stated to this committee that they support H. R. 7125 in its present form.

The two large Canadian-owned distilling companies, who do 88 percent of the business in Canadian whisky in the United States, are heavy financial supporters of the DSI. In proposing that the 20-year bonded period should apply only to future production, DSI, in effect, suggests that present benefits accruing to alien producers be continued for at least another 10 to 12 years, while still being denied United States producers. This would give foreign companies, such as the Seagram Co. and the Walker Co., a continuing clear field for older whiskies without United States competition. Seagram presently markets a 12-year-old Scotch in the United States, and Walker markets a 10-year-old Canadian.

Aided by over $87 million of added profit derived from tariff reductions in 1948 and 1951 which were not passed on to the United States consumer, Seagram and Walker have achieved a dominating position in the United States market for premium-priced whisky. Under Canadian law, a tax-shelter corporation is provided for profits derived from foreign business, and such profits pay no tax to either country. They have also substantially increased their production of Canadian whiskies. They have imported into Canada quantities of United States whiskies to be added to Canadian supplies. Thus, they have placed themselves in a position to market older whiskies in huge quantities during the coming decade.

The growth in Canadian whisky inventories was demonstrated in recent hearings before the Tariff Commission. It was shown to have increased from 20 million gallons in the last prewar year, 1939, to 162 million gallons in 1957, or 500 percent plus.

The question is not whether Canadian producers do or do not intend to enter the older whiskies market in force today, but whether they could do so at a time of their choosing. Under the amendment to H. R. 7125 proposed by DSI, the United States producers would be barred for the next 10 to 12 years from effectively entering this market.

Apart from this ability to market over-8-year whisky, the Canadian producers would certainly wish to expand their existing position of dominance against competition from the United States industry in the premium-price field. One natural source of this competition would be matured United States whiskies of superior quality.

But what is of more importance, the Canadian distillers can weather any economic storm because they do not have to pay any tax until there is a market for the goods. Today Iraq. Is that going to be another Korea? What shall the United States distiller do? Shall it produce against a possible war and shutdown, or shall we just stop planning and turn the business over to the Canadians?

The DSI proposal would, therefore, create the following position for the Canadian producers who already have captured 34.4 percent of the United States whiskies and 47.4 percent of all whisky imported into the United States.

(1) If the Canadians chose to enter the over-8-year field, they would be assured against any competition from United States producers for the next 10 years.

(2) If the Canadians chose not to enter the over-8-year field, they would still be protected from competition in over-8-year whiskies which might present a challenge to their position in the premium-price market.

Support by DSI of a position favorable to Canadian companies raises natural questions as to its membership and policies. Many important United States distillers are not members of DSI, and these have, quite generally, supported H. R. 7125 in communications to this committee. The two Canadian companies, because of their size, are important members of DSI, contribute heavily to its support, have a dominant voice in, and a complete power of veto upon, any DSI policy. It is not surprising, therefore, that DSI has never been able to represent the interests of the United States industry in securing equality of competition against Canadian producers. It is interesting to note that the DSI spokesman cannot be representing even all of its claimed membership, since some members of DSI have advised the committee that they support H. R. 7125.

4. H. R. 7125 provides benefits for the United States industry as a whole. The existing inventories of older whiskies are large, the holdings are scattered, purchasers can freely buy their requirements, and the claimed "disadvantages" to any company would arise only from its business decision not to market older whiskies rather than from the provisions of H. R. 7125

Spokesmen for DSI have asserted that the creation of the problems of the force-out was the responsibility of a few producers; that a few producers would benefit from the extension and have an advantageous position.

The force-out problem is industrywide. It is clear that the Tariff Commission report that the entire industry produced large quantities in the 1950–51 years. Some of this turned out to be surplus, because the Congress, instead of reducing the tax as had been expected, found it necessary to increase the excise tax in November 1951. This limited the market for legally produced, taxpaid whisky. In addition, economic conditions are always changing—and have changed.

Speaking specifically for Schenley, the records will show that its annual share of the industry's whisky production in the United States during this

period of heavy production was less than its then share of total industry usage. Schenley regularly markets substantial quantities of bourbon whiskies, bonded and straight. It has also, for many years, marketed large quantities of the finest 7-year-old whiskies. With such a marketing program, Schenley naturally requires considerably higher inventories of older whiskies than does a company which specializes either in blends or in the sale of whiskies 4 years old.

The contention that 1 or 2 companies have all the older whisky is not supportable by the facts.

The Tariff Commission report (table 10) showed the inventories of whisky in the United States by years and seasons of production as of December 31, 1957. The total inventory as of that date—all of which would be denied bonding extension under the DSI proposal, was 736,071,707 original proof gallons.

Of this total, there were stored in warehouses of the 4 largest companies a total of 402,300,300 gallons; in warehouses of the next 3 companies (Publicker, Brown-Forman, Glenmore), 95,140,733 gallons; and in the remainder (over 50 in number), 149,530,674 gallons.

Since December 31, 1957, 14,075,037 gallons of whiskies produced in the spring 1950 season have been taxpaid, redistilled, or exported. Of the remaining whiskies nearing force-out in the coming 2½ years, that is, in the period between now and December 31, 1960, the total holdings as of December 31 last were 180,925,562 gallons. These whiskies were produced between July 1, 1950, and the end of 1952.

This large quantity of the older whiskies is distributed throughout the industry. 136,893,087 gallons were held in the warehouses of Seagram, Schenley, National Distillers, and Hiram Walker, 26,443,164 gallons were in Publicker, Brown-Forman, and Glenmore warehouses. The remaining 17,589,311 gallons were stored in the warehouses of the smaller distillers, and in evaluating the significance of this total, it is noteworthy that the amount of whisky over 7 years used by the entire industry in the 1955 fiscal year was 17,200,000 gallons (Tariff Commission Report, table 9).

These figures show that there are substantial stocks of whiskies in bond, and particularly older whiskies. Furthermore, it is clear that the ownership of the stocks of older whiskies (those above 5 years) is not concentrated in the hands of just 1 or 2 companies. The holdings are widely spread among large companies and small companies alike.

Moreover, apart from the question of present ownership of these stocks, there is the fact that whiskies of older ages are available in the market for purchase at low prices by any who wish to buy them.

The overall figures show that no company can claim that it would be excluded from any over-8-year market that might come into existence following passage of H. R. 7125. To support such a claim a company would have to show that it wished to market older whiskies, that it owned insufficient stock of older whiskies to compete in this market, and that it was unable to acquire by purchase such additional stocks as it might require for its expected share of the market.

No company can factually support such a claim of disadvantage. There are substantial offerings in the open market of whiskies in the older age brackets at sharply depressed prices. No company in the industry is prevented from acquiring whiskies and carrying them past the 8-year period if it desires.

As the Tariff Commission report clearly states (p. 67):

"* * * Furthermore, even if the bonding period is extended, owners of this whisky will be subject to increasing pressure to dispose of the whisky because of the cumulative cost of storing which may eventually raise the price for the whisky beyond the point at which it can be sold in any volume. With or without an extension of the bonding period, disposal of this whisky will be a problem for the whisky industry in the next few years, and extension of the bonding period will only make the problem somewhat less acute."

In view of these facts, it is not surprising that while opponents of H. R. 7125 persistently contend that companies not having older whiskies would be at a competitive disadvantage, they have not been able to single out any company and show how it would suffer from enactment of the measure.

CONCLUSION

Since it is agreed that the 8-year bonded period is unfair, unnecessary, and burdensome, the extension of the bonded period to 20 years is a just and fair change in the law.

Had this change been made some years back, the industry and the Treasury would have been spared huge financial losses. Certainly the change in law ought not to be further delayed.

The $10.50 per gallon tax is a heavy burden even on gallons which go immediately into consumption. The only result of attempting to collect the tax at 8 years on whisky for which there is then no immediate market is to cause a destruction of the property in order to avoid payment of the tax. The truth of this has been demonstrated by the large number of gallons which have already been redistilled at a loss to the industry and to the Government.

No revenue or public purpose is served by a method of tax collection which results in no tax but causes the destruction of lawfully owned property.

The Congress ought not to mandate false labelling, nor use its revenue powers to enforce continued destruction of property with consequent losses to the industry and the Treasury.

The extension should be made applicable to existing inventories as well as new stocks. To limit the extension to new stocks, imposes further burdens and penalties on the United States industry which already has suffered substantial losses. It is contrary to congressional precedents.

The major beneficiaries of any continuing restrictions would be Seagram and Walker, who would be assured of a continuation of their exclusive monopoly in the over-8-year field, for years to come.

Respectfully submitted.

SCHENLEY INDUSTRIES, INC.

WASHINGTON, D. C., *July 16, 1958.*

CRAVATH, SWAINE & MOORE,
15 Broad Street, New York, N. Y., June 10, 1958.

SCHENLEY INDUSTRIES, INC.,
350 Fifth Avenue, New York, N. Y.

DEAR SIRS: You have requested me to review operation of the present 8-year limitation on the bonding period now provided for distilled spirits and the various legislative proposals which have been offered to change it, especially the latest, H. R. 7125, the Excise Tax Technical Changes Act of 1957, which passed the House of Representatives last year and is now pending in the Senate.

Section 5232 of the Internal Revenue Code of 1954, commonly known as the force-out provision, requires the payment of Federal excise tax of $10.50 a gallon on whisky remaining in bond at the end of 8 years even if the whisky is not withdrawn for sale. Thus, payment of the tax is required at the end of the 8-year bonding period, prior to the sale of the whisky, and indeed without regard to the question whether there is any likely or possible sale for the whisky.

The proposed Excise Tax Technical Changes Act of 1957, reported out favorably and unanimously by the Committee on Ways and Means on May 24, 1957 (Rept. No. 481, 85th Cong., 1st Sess.), and passed by the House, is the first comprehensive revision of the general excise tax provisions since 1932. It is the result of 2 years' study by a subcommittee, which held extensive hearings and studied many proposals for amendments. The committee reports that many of the excise tax provisions proposed to be amended are outmoded, create uncertainty and confusion, and result in inequities. Among many other changes designed to increase the fairness of the excise tax laws, and to improve their administration, is an amendment of section 5006 (a) (2) of the code, so that the period within which the tax on distilled spirits must be determined and paid would be extended to 20 years from the date of original entry for deposit in storage in Internal Revenue bond in order to provide the opportunity for more orderly marketing of distilled spirits. (Report, p. 133.) The committee further reports that there would be no revenue loss from the change. (Report, p. 5.) The law is left unchanged in its requirement that the excise tax must be paid in full when the whisky is withdrawn from bond, but in effect the period during which it may be left in bond is extended from 8 to 20 years.

H. R. 1725 is the latest, most comprehensive, and most carefully considered, in a line of bills which have attempted over the past 5 years to deal with the hardship caused by the 8-year bonding period. It was preceded by H. R. 5407 (83d Cong.) providing for an extension of the bonding period to 12 years. In a letter addressed to the chairman of the Senate Committee on Finance on February 24, 1954, the Secretary of the Treasury (Mr. George M. Humphrey) recommended its adoption on the ground that the bill appeared "reasonable to relieve a distress situation in the industry" and that "there will not be any

significant revenue loss involved." The Treasury Department had reported to the chairman of the House Committee on Ways and Means on March 31, 1953, that it took a "neutral position" on a prior version of the legislation, on the ground that there was "apparent conflict within the industry" because "possible unfair competitive advantages might arise from a change in the bonding period." The difference between the two bills was that H. R. 5407 prohibited the description of whisky, avoiding the force-out as being over 8 years of age.

In every year since 1952, because of the coming of age of inventory greatly in excess of annual market requirements, the force-out provision has imposed severe and mounting hardship on the domestic whisky distilling industry. There is no force-out for foreign whiskies. Whiskies imported from abroad are permitted to show on their labels an age in excess of 8 years; and considerable quantities of distilled spirits have come in from abroad showing more than 8 years' age. American competition in the market for whiskies over 8 years old is practically impossible. This discrimination in favor of foreign whiskies adds to the other problems created by the 8-year-age limitation on domestic whiskies.

Since the industry cannot afford to prepay tax on whisky for which there is no market, and the tax cannot be avoided by exporting the whisky in the absence of a foreign market, the alternative open to the distiller as the end of the 8-year bonding period approaches are to destroy the whisky or redistill it, thereby losing all or a large part of his investment. Mr. Dwight Avis, Director of the Alcohol and Tax Division of the Internal Revenue Service, said before the Ways and Means Subcommittee on April 6, 1955:

"The [1954] code authorized the destruction of distilled spirits in bond—thus protecting distillers and warehousemen from severe financial loss, and even bankruptcy, where force-outs of distilled spirits, for which there is no market, occur under existing law."

Mr. Avis' comment recognizes that there are cases in which whisky, which has been forced out by the 8-year bonding limitation, cannot be marketed; and that it may be more economical to destroy it than to pay the tax and try to sell the whisky. A statutory provision which seeks to protect a businessman from loss by permitting him to destroy his product is surely a Spartan remedy.

To escape the ruinous cost of these two alternatives, holders of whisky approaching force-out have been dumping it for what it will bring, disrupting the bulk whisky market, causing great economic loss to themselves and to the Government revenues. The situation has become more serious in each recent year and is now entering a critical stage as the large inventories laid down during the Korean hostilities in 1950 and 1951 approach the force-out at a time when the economy is least able to absorb them. It is estimated that 87 million tax gallons of whisky, more than double the quantity of 8-year-old whisky disposed of in any year since prohibition, will become 8 years old in the coming fiscal year. Report of United States Tariff Commission, August 12, 1957, page 42.

The force-out is an anachronistic provision with no revenue significance. It was not enacted to raise revenue or to accelerate tax collections. Rather, it was enacted to assist in the policing of collections after the Civil War and before the modern system of warehouse bonding had been developed. The bonding limitation was originally 1 year. It was first extended to 3 years, and then in 1894 to 8 years. That period was then so much longer than the customary age of whisky inventories that the extension was regarded by the Treasury as the practical equivalent of an unlimited bonding period. The section was in fact of no importance from 1894 to 1918, and was suspended during the prohibition era. The revival of the force-out with repeal of prohibition in 1934 for many years imposed no burden on the industry. Inventory pipelines had to be filled, and that process was still under way when the production of distilled spirits was suspended and inventories were depleted during World War II.

Postwar inventory accumulations and a decline in whisky sales, caused by the very high level at which the excise tax has been maintained, have produced a serious inventory problem for the industry. The force-out is calculated to aggravate and prolong the problem of restoration of normal inventories, without benefit to anyone. The provision of H. R. 7125 extending the force-out period to 20 years is the result of careful study by the Committee on Ways and Means, following 4 years of consideration of the best means to relieve the distress caused by the 8-year bonding period.

The problem of the forceout has been most urgent since 1951, when the Federal excise tax was increased from $9 to $10.50 per gallon. Many different proposals have been considered by the industry and by Congress during the intervening 7

years. H. R. 7125 and the report of the Committee on Ways and Means thereon made after extensive hearings and full consideration of all the different interests involved represent a well-considered attempt to reach an objective solution of a troublesome problem, involving as it does enormous actual and potential losses to the Treasury and to the industry.

The failure to obtain necessary legislative relief before this time is not, as one might suppose, explained by any conflict of interest between the Treasury and the industry. The Treasury has long recognized that elimination or modification of the forceout would not affect excise tax collection, and would improve income tax collections. The present estimate is that if the law were to remain unchanged, the excess of whisky reaching the age of 8 years which would have to be destroyed or redistilled will total 50 million gallons. Millions of these gallons have already been destroyed or redistilled because of the forceout law. The approximately $100 million which distillers have invested in these 50 million gallons would constitute deductible tax losses representing a potential loss in income tax revenue of $50 million. Moreover and more important, to the extent that the forceout would require the sale of whisky for depressed prices which would cover the excise tax and only a part of the producers' costs, taxable income of the distillers and income tax collections would be further reduced as they have been in the past. With reference to the present marketing problems of the industry, Judge Goodrich said in *Schenley Distillers, Inc.* v. *United States*, 3d Cir., May 8, 1958:

"* * * This situation may, as the plaintiffs assert, result in loss of taxes to the Government. Whisky poured down the drain to avoid taxpayment certainly does not help the United States Treasury. And a hard-pressed, money-losing distillery cannot pay the Government as much in taxes as though it were running at a profit. Granted all this is so, the solution of it is one for the Congress, not for the courts."

There was a loss of $1¼ billion between June 1951 and June 1955, in the market value of bulk whiskies in bond, representing the industry's measure of the reduction in profits resulting from the present situation. The Treasury has a 52 percent interest in this profit loss, as well as an interest of an indeterminate amount in the normal taxes and surtaxes which would have been paid on such lost profits by shareholders in the companies owning the whiskies. Millions of the cases of domestic whiskey sold in glass in 1954, 1955, 1956 and 1957 were sold at no profit at all or at a loss. That situation has continued, and without legislative relief from the forceout substantial losses in income tax revenue are inevitable.

Officials of the Treasury have either supported, or stated that they would not oppose proposals to postpone or eliminate the forceout. The industry is unanimously opposed to the forceout in its present form. There is no opposition frm any other responsible source to granting relief to the industry from the unforeseen consequences of this antiquated and useless provision. Why, then, if the industry and the Treasury agree that relief is both necessary and desirable, has the provision remained without amendment, nothwithstanding 5 years of effort?

The answer seems to be in fact that a large part of the leadership of the liquor industry has attempted to combine relief from the force-out with provisions designed to regulate marketing practices in a manner unacceptable to other members of the industry. The regulatory proposals have raised issues outside the province of the Treasury, its Alcohol and Tobacco Tax Unit, and the congressional committees concerned with revenue legislation. So long as elimination of the force-out is entangled with an industry controversy over regulatory questions, the Treasury has been reluctant to exercise its natural leadership in asking Congress to repeal an unwanted and harmful statutory provision. The crux of the dispute is simple. If the limitation on the bonding period is extended or eliminated, the inventories of distillers will soon contain large stocks of whisky over 8 years of age. Some members of the industry believe that distillers holding large inventories of old whisky will thereby obtain competitive advantages in the marketing of whisky over 8 years of age. To counteract this supposed advantage, various proposals have been put forward and incorporated in legislation ostensibly designed to meet the force-out problem.

H. R. 5407 provided that whisky escaping the force-out could not be labeled or advertised as being over 8 years of age whatever its actual age. It has also been proposed that the force-out shall not be eliminated but circumvented by granting permission to distillers to add younger whisky to barrels of older

whiskies, giving the barrels the age of the youngest whisky in determining its liability for force-out. That proposal, reported by a subcommittee of the House Committee on Ways and Means of the 83d Congress, would have postponed the force-out only by destroying millions of dollars invested in aging the older whisky in the barrels. Another proposal would have penalized the holding of older whisky by computing the tax on the gallonage in the barrel on the eighth anniversary, requiring the distiller to pay tax on the whisky subsequently lost by evaporation. The distilling industry and the Treasury have long been in agreement that the former practice of computing tax on gallonage greater than the amount withdrawn was unfair and confiscatory; and the proposal to resurrect the provision at this time is not entitled either to industry or to Treasury support.

Such proposals are out of place in legislation concerned with excise tax administration. If it is desired to eliminate the present lawful market in older domestic whiskies, and convert the near monopoly enjoyed by the foreign distillers in the premium whisky market into an absolute one, such legislation should be considered by congressional committees other than those having jurisdiction over revenue bills. Similarly, if it is believed that the aging of whisky beyond 8 years does not improve its quality, and that it is unfair to make advertising claims to that effect, legislation to that effect is not a revenue measure.

Under our economic system, the method of merchandising a product is normally left to the producer. The Government ordinarily does not regulate distribution unless such regulation is necessary for the protection of the revenue. Here the interests of the revenue are best served by leaving marketing decisions to the producers and eliminating the 8-year forceout both for existing stocks and for distilled spirits laid down in the future. The forceout of either category of spirits would, as has been shown, result in its being destroyed, redistilled, or dumped upon an already weak market. The Treasury is justly concerned with any legislation which, while purporting to protect excise tax revenue, causes large losses of income taxes in which the Department is vitally interested.

The Committee on Ways and Means, in its favorable report on H. R. 7125, expresses the same goal (p. 82):

"In effectuating these purposes, the responsibility of proprietors for the proper conduct and control of their operations has been recognized. It has also been recognized that qualified proprietors of distilled spirits plants should be free to conduct their operations and to utilize their facilities in an efficient and businesslike manner, subject only to such controls as are reasonably necessary to protect the Government's interests."

The Treasury's financial involvement in the affairs of the distilling industry is unique. In the fiscal year ended August 31, 1957, Schenley Industries, Inc., made a net profit of only $10,966,000 on sales of $469,989,000; $4,366,851 was paid out in cash dividents to stockholders. On the year's business, the Treasury collected $277 million in excise taxes and $10,400,000 in Federal income taxes. The Treasury thus got 66 times as much revenue as did the stockholders. Thus the Treasury has an immensely greater stake than anyone else in a stable distilling industry, as well as in continuation and expansion of the activities of distillers.

As the situation now stands, the substantial interest of the Treasury in excise and income tax collections, and in the financial stability of the distilling industry, can be effectively protected only by affirmative support of legislation eliminating the forceout. If legislative regulation of the marketing practices of the whisky-distilling industry is to be proposed, it should be proposed for consideration and appropriate action by the Government agencies and congressional committees concerned with such regulation. It should not be brought in by the back door as the price of support for proposals to repeal an inequitable tax law.

The interests of the revenue are best served by the divorce of revenue and regulation questions, the confusion of which has heretofore blocked action on a pressing legislative reform. In my judgment, section 5006 (a) (2) of the code should be amended along the lines proposed by H. R. 7125 as favorably reported by the Committee on Ways and Means.

Very truly yours,

ROSWELL MAGILL.

RETROACTIVE, CHANGING THE RULES IN THE MIDDLE OF THE GAME

DEPARTMENT OF NATIONAL REVENUE, CUSTOMS AND EXCISE,
Ottawa 2, July 7, 1958.

CANADIAN SCHENLEY LIMITED,
Valleyfield, Quebec.
(Attention: Mr. D. D. McFee, chief distiller.)

GENTLEMEN: Receipt is acknowledged of your letter dated July 4 in which you request permission to redistill 97,500 proof gallons of American whisky.

Enclosed please find letter which has been forwarded to all excise officers in charge of distilleries in Canada, which is self-explanatory.

Yours truly,

J. K. WILLIAMS, *Director of Excise Duty.*

DEPARTMENT OF NATIONAL REVENUE, CUSTOMS AND EXCISE,
Ottawa 2, July 7, 1958.

This letter is to inform you that from this date on, no departmental authority will be given for American spirits to be "taken for reducing by redistillation" in maturing warehouse account.

Please advise licensee.

J. K. WILLIAMS, *Director of Excise Duty.*

AMENDMENTS TO H. R. 7125 DESIGNED TO REQUIRE 8-YEAR REGAGE AS TO EXISTING STOCKS

1. Amend IRC section 5008 (a) (4), page 134, as follows:

"Designate present text as subparagraph '(A)' and add subparagraph '(B)' to read as follows:

"'(B) In the case of distilled spirits (other than distilled spirits which on July 26, 1936, were 8 years or more old and which were in bonded warehouses on that date) on deposit in an internal revenue bonded warehouse, or in transit thereto, on the date of enactment of the Excise Tax Technical Changes Act of 1957, no tax shall be abated, remitted, credited, or refunded under this subsection in respect of losses of distilled spirits sustained by reason of leakage, evaporation, or absorption while stored in wooden containers where such loss occurred after the expiration of 8 years from the date of original entry for deposit of such spirits.'"

2. Renumber present bill sections 207, 208, 209, 210, and 211 (beginning on page 417) as sections "208, 209, 210, 211, and 212," respectively, and add new bill section 217 to read as follows:

"SEC. 207. LIMITATION ON LOSS ALLOWANCES.

"Section 5011 (a) is amended by adding thereto paragraph (5) to read as follows:

"'(5) LIMITATION.—No tax shall be abated, remitted, credited, or refunded under this subsection in respect of losses of distilled spirits (other than distilled spirits which on July 26, 1936, were 8 years or more old and which were in bonded warehouses on that date) sustained by reason of leakage, evaporation, or absorption while stored in wooden containers, where such loss occurred after the expiration of 8 years from the date of original entry for deposit of such spirits.'"

Senator KERR. The committee will recess subject to the call of the Chair.

(Whereupon, at 1:05 p. m., the committee recessed, subject to the call of the Chair.)

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