STATE TAXATION OF INTERSTATE COMMERCE

1432-1

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

EIGHTY-SIXTH CONGRESS

FIRST SESSION

ON

S.J. Res. 113

TO BRING ABOUT GREATER UNIFORMITY IN STATE TAXATION OF BUSINESS INCOME DERIVED FROM INTERSTATE COMMERCE; TO ESTABLISH A COMMISSION ON TAXATION OF INTERSTATE COMMERCE; AND FOR OTHER PURPOSES

S. 2213

A BILL TO LIMIT THE POWER OF THE STATES TO IMPOSE INCOME TAXES ON INCOME DERIVED EXCLUSIVELY FROM THE CONDUCT OF INTERSTATE COMMERCE

S. 2281

A BILL TO PRESCRIBE LIMITATIONS ON THE POWER OF THE STATES TO IMPOSE INCOME TAXES ON BUSINESS ENTITIES ENGAGED IN INTERSTATE COMMERCE

JULY 21 AND 22, 1959

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
43695 WASHINGTON : 1959

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STATE TAXATION OF INTERSTATE COMMERCE

TUESDAY, JULY 21, 1959

U.S. SENATE, COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to call, at 10:15 a.m., in room 2221, New Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Kerr, Douglas, Gore, Talmadge, Williams, Carlson, Butler, Cotton, and Curtis.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The committee will come to order.

The bills before the committee are Senate Joint Resolution 113, S. 2213, and S. 2281. All of them relate to the subject of State taxation of interstate commerce.

(The bills referred to are as follows:)

[S.J. Res. 113, 86th Cong., 1st sess.]

JOINT RESOLUTION To bring about greater uniformity in State taxation of business income derived from interstate commerce; to establish a Commission on Taxation of Interstate Commerce; and for other purposes

Whereas the Constitution vests in the Congress the power to regulate interstate commerce; and

Whereas a free and unimpeded flow of commerce between the several States is vital to the economy and the general well-being of the Nation; and

Whereas the practice, presently engaged in by a number of the several States, of imposing a tax upon the income of businesses engaged in interstate commerce which operate or do business in such States has resulted in subjecting such businesses to a multiplicity of income tax laws which are independently imposed, lack uniformity in substance and application, and are often inconsistent in theory and administration; and

Whereas such practice has tended to impede, obstruct, restrain, and embarrass the free flow of commerce between the several States; and

Whereas in order to insure the free and uninterrupted flow of commerce between the several States, it is imperative that the several States be permitted to impose income taxes upon businesses engaged in interstate commerce only in accordance with reasonable and uniform standards: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TEMPORARY MINIMUM STANDARD

SEC. 101. No State or political subdivision thereof shall impose a tax upon the income of any business engaged in interstate commerce for any taxable year unless, during such year, such business has maintained a stock of goods, an office, warehouse, or other place of business in such State or has had an officer, agent, or representative who has maintained an office or other place of business in such State.

SEC. 102. The provisions of section 101 shall apply only with respect to taxable years which end after December 31, 1958, and which begin before January 1, 1961.

TITLE II—COMMISSION ON STATE TAXATION OF INTERSTATE COMMERCE

DECLARATION OF PURPOSE

SEC. 201. It is the purpose of this title to provide for the formulation of a concrete proposal for an equitable solution to the problems experienced (1) by businesses (particularly small businesses) engaged in interstate commerce as the result of their being subjected to a multiplicity of income taxes independently imposed by the various States in which they operate or do business, and (2) by the various States in which such businesses operate or do business in assuring that such businesses shall be required to asume a fair share of the tax burden imposed upon the residents of, and businesses located within, such State.

ESTABLISHMENT OF COMMISSION

SEC. 202. (a) In order to carry out the purposes of this title, there is hereby established a Commission to be known as the "Commission on State Taxation of Interstate Commerce" (hereinafter referred to as the "Commission") which shall be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall be individuals from private life who are familiar with the problems connected with State taxation of income of businesses (particularly small businesses) engaged in interstate commerce and who, by reason of education, training, or experience, are peculiarly qualified to carry out the duties of the Commission.

(b) The Commission shall elect a Chairman from among its members.

(c) Any vacancy occurring in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(d) Three members of the Commission shall constitute a quorum, except that the Commission may establish a lesser number as a quorum for the purpose of taking sworn testimony.

(e) Members of the Commission shall be compensated at the rate of $20,000 per annum and shall be reimbursed for any travel, subsistence, or other necessary expenses incurred by them while engaged in the actual performance of the duties of the Commission.

(f) Service of an individual as a member of the Commission or employment of an individual by the Commission as an attorney or employee in any business or professional capacity, on a part-time or full-time basis, with or without compensation, shall not be considered as service or employment of such individual within the provisions of section 281, 283, 284, or 1914 of title 18 of the United States Code, or section 190 of the Revised Statutes (5 U.S.C. 99).

STAFF OF THE COMMISSION

SEC. 203. (a) The Commission shall have the authority to appoint, without regard to the civil-service laws and the Classification Act of 1949, as amended, such personnel as it deems necessary to enable it to discharge its duties under this title.

(b) The Commission may procure, without regard to the civil-service laws and the Classification Act of 1949, as amended, temporary and intermittent services to the same extent as is authorized for the departments by section 15 of the Act of August 2, 1946 (60 Stat. 810), but at rates not to exceed $50 per diem for individuals.

DUTIES OF THE COMMISSION

SEC. 204. (a) The Commission shall conduct a thorough and complete study and investigation of all matters pertaining to the taxation by States of the income of businesses (particularly small businesses) engaged in interstate commerce for the purpose enabling the Commission to formulate and recommend to the Congress a concrete proposal for legislation providing for the establishment of uniform standards which the States will be required to observe in imposing income taxes upon businesses engaged in interstate commerce. Such standards shall be designed to permit any State to require businesses engaged in interstate commerce which operate or do business in such State to assume a fair share of the tax burden of such State, but shall, at the same time, be designed to protect such businesses (particularly small businesses) from being unduly hampered or embarrassed in their operations by reason of being subjected to a multiplicity of

income tax laws which are independently imposed by the various States in which such businesses operate or do business and which not only are not uniform either in substance or application but which are often inconsistent in theory and administration.

POWERS OF COMMISSION

SEC. 205. (a) In carrying out it duties under this title, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, take such testimony, and make such expenditures as the Commission or such committee may deem advisable. The Chairman of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof. The Commission shall have such power of subpena and compulsion of attendance of witnesses and production of documents as are conferred upon the Securities and Exchange Commission by subsection (c) of section 18 of the Act of August 26, 1935, and the provisions of subsection (d) of such section shall be applicable to all persons summoned by subpena or otherwise to attend and testify or produce such documents as are described therein before the Commission, except that no subpena shall be issued except under the signature of the Chairman, and application to any court for aid in enforcing such subpena may be made only by the Chairman. Subpenas shall be served by any person designated by the Chairman.

(b) The Commission is authorized to secure from any department, agency, or independent instrumentality of the Government such information or assistance as the Commission may deem necessary or desirable to enable it to carry out its duties under this title.

COOPERATION WITH STATE AND PRIVATE PERSONS

SEC. 206. In carrying out its duties, the Commission shall cooperate with States and with private persons or private organizations who are able to assist the Commission in carrying out the purposes of this title. The Commission is further authorized to utilize the uncompensated services of private individuals or of State or local employees in carrying out its duties.

EXPENSES OF THE COMMISSION

SEC. 207. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amount, not in excess of $, as may be necessary to carry out the provisions of this title.

REPORT BY AND EXPIRATION OF COMMISSION

SEC. 208. (a) The Commission shall report to the Congress the results of its study and investigation along with its proposals for legislation on or before February 1, 1961.

(b) On July 31, 1961, all authority under this title shall terminate and the Commission shall cease to exist.

[S. 2213, 86th Cong., 1st sess.]

A BILL To limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, after the date of the enactment of this Act, no State, or political subdivision thereof, shall have the power to impose a net income tax on income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person, if such person maintains no stock of goods, plant, office, warehouse, or other place of business within the State.

[S. 2281, 86th Cong., 1st sess.]

A BILL To prescribe limitations on the power of the States to impose income taxes on business entities engaged in interstate commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) no State or political subdivision

thereof shall impose an income tax on income derived from a trade or business by a person engaged in interstate commerce unless such person is carrying on such trade or business in such State.

(b) For purposes of subsection (a), a person is not carrying on a trade or business in a State solely by reason of one or more sales of tangible personal property in the State (whether title to such property passes in or outside of the State), if such person does not have or maintain an office, warehouse, or other place of business in the State, and does not have an officer, agent, or representative in the State who has an office or other place of business in the State. For purposes of the preceding sentence, the terms "agent" and "representative" do not include an independent broker or contractor who is engaged independently in soliciting orders in the State for more than one seller, and who holds himself out as such.

SEC. 2. No State or political subdivision thereof shall, on or after the date of the enactment of this Act, assess or collect any income tax, or make any levy with respect thereto, which was imposed by such State or political subdivision thereof on the income of any person before the date of the enactment of this Act, if the imposition of such tax, on or after the date of the enactment of this Act, is prohibited by the first section of this Act.

SEC. 3. For purposes of this Act, the term "income tax" means any tax imposed on, or measured by, net income.

The CHAIRMAN. We are honored this morning by having with us the distinguished Senator from Alabama, Senator Sparkman, who is a patron of Senate Joint Resolution 113.

STATEMENT OF HON. JOHN SPARKMAN, U.S. SENATOR FROM THE STATE OF ALABAMA; ACCOMPANIED BY WALTER B. STULTS, STAFF DIRECTOR, SENATE SELECT COMMITTEE ON SMALL BUSINESS

Senator SPARKMAN. Mr. Chairman, I want Mr. Stults who is the staff director of the Small Business Committee to sit at the table with me. Mr. Walter B. Stults.

Mr. Chairman, I have a prepared statement. I presume a copy is before you.

Speaking for the Senate Small Business Committee, I wish to say first that I am most grateful for this opportunity to appear before you today.

Although the February 24 decisions of the Supreme Court focused attention on multistate taxation of income derived from exclusively interstate commerce, the problem had been present a long time. For well over 20 years, private organizations and groups of public officials have been attempting to bring some order out of the chaos caused by varying State business tax laws, but their efforts have not met with success. I feel strongly that the Congress has a responsibility to assume leadership in this area to work closely with the States to alleviate a serious situation.

At this point, Mr. Chairman, I should like to make the report of the Small Business Committee entitled, "State Taxation on Interstate Commerce," a part of the files of this committee. I am not asking that it be printed, but made a part of the files of this committee.

The CHAIRMAN. It will be made a part of the file relating to the bill.

(The report referred to will be found in the files of the committee.)

Senator SPARKMAN. While it is a short exposition of the subject, I feel that it depicts the seriousness of the problem so clearly that I shall not devote any of my statement to that area. Furthermore, I

am certain that other witnesses will stress their difficulties in complying with State tax laws.

Your committee is studying several legislative proposals designed to remedy this business ill. While they all have merit, I wish to speak in favor of Senate Joint Resolution 113 which I had the honor to introduce for 16 members of the Small Business Committee.

Senate Joint Resolution 113 is a two-pronged attack on the problem you have before you: First, it provides a temporary maintenance of the status quo in the right of the States to tax income derived from interstate commerce; and second, it calls for the establishment of a commission to study all aspects of the multistate business tax problem and to make recommendations to Congress for solving those problems.

I personally feel that this is a sound approach, since it prejudges no questions which are to be studied by the commission, and, at the same time, it provides a temporary answer to the present uncertainty facing so many small and medium-size business firms. This question is whether they are "doing business" in a legal sense and are thus subject to State business taxes.

In order to determine the soundest basis for a temporary definition, our committee studied past congressional action touching this point and found that in the District of Columbia Business Tax Code Congress gave its approval to a definition of "doing business" which is the basis for section 101 of Senate Joint Resolution 113. In essence, this section provides that a State may not impose a tax upon the income of any out-of-State firm engaged in exclusively interstate commerce unless that firm maintains a stock of goods, an office, a warehouse, or other place of business within the taxing State.

The enactment of section 101 will bring a useful answer to a serious question. Before I leave this point, I should emphasize that this definition fixes the liability for taxation at the very line drawn by the Supreme Court, since it ruled on the tax liability of firms which maintained fixed places of business within the taxing State. We are not trying to reverse the Court in any way.

We also recommend establishment of a commission, because we realize that there are many aspects of the State taxation problem which should be studied. The Commission would propose a permanent solution for the "minimum business activity" question if a Federal standard is to be provided. In addition, each of the 35 States now taxing business income use different definitions and different formulas—thus guaranteeing major compliance headaches for all businesses crossing State lines. The Commission would seek to draft a uniform apportionment formula agreeable to all States whether they are primarily industrial or consuming areas. The Commission would recommend uniform definitions for the terms basic to tax legislation.

It has been suggested that this Commission is not necessary and that congressional committees might be able to do the task we have marked out for the Presidentially appointed Commission. I respectfully suggest, however, that this is the sort of job which can be done better by a commission than by a committee. In the first place, the States have a major stake in any solution of this problem and I feel they will be able to work closer with a commission than with a congressional committee. The Commission will have to devote more time-consuming

effort for the next 18 months, at the least, than can be allocated by the busy members of any committee. Thirdly, there is a question which committee of Congress is most appropriate for such a study. While these bills have been referred to you, the Senate Finance Committee, identical measures in the House have been sent to the Judiciary Committee. In addition, the Interstate Commerce Committees of the House and the Senate also have some justification for feeling the bills should go before them.

Finally, I want to say we have designed this to be an acting, not a talking, commission. Its function is to be limited to a study of State taxation of income derived from interstate commerce and it is directed to report by a certain date. In order to make that date more pressing, Senate Joint Resolution 113's temporary minimum standard will expire in 1961 and there will naturally be a great stress to submit final recommendations by that time.

Let me take just a few moments to discuss some points that may arise in connection with the legislation before you.

First, I have already pointed out that the Supreme Court has never ruled that the States have the right to tax businesses which have no place of business within the State. Therefore, we are taking nothing away from the States which is definitely theirs.

Secondly, State tax officials will affirm that there is a serious problem in trying to assess and collect taxes from out-of-State firms having no local office. Few States are now attempting to levy such taxes and relatively little income is derived from that source.

I have had some State tax administrators tell me that they had no intention of taxing small businesses which did only a small amount of business in their State without a place of business. While that may be comforting to the small firm, I submit that it is an unfair method of taxation when evasion is countenanced so long as the amount of money involved is small. In addition, such evaders have always hanging over their heads the Damoclean sword of retroactive assessment, penalties, and interest.

Thirdly, by virtue of its temporary nature, the minimum standard proposed in Senate Joint Resolution 113 is subject to revision within 2 years and may be modified or allowed to lapse at that time. Experience gained under this standard should be extremely valuable.

Finally, I am strongly convinced that no State will lose by the enactment of Senate Joint Resolution 113. On the contrary, I think each State will gain revenue—at a time when the financing of State governments is a major problem.

Although the Small Business Committee did not touch upon it, I would suggest that the Finance Committee might wish to study whether Congress should make a policy statement that all business firms should allocate and apportion 100 percent of their income for State taxation. Since most State revenue officials feel that most interstate businesses are currently taxed on far less than 100 percent of their income, this requirement should bring additional tax receipts to every State. Incidentally, no witness appearing before our committee indicated any opposition to such complete apportionment; their only complaints touched upon the uncertainty of liability, the costs of compliance, and the possibility of assessments of taxes on more than 100 percent of their income.

It is the recommendation of the Senate Small Business Committee that Senate Joint Resolution 113 be enacted as soon as possible during this session of Congress.

In closing, I should like to deal briefly with several relatively technical changes which might well be incorporated in the draft of Senate Joint Resolution 113 as it was introduced.

1. An additional clause should be added to section 101 which would give a State power to tax a business which "is created, organized, incorporated, or otherwise domiciled in such State."

2. The temporary minimum standard should be extended to taxable years beginning before January 1, 1962, rather than January 1, 1961, as provided in section 102. Since the Commission will not report until February 1961, it is expected that congressional action will not be completed until the middle of 1961; therefore, the standard should run through that year.

3. A new section 103 should be added stating that "For the purpose of this title, the term 'State' shall include the several States and the Commonwealth of Puerto Rico."

4. Section 201 should be rewritten to read, in part, as follows:

> It is the purpose of Congress to provide for the formulation of a concrete proposal or proposals for the relief of interstate commerce and an equitable solution to the problems experienced. * * *

In the same section in line 10, following the word "they," insert "are found by the various States to"; and in line 12, following the word "businesses," insert "are found to." The same phrase, "are found to," should be inserted following the world "businesses" in line 6, page 6.

Mr. Chairman, I should like to offer for the record a statement of Mr. Robert F. Darrah, executive vice president of Southern Wholesale Lumber Association, of Livingston, Ala. He discusses this quite well from the standpoint of typical small businesses, and I should like that to be included as part of my remarks.

The CHAIRMAN. Without objection, inclusion will be made.

(The statement referred to is as follows:)

STATEMENT OF ROBERT F. DARRAH, EXECUTIVE VICE PRESIDENT, SOUTHERN WHOLESALE LUMBER ASSOCIATION, LIVINGSTON, ALA.

This association represents wholesale distributors of lumber domiciled in 16 States, all being typical small business organizations, most of them are largely engaged in interstate commerce, selling and delivering lumber to retail dealers and industries beyond the borders of the States wherein they are located that with few exceptions levy an income tax on corporations and individuals as well.

A recent survey based on 1958 figures revealed that sales by these firms in interstate commerce was from 35 to 85 percent of their total volume. Very few have offices or warehouses, or carry inventories, in other States. A minimum employ traveling salesmen, the great majority of sales being made by wire service or mail from one office where all business is transacted. The volume of sales in any State is not large and the profit relatively small; however, were income taxes levied in all States the aggregate would be burdensome double taxation on the greater part of net profits earned by a majority of wholesale lumber dealers domiciled throughout the Nation engaged in interstate commerce.

In addition to the liability for income taxes in practically all of the States wherein sales in interstate commerce are made, the question of filing multiple tax returns is a serious and expensive problem, in many cases probably double

the burden of preparing and filing the many forms currently required by the Federal and State Governments.

It does not appear fair or just to require a firm, whether corporate or individual, who has paid an income tax to its home State on its entire net profits to pay a similar tax to another State from which it obtains no benefits of consequence.

In his dissenting opinion to the Supreme Court's ruling validating State income taxes on interstate commerce, Justice Frankfurter said—

"The solution to these problems ought not to rest on the self-serving determination of the States of what they are entitled to out of the Nation's resources. Congress alone can formulate policies founded upon economic realities, perhaps to be applied to the myriad situations involved by a properly constituted and duly informed administrative agency."

Therefore, in view of the emergency of the situation we urge the approval and adoption of Senate Joint Resolution 113 that will provide at least temporary relief for thousands of small business firms until such time as the Congress can determine a solution of the difficulties they are faced with as a result of the Supreme Court's decision that only the Congress can resolve.

Senator SPARKMAN. Mr. Chairman, may I say in connection with the hearings of the Small Business Committee, the first day of hearings were here in Washington and we had quite a number of witnesses appear before us; following that, we had hearings in Boston, Mass. We had planned two other hearings, one in New Jersey, one in New York, but unfortunately, those hearings were scheduled at a time that the Senate was quite busy, and they had to be canceled.

However, written statements from the witnesses that were scheduled to testify there were received.

We feel that with the two completed hearings and the two incomplete hearings, we got a pretty fair cross section of the thinking of businessmen, not only small business, but some of the largest businesses in this country, who testified on these measures, and the report is based on that and we believe it will be helpful to the committee.

If I may just add this one thing, Mr. Chairman, that one of the complaints made by most business, and this included big business as well as small business, was the multiplicity of records that had to be kept, not only records, not uniform records, because the different States have different forms, different methods, different definitions, different standards, so it was necessary to set up a separate set of records for each State in which the business happened to be doing business. We had testimony from some small businesses that the cost of keeping the records, complying with the requirements was more than the tax, and in some instances, it would certainly be so great as to discourage the doing of business.

The CHAIRMAN. Thank you very much, Senator Sparkman. It is always a great pleasure, sir, to have you before this committee.

Are there any questions?

Senator KERR. Yes, I have questions.

The CHAIRMAN. Senator Kerr.

Senator SPARKMAN. By the way, Mr. Chairman, one other note that Mr. Stults has reminded me of here with reference to the cost of compliance, I suppose it is not necessary to call your attention to the fact that the Federal Government pays from 30 to 52 percent of all of the expenses of firms trying to comply with multi-State taxation.

The CHAIRMAN. Senator Kerr.

Senator KERR. There is a statement in here I am looking for, Senator Sparkman, stating what the Supreme Court did not rule, on page 3:

First, I have already pointed out that the Supreme Court has never ruled that the States have the right to tax businesses which have no place of business within the State.

Where is the statement you made in connection with that to which this refers?

Senator SPARKMAN. I will find it for you in just a moment.

Senator Kerr, I say:

First, it provides a temporary maintenance of the status quo in the right of the States to tax income derived from interstate commerce * * *

Senator KERR. That is Senate Joint Resolution 113?

Senator SPARKMAN. Yes, Senate Joint Resolution 113. I say it maintains the status quo. I do not say there definitely that the Supreme Court held to that effect. But as it was—there were two cases.

Senator KERR. Let me ask you this—is that your counsel there with you?

Senator SPARKMAN. No, he is the staff director.

Senator KERR. Is he an expert on these matters?

Senator SPARKMAN. I believe he is.

Senator KERR. Well, now, you know, I find myself very often in need of at least one expert and sometimes two. Do you suppose he could tell us just what the Supreme Court did rule?

Senator SPARKMAN. Yes, he can. In fact, we have the decisions here. Have you read the decisions?

Senator KERR. I have got them here. You know, we have a rule here on this committee that a witness who really wants to get along with us speaks in terms that a sixth grader can understand. Do you suppose he could do that in connection with what this Supreme Court did?

Senator SPARKMAN. Yes, I think he can tell you right off, and may I say that in our hearings—and I shall be very glad to make the hearings likewise a part of the committee files——

Senator KERR. All I want to find out is what the Supreme Court held.

Senator SPARKMAN. Yes, but I am just calling your attention——

Senator KERR. If this fellow can tell me, why should I read the hearings to find out?

Senator SPARKMAN. I thought you might perhaps want to follow and ask some questions based on that. If you do, it is found at pages 81 to 163 of the hearings.

Now, if you will—you want him to tell you what the Supreme Court held in those cases.

Senator KERR. If he has had time while you have been talking for him to find out. [Laughter.]

Mr. STULTS. I have a very gracious chairman to give me that breathing spell, Senator Kerr.

Senator KERR. Yes.

Mr. STULTS. Senator Kerr, Mr. Justice Clark in writing for the majority of the Court said that:

The constitutionality of State net income taxes levying taxes on that portion of a foreign corporation's net income earned from and fairly apportioned to business activities within the taxing State when those taxes—when those activities are exclusively in furtherance of interstate commerce—

are held to be constitutional.

Senator KERR. Now, the statement you just read, the first sentence in the opinion, and it said that these cases concern the constitutionality of such State income tax laws.

Now, then, does the case hold that such laws are constitutional?

Mr. STULTS. Yes, sir. With this fact situation given in the case of *Northwestern States*——

Senator KERR. Wait a minute.

Mr. STULTS. Beg pardon?

Senator KERR. Does the case hold that State laws, "State net income tax laws levying taxes on that portion of the foreign corporation's net income earned from and fairly apportioned to business activities within the taxing State when those activities are exclusively in furtherance of interstate commerce are held to be constitutional," is that what the Court held?

Mr. STULTS. Senator Kerr, the lawyers tell me that the Supreme Court can rule only in the fact situation and in the case before it at that time. It does not give a blanket decision which will cover all fact situations nor all State laws.

However, by combining the case of *Northwestern States Portland Cement Co.* v. *The State of Minnesota*, and *T. V. Williams, as State Revenue Commissioner of the State of Georgia* v. *Stockham Valves and Fittings*, in those two fact situations, in both of which the taxpayer had maintained places of business within those States, the Supreme Court did hold that the States of Minnesota and Georgia, respectively, could tax firms with those places of business.

Senator KERR. In other words, then, the Court held where an Oklahoma corporation, let us say, making concrete blocks had a branch or a division located in another State engaged in making blocks and selling them there would be subject to taxation on the income earned there by the business it generated out of that branch it operated there?

Mr. STULTS. Yes, sir.

I think that a fair extension of the Court's decision would hold that that Oklahoma firm would be taxable in those States where it had a branch office.

Senator KERR. Did the decision hold that the State's right to tax was limited to the profits earned by the branch located in the State?

Mr. STULTS. Yes, sir.

The two words, "fairly apportioned," I think hold a limiting factor, saying that only a percentage of the sales, a percentage of the total payroll of the firm, a percentage of the firm's net worth which exists in the taxing State shall be attributed to activities within that State.

Senator KERR. Let us take the R. J. Reynolds Tobacco Co., which is located in North Carolina.

It pays taxes there in North Carolina on all cigarettes it sells and sends out of there, I believe, Federal taxes?

The CHAIRMAN. Yes.

Senator KERR. It has a branch in Oklahoma City, a distribution branch.

Under this decision, then, any cigarette that is sold in Oklahoma and a profit made on it would bring about a situation whereby the State of Oklahoma under this decision can pass a law taxing R. J. Reynolds on the net profit it made on that operation selling in Oklahoma.

Mr. STULTS. Yes, sir.

Senator KERR. Well, now, suppose that operation had an area of five States that it served, and it sold half of what it sold out of that branch in Oklahoma and the other half of it it sold in the four States around Oklahoma.

Would Oklahoma then tax the profits made on what it shipped into the other four States from that branch?

Mr. STULTS. Senator, I am afraid I do not know Oklahoma's State tax law or regulations.

Senator KERR. I am just assuming that Oklahoma—what State did have this law?

Mr. STULTS. Georgia and Minnesota, the two cases; Oklahoma, incidentally, does have such a law, but I don't know——

Senator KERR. Let us go to Georgia. Let us just take Georgia.

The local branch is located in Georgia and it served Georgia and Alabama, and it sold half of what it distributed in Georgia, and the other half in Alabama where it had no branch and made as much money on what it shipped into Alabama as what it sold in Georgia.

Could Georgia tax what it made on the business it had by reason of what it sold out of the Georgia branch and shipped into Alabama?

Mr. STULTS. I would say, Senator, that under present interpretation Georgia could probably apportion the entire amount of sales attributed to that division office in Atlanta, and at the same time it is possible that the revenue commissioner of Alabama could try to get the Reynolds Tobacco Co. to pay on the percentage of sales going into Alabama.

Senator KERR. Well, now, North Carolina sure gets its income tax if they have one on everything he sells everywhere, does it not?

Mr. STULTS. Yes, sir. But there is, I am sure, in North Carolina an offsetting credit, so that those sales that are made outside of North Carolina, and the taxes which are paid outside of North Carolina, could be given as a credit to the State of North Carolina.

This is possible—I assume that it is done—although here again I do not know the North Carolina State law.

I am afraid that there is not a person in all of Washington who knows all of the State tax laws, and all the State regulations; they are so diverse.

Senator KERR. But if a company is going to do business in all the States, it is going to have to know them, is it not?

Mr. STULTS. Yes, sir. That is the point that, I think, the Senate Small Business Committee was trying to make: the tremendous difficulty in knowing all of the State tax laws and the difficulty and expense in complying with those tax laws.

Senator KERR. Senator Sparkman, let me ask you this question: Could not the development of the thesis as handed down by the Supreme Court in its decision and the expansion of the principle, result in what would, in effect, be a tariff on interstate commerce?

Senator SPARKMAN. I think that it would not be too farfetched to describe it as such.

Senator KERR. A tariff is just a tax.

Senator SPARKMAN. And yet let me say this, it is not a problem that is easy of solution.

We certainly recognize the right of States to tax properly activities in their States, and we certainly do not want to be in the position of taking away from them any right that they have.

But under this decision of the Supreme Court, particularly if it should apply to those cases other than is true under the statement of facts in these two particular cases; that is, where they were maintaining a place of business in each State, it could really become complicated. Some businesses have pointed out to us it could result in more than 100 percent of their income being taxed.

Senator KERR. You mean their tax would equal more than 100 percent of their profit?

Senator SPARKMAN. More than 100 percent of their profit could be taxed by a combination of States. That is brought about by the great diversity of formulas, used by the States.

We had a witness from Westinghouse, for instance, who pointed out a situation where in one State the tax was based on point of origin, and in an adjoining State it was based on destination; in another it was based on negotiation. The result is that there is a mixup——

Senator KERR. The sale could be negotiated in one State, originated in another, terminated in another, and be taxed in all three.

Senator SPARKMAN. Yes, and as this tax expert from Westinghouse pointed out, in a certain arrangement a company was able to avoid such taxes completely by originating in a State which provided for terminal sales and transacting the business over in another State where point of origin was taxed——

Senator KERR. Terminating in another State and taxed only at point of origin.

Senator SPARKMAN. That is right.

It seems to me a great deal of confusion is bound to result from these decisions.

Senator KERR. Wouldn't a law saying that the business could be taxed only in the State where it is legally domiciled clarify the situation considerably?

Senator SPARKMAN. If it should be decided that Congress ought to take hold of the thing and invoke a principle of law—my own feeling, if I may express it, and I think one that a great many State representatives would agree with, is that the best solution to this thing would be for a uniform act or a uniform program agreed upon by the several States.

Senator KERR. What about a Federal law that said that only those States that did agree to the uniform law would have the right to do this taxing?

Senator SPARKMAN. Well, certainly a compact could be agreed upon by such number of States as wanted to come into it, and Congress could ratify that pact.

Senator KERR. Thank you very much.

Senator SPARKMAN. There are many suggested solutions.

We feel that it is complex, and that there are many tax problems interwoven with it, and that a commission should perform a very helpful service.

Senator KERR. I want to say that I congratulate both you and your staff members on the extent of your knowledge in this matter, and you have contributed a great deal to mine.

Senator SPARKMAN. Thank you.

The CHAIRMAN. Are there any further questions?

Senator CARLSON. Mr. Chairman, I just arrived, a little late; I am sorry, I want to apologize; I have been to another committee this morning.

I have a letter from the director of revenue, Mr. J. E. Kirchner of the department of revenue of the State of Kansas, on this very problem.

I received this letter yesterday, and I want to read one or two paragraphs from it:

In view of these decisions—

and he has reference to the Supreme Court decisions, and I would like to have the entire letter placed in the record—he writes this:

In view of these decisions it would appear that in administering the Kansas Income Tax Act we should attempt to enforce income tax reporting of all business transacted in Kansas by out-of-State firms, including isolated or occasional transactions. If this were the case, we would require each firm doing business in Kansas to file a return with this department showing the business done in Kansas in proportion to the total business of the firm, and to pay Kansas income tax accordingly. This would apply even if only one action transpired in Kansas.

Such a procedure would be virtually impossible to enforce and would seem impractical administratively.

Conversely, should S. 2213 or action similar thereto become effective, it would have the effect of permitting many out-of-State firms to do a tremendous volume of business in Kansas without being liable for any Kansas tax. Or a firm could locate in Nebraska, which has no income tax, do business in every State of the Union, and escape income tax in each State.

I think it is best that I continue for just a minute.

It seems that either extreme described above would be undesirable in Kansas, but that some solution should be prescribed. For that reason we wish to endorse and call to your attention the resolution passed at the annual meeting of the National Association of Tax Administrators, Buffalo, N.Y., July 8–11, 1959.

I have the resolution here, which I will make a part of the record.

As I understand it, they want a little time to study this before any action is taken. Is that your position?

Senator SPARKMAN. Well, in part.

There are two things—I explained this earlier in the statement.

Senator CARLSON. I am sorry I was not here.

Senator SPARKMAN. First, we seek more or less to freeze the situation as it is now, to prevent many of those things happening that he describes.

We set it on a 2-year basis, during which time the Commission would make its study and come out with its report.

We do not seek to write in a permanent solution here, but just an expedient to hold things more or less as they are.

Senator CARLSON. Thank you so much.

(The document referred to follows:)

STATE OF KANSAS,
DEPARTMENT OF REVENUE,
Topeka, Kans., July 17, 1959.

HON. FRANK CARLSON,
Senator, Senate Office Building, Washington, D.C.

DEAR SENATOR CARLSON: It has come to our attention that the Committee on Finance of the U.S. Senate will hold hearings on July 21, on several resolutions which would restrict State taxation of income derived exclusively from business in interstate commerce.

We understand that one of the resolutions is S. 2213, by Mr. Bush which provides that no State shall have the power to impose a net income tax on income derived exclusively from interstate commerce solely by reason of the solicitation of orders within the State if the taxpayer maintains no stock of goods, plant, office, warehouse, or other place of business within the State.

We also understand that S. 2281 by Mr. Saltonstall is to the same general effect.

It appears that the interest in this matter was brought about primarily by recent Supreme Court decisions in the case of *Northwestern States Portland Cement Co.* v. *State of Minnesota*, and *Williams* v. *Stockham Valves and Fittings, Inc.*, decided February 24, 1959, and other cases which virtually removed restrictions on taxing, for income tax purposes, income derived from interstate commerce.

In view of these decisions it would appear that in administering the Kansas Income Tax Act we should attempt to enforce income tax reporting of all business transacted in Kansas by out-of-State firms, including isolated or occasional transactions. If this were the case, we would require each firm doing business in Kansas to file a return with this department showing the business done in Kansas in proportion to the total business of the firm, and to pay Kansas income tax accordingly. This would apply even if only one action transpired in Kansas.

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It seems that either extreme described above would be undesirable in Kansas, but that some solution should be prescribed. For that reason we wish to endorse and call to your attention the resolution passed at the annual meeting of the National Association of Tax Administrators, Buffalo, N.Y., July 8–11, 1959. The resolution reads as follows:

"Whereas various States are confronted with problems of taxation of net income of corporations engaged in interstate commerce: Now therefore, be it

Resolved, That the National Association of Tax Administrators urge the appropriate committee of the Congress of the United States to recommend deferral of congressional legislative attention in the matter of State taxation of net income of corporations engaged in interstate commerce until a study commission set up by the Congress and including appropriate State officials has had opportunity to examine the impact of the recent Supreme Court decisions with regard to State income taxation of interstate commerce."

We will appreciate your consideration of the above problem and wish to offer you any possible assistance in your deliberation.

Sincerely yours,

J. E. KIRCHNER,
Director of Revenue.

Senator COTTON. Mr. Chairman, could I ask one quick question?

The CHAIRMAN. Senator Cotton.

Senator COTTON. This Commission that your bill contemplates, Senator, would its studies be confined to the matter of the taxation of corporations or would it extend to other facets of this problem of State taxation as between States?

What I have in mind, is that we often have the problem of the taxation of income of individuals—for example, a pilot on a plane that flies over one State but lives in another, and the State comes in and wants to tax a portion of his income.

We have that problem in other bills before this Congress.

Would your Commission confine itself, did you contemplate, only to corporation taxes?

Senator SPARKMAN. Only to business taxes. It applies, however, to individuals as well as corporations.

Senator COTTON. You would study this matter of the taxation of personal incomes?

Senator SPARKMAN. No.

The multiple taxation of businesses deriving income from business done in a number of States is what we would study.

I recognize the importance of the question that Senator Cotton has raised, and I do hope sometime there may be made a full and adequate study of all of the complex problems of taxation involving the Federal Government and the States.

I believe eventually something like that must be done, but that is not contemplated here. This is for one purpose, and one purpose only: to study those problems that arise as a result primarily of these recent decisions of the Supreme Court.

The CHAIRMAN. Thank you very much, Senator Sparkman.

Senator TALMADGE. Mr. Chairman?

The CHAIRMAN. Senator Talmadge.

Senator TALMADGE. Mr. Chairman, may I ask Senator Sparkman a question or two so that I may get very clearly in my mind what the Supreme Court held in these two cases.

Let us take a hypothetical situation of a wholesale lumber dealer in Georgia. Say he is in business in McRae, Ga. He saws lumber and sells it over the telephone, as is frequently the practice. Maybe he does business in half a dozen or more States.

Suppose he sells some lumber in Montgomery, Ala., over the telephone. Under these decisions would he have to file an income tax return in the State of Alabama and pay his proportionate share of tax on his earnings from the sales in Alabama?

Senator SPARKMAN. If Alabama had a law requiring the payment of income tax based upon the destination of the goods, it would be my opinion he would have to file an income tax in Alabama.

Senator TALMADGE. That would be true even though he had no stock of goods, office, warehouse, place of business, officer, agent, or representative?

Senator SPARKMAN. The Supreme Court did not rule on that, and that is the point I tried to make here, what we are doing is to try to freeze the situation at the present holding of the Supreme Court.

It just happens that under the facts in the two cases decided by the Supreme Court, one of them which involves an Alabama business doing business in Georgia, and another one which involves an Iowa concern doing business in Minnesota, in both of those instances the company had a place of business within the definition of the law in the States in which they were taxed.

Now there are States, and I think undoubtedly the practice would grow, of having States levy taxes on firms doing business without maintaining any place of business, stock of goods, or office location in that particular State.

That was contained in the letter read by Senator Carlson with reference to Kansas, for instance.

Senator TALMADGE. Let us take it one step further then.

Suppose a Georgia farmer produces pecans, and in an effort to get the highest profit possible from his pecans, he develops a specialty mail-order business and sends Christmas gifts of his pecans throughout the country, and he sells in all of the 49 States.

Would he have to file an income tax return in all the 49 States where he sold pecans through the mail?

Senator SPARKMAN. Well, of course, you are getting pretty far away from the Supreme Court cases, and I would say that there is nothing in these cases that would cause him to have to pay that.

But, again, if those States enact income tax laws based upon the destination of the product, it would be my opinion that he would be required to file, certainly he might be required to file, income tax returns in each of those States.

Senator TALMADGE. Where is the line of demarcation and what court has drawn it? Does it unfetter the gates completely to any occasional odd sale in any State?

Senator SPARKMAN. I would not say so, because in those two particular cases there was a place of business being maintained in the State and, therefore, I do not think it would be fair to say that the Supreme Court went beyond that.

Senator TALMADGE. Under the terms of the act then, could they tax any sales on any business or corporation that did not maintain an office, or commodities or warehouse or an agent in the State?

Senator SPARKMAN. Under those two particular Supreme Court decisions I do not think you could say that it has been held that they could be levied unless it had. It did not say that the States could not. It simply said the States could tax interstate income in those two instances.

Senator TALMADGE. Could what?

Senator SPARKMAN. Could levy a tax where the firm doing business maintained a place of business in the State, as was true in the facts of these two cases.

Senator TALMADGE. Did the decisions define what the place of business would be?

Senator SPARKMAN. I do not believe so, but it was a place of business in compliance with the State laws.

Senator TALMADGE. Suppose a Georgia processor of poultry sells his wares in Chicago. Would we have to file an income tax form in the State of Illinois?

Senator SPARKMAN. I would not say under those decisions he would have to. But my own opinion is this is an open question and should cases be presented to the Supreme Court involving such a question, and Illinois had an income tax law providing for an income tax payment on the termination of business deals, he would have to file.

Senator TALMADGE. Then, you are saying——.

Senator SPARKMAN. Certainly in the hearings before us the fear was expressed by every business representative who appeared that such would be true. By the way, there is one thing I have not mentioned here.

In at least one of these cases the Supreme Court held that not only did the taxpayer have to pay this year but required him to go back to 1933.

Senator KERR. Would the Senator yield?

Senator TALMADGE. I would be delighted to yield to my friend from Oklahoma.

Senator KERR. The language of the decision in what I presume to be the syllabus of decision, the final two sentences read as follows:

It is contended that each of the State statutes——

Senator TALMADGE. What page is the Senator reading from?

Senator KERR. I am reading from page 82 of the hearings before the Select Committee on Small Business, at the top of the page:

Although the cases were separately briefed, argued, and submitted, we have, because of the similarity of the tax in each case, consolidated them for the purpose of decision. It is contended that each of the State statutes, as applied, violates both the due process and commerce clauses of the U.S. Constitution.

This is the pertinent sentence:

We conclude that net income from the interstate operations of a foreign corporation may be subjected to State taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same.

Now, it would seem to me that that is a broader holding than the interpretation which may be found later in the decision or which Senator Sparkman has given, which was that the effect of the decision is only that the State within which a branch of a business is located would be taxed, because the Court says:

We conclude that net income from the interstate operations of a foreign corporation may be subjected to State taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same.

I do not know what "nexus" is. That may be——

Senator TALMADGE. That is apparently the point. The Senator does not know what "nexus" would be.

Can the Senator throw any light or supply any information on that?

Senator SPARKMAN. Nothing more than what I have said, and I agree with what Senator Kerr has said, that if you take that alone, it certainly seems to open the gates because it——

Senator KERR. It seems to me it opens the gates so that any State could tax any corporation on that part of its business done in that State.

Now, unless this nexus does something to that interpretation—I have got a dictionary here and I am going to find out. [Laughter.]

Senator BUTLER. Will the Senator yield?

Senator SPARKMAN. Let me say this, and I will say this again: Remember the facts of the case before us that these concerns actually maintained a place of business.

Senator KERR. I understand.

Senator SPARKMAN. Yes.

Senator KERR. But this conclusion——

Senator SPARKMAN. Taking that alone——

Senator KERR. This conclusion by the Court was not limited to that kind of situation, if I understand it.

Senator SPARKMAN. If you take that statement alone, that is correct.

Senator BUTLER. Will the Senator yield?

Senator TALMADGE. I yield, unless the Senator from Oklohama wants to pursue this "nexus" situation.

Senator KERR. Here it is. You just take this Webster and he is the most amazing guy, and he has been dead nearly a hundred years.

Nexus, connection or interconnection; tie or link.

So that you cannot interpret—you cannot interpret that to mean that under that word they would have to have a terminal facility there or a branch there, would you?

Senator TALMADGE. No. Link could be weak or strong.

Senator KERR. So the only conclusion I can draw is that the effect of this decision is that any State can tax any part of any taxpayer's business which is done in that State.

Senator TALMADGE. Unless the Court has defined in some other decision what the "nexus" situation must be for taxation in interstate commerce.

I yield to the Senator from Maryland.

Senator BUTLER. I would line to ask the Senator this question: If a newspaper has an office in Washington to gather news to publish in a paper that is published in the State of New York, and some of those papers are distributed in Washington, would they be caught with this tax?

Senator KERR. And so would Life magazine.

Senator SPARKMAN. It seems to me if you rest upon that one sentence that would be true.

Senator BUTLER. Does this decision go to the point of having an office in the State seeking to tax and doing a local business from that office, or does it also apply simply because they have an office in a State that all interstate business is taxed?

Senator SPARKMAN. It does not limit it. Let me say this: The decision does not say that it does not apply to firms other than those maintaining a place of business.

It just happens that in both of these cases, the firms involved did maintain places of business within the respective States.

Senator BUTLER. Well, the sentence quoted by the Senator from Oklahoma——

Senator SPARKMAN. Well, yes, I would say that if that stood alone, it would seem to cover everything. But I believe the whole decision ought to be read. The two cases are combined.

By the way, if you do not have it available, we do have it in the hearings, and I should be glad——

Senator KERR. Would the Senator yield at that point, the Senator from Maryland?

Senator SPARKMAN. There is a copy.

Senator BUTLER. If a corporation is doing business out of the State of its domicile, if it has a plant there and is doing a strictly local business there, I can't see that that can properly be taxed. But if it ships from one State into another and simply because it happens to have an office there or is qualified to do business there, it is a little hard to follow the Supreme Court.

Senator SPARKMAN. I certainly agree completely with the Senator from Maryland. I was always taught to believe, I was taught that solicitation of orders in a State, for instance, to be filled by shipments coming from another State, was not subject to local taxation.

In fact, I have actually won cases on that basis. But this seems that it might knock the props out from under that.

Senator BUTLER. And having represented a newspaper before I came here, I was always taught that the mere fact that you gathered news in a State other than the State in which the paper was published

does not subject that paper to tax or to qualification to do business in that State.

Senator SPARKMAN. Then you might like to read that decision and see if that still holds good.

Senator KERR. Would the Senator yield now?

If this statement in the syllabus of the case constitutes a general rule of law by reason of this decision, then naturally it would apply to the two cases that were involved specifically before the Court.

Senator SPARKMAN. That is correct.

Senator KERR. And it would seem to me from the meager experience I had as a lawyer that when you have a general rule of law laid down, and then the description of specific cases and the holding they are subject to it, you have a situation entirely different from one which could be interpreted as a rule of law applying only to cases such as those specifically before the Court.

Senator SPARKMAN. Yes. I have tried to point out that I do not believe it would be safe to say that it applies only to cases such as these two, and yet the Supreme Court decisions so far relate only to those two.

Senator KERR. Except that in getting ready to handle the two, it lays down a general rule of law in that syllabus; does it not?

Senator SPARKMAN. That sentence certainly does.

Senator KERR. Which is certainly far beyond the facts involved in the two specific cases.

Mr. STULTS. May I, Senator Kerr, point out that the Commerce Clearing House, in talking about this case, said:

> Although the Supreme Court in the *Northwestern* and *Stockham* cases does not lay down any definite criteria for determining what constitutes sufficient nexus, it gives us a clue in citing *Miller Brothers* v. *Maryland*, a 1954 Supreme Court decision. In that case Maryland sought to require a Delaware merchant to collect and remit a purchaser's use tax on sales made in Delaware to Maryland residents.
>
> The Supreme Court held that this was a denial of due process and stated:
>
> "Due process requires some definite link, some minimum connection between a State and the person, property, or transaction it seeks to tax."
>
> The connection which was here insufficient was based upon newspaper and radio advertising, the mailing of circulars, and the deliveries of purchases in Maryland.

Now, here you find a——

Senator KERR. That was a use tax, though.

Mr. STULTS. Yes, sir.

Senator KERR. That was a use tax.

Mr. STULTS. A use tax. But the courts——

Senator KERR. That is a far different thing, as between the collection of a use tax——

Mr. STULTS. That is right.

Senator KERR. Which nobody could doubt was due, and the fixing of an income tax with reference to which there is no doubt of the State to fix it.

Mr. STULTS. Yes, sir.

Senator KERR. In that case, as I understand it, there was no question about the power of the State to fix the use tax. The question that was before the Court was whether they could require another State to come there and collect it; wasn't that right?

Mr. STULTS. Yes, sir; that is right.

Senator KERR. Well, I can sure see the difference between that. I could see how that would not come under this conclusion.

Mr. STULTS. Yes.

The only point of interest and my reason for bringing it up was that the Supreme Court in this case did cite the *Miller Bros. Furniture* case.

Senator KERR. Yes.

The CHAIRMAN. Thank you very much, Senator Sparkman.

Senator SPARKMAN. Thank you, Mr. Chairman, and gentlemen of the committee.

Senator GORE. Mr. Chairman, I have one question.

The CHAIRMAN. Senator Gore.

Senator GORE. Senator Sparkman, I would like to ask you a question with respect to your bill.

Section 101, as you have described it, would, in your opinion, preserve the status quo?

Senator SPARKMAN. Yes, insofar as the Supreme Court decisions go.

Senator GORE. I have some doubt that it would do so. Perhaps that doubt would turn on a definition of what constitutes an "office" or "other place of business."

Let us apply that to an insurance company, the Metropolitan Life. It has an agent in Alabama. This would not exempt Metropolitan Life from State tax on that portion of its income earned from business in the State of Alabama; is that true?

Senator SPARKMAN. Well, I do not believe the example is appropriate because I believe every State requires a life insurance company to do business within a State to maintain an office. In other words, they have to qualify as doing business in the State.

Senator GORE. I have selected an example in which it is clearly fixed that a company has an agent in a State.

Senator SPARKMAN. Yes.

Senator GORE. And I am asking you if, under the terms of your bill, the State of Alabama, or the State of Georgia, can proceed to levy a tax.

Senator SPARKMAN. If it can do so now it would continue to do so if this resolution were passed.

Senator GORE. Well, under the Supreme Court decision all States can now do so, can they not, provided they have the constitutional power within the State?

Senator SPARKMAN. The Supreme Court said if the tax were levied on a proper basis and apportioned properly, it could be done.

Senator GORE. Well, let us take another example, a company operating and domiciled in Delaware or New York or some other State and having a salesman who goes into the State of Georgia.

This salesman does not rent an office that has his name on the door. He does not have a warehouse to maintain, but he goes to Atlanta and registers in a room and he has exhibits of shoes on the mezzanine. He stays there for 2 weeks and he sells his wares. Has he not maintained a place of business, has he not had——

Senator SPARKMAN. Orders are taken and it would be shipped in?

Senator GORE. Well, it might be or it might be that he sells some of his stock.

Senator SPARKMAN. If he made a practice of selling out of his stock, then he would have a stock of goods.

Senator GORE. I understand that.

Senator SPARKMAN. And he would be liable.

Senator GORE. But say he only has samples, but he registers in the hotel and he stays there 2 weeks and he calls his customers, and his customers call him at room 1015 of the Dinkler Plaza Hotel, he solicits orders, and he accepts orders, and he makes propositions and says, "You can call me back in room 1015. I will be here for 2 weeks."

Has he not maintained an "office" or "other place of business"?

Senator SPARKMAN. I think it would be subject to interpretation. Certainly if he opened an office there and maintained it over a sufficiently long period of time, it would be; whether 2 weeks would be sufficient or not, I do not know. If it were a casual—if it was a trip that he makes once a year and spends 2 weeks there, it does not seem to me, just offhand, that that would be sufficient to constitute setting up an office or doing business.

Senator GORE. Then the statement I made was that I doubted that this section 101 would preserve the status quo.

Senator SPARKMAN. This would not affect that. The question would still be the same. It would be whether or not his staying there that long constituted setting up a place of business.

Senator GORE. So you agree that the whole matter turns on the definition of a representative who has maintained an "office" or a "place of business" in such State?

Senator SPARKMAN. Yes. I do not see any way of getting around it being a matter of interpretation, a definition of those words.

Senator GORE. There is one way of getting around leaving it entirely to interpretation, and that is to spell out specifically what the Congress means by a "place of business."

Senator SPARKMAN. That could be done.

Senator GORE. Would your committee, or your staff, be willing to make some suggestions along that line?

Senator SPARKMAN. Well, I shall be very glad to ask them to check the matter. My own personal feeling is that you are just not going to be able to go beyond this. A lot of times it might differ as among States. One State might have one definition of doing business and another State would have another definition, and as long as they were reasonable and within the proper limitations, I think the Court would sustain either one.

Senator KERR. I think the Senator is trying to find out the best he can what the language would be for those reasonable limitations.

Senator SPARKMAN. Well, the way to answer that, I think, would be to set up a new section in here and put in definitions.

Senator TALMADGE. You could put the words "stock of goods other than for the purposes of demonstrating samples," and that would cover it insofar as the stock of goods situation is concerned.

Senator SPARKMAN. Well, that could be done. I should think that ordinarily the term "stock of goods" would not include samples from which orders will be taken. But the minute you start selling those goods off the shelves, why then, I think the nature of the goods changes, the operations change.

Senator GORE. The nature of the place of business?

Senator SPARKMAN. That is true. How long can you stay there?

Senator GORE. The point I am trying to make, Senator Sparkman, is that I am not sure that section 101 accomplishes anything if enacted.

Senator SPARKMAN. I think, as I said, I think it maintains the status quo and holds it to those cases which have been definitely held by the Supreme Court to be covered.

Mr. STULTS. Furthermore, Senator Gore, it does cut out completely any possibility of State taxation of mail order or the straight solicitations through the mail orders.

We had much testimony from businessmen who did not even send a salesman into a State, who were fearful that the various States would try to tax those sales made by mail order solicitation, radio solicitation, advertising and periodical solicitation.

So section 101 does definitely restrict the States insofar as those businesses are concerned.

Senator GORE. You did not find the local merchants anxious to have Montgomery Ward protected, did you?

Mr. STULTS. Montgomery Ward, I think, is qualified in almost every State, and they have their own order-solicitation offices in every State that I know of, as well as their own retail outlets.

The type of mail-order house we heard of was a man sending out stamps on approval, perhaps receiving an average order of 85 cents who would find it quite difficult to comply with State income taxes.

Senator GORE. Mr. Chairman, I have reached no conclusion as to whether this bill should be enacted or not. But it does seem to me that if we are to enact a bill we ought to enact a meaningful one, and I just seriously question whether the broad and general language in section 101 accomplishes any specific purpose.

That is all; thank you.

The CHAIRMAN. Thank you very much, Senator Sparkman.

Senator SPARKMAN. Thank you, sir.

The CHAIRMAN. A bill of like import has been presented by Senator Bush, of Connecticut, and Senator Keating, of New York. It is S. 2213.

Senator Bush is a distinguished member of the Senate Committee on Banking and Currency.

Senator CARLSON. Mr. Chairman, I have submitted this letter to be made a part of the record that I read from.

The CHAIRMAN. Yes; it has been made a part of the record.

Senator Bush?

STATEMENT OF HON. PRESCOTT BUSH, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator BUSH. Mr. Chairman, and members of the Finance Committee, I appreciate the opportunity to speak on behalf of S. 2213 which I have introduced with the cosponsorship of Senator Keating from New York, and Senator Butler, of Maryland.

I think my remarks will take, perhaps, less than 5 minutes.

At the outset I might observe that the importance and the urgency of the subject we are to discuss is demonstrated by the fact that hearings are being held on these measures less than 1 month after their introduction in the Senate. As your prompt action in sched-

uling hearings indicates, Mr. Chairman, the problem is a serious and urgent one.

The crux of the problem lies in Supreme Court decisions handed down February 24, 1959, involving the cases of *T. V. Williams* v. *Stockham Valves & Fittings, Inc.* and *Northwestern States Portland Cement Co.* v. *Minnesota.*

The Supreme Court, on the above date, held by a 6-to-3 vote, that the commerce clause of the Constitution of the United States does not prevent a State from taxing a foreign corporation's net income derived from sales within the State even though such transactions are exclusively in intersate commerce. This interpretation has come as a complete surprise to the commercial world and is a departure from what was previously understood by businessmen. It is a surprise, too, to many authorities upon constitutional law.

The Supreme Court seemingly is developing a new concept of law in which the distinctions between interstate and intrastate commerce are no longer of consequence and the due process test of constitutionality is predicated upon whether there are activities within the taxing State.

Because of these decisions, businessmen are apprehensive that they may ultimately be forced to pay income taxes in every State in which they sell their goods with the resulting impediment to a free flow of trade throughout the country.

While Europe is reducing its trade barriers, these Supreme Court decisions threaten to force a step backward for the United States, whose growth and economic strength has come about largely because our entire geographic area has been free of strangling and restrictive trade regulations.

I observe parenthetically that I noticed the Senator from Oklahoma raised the question as to whether we are in danger of having tariff walls between the States. That was the question that crossed my mind in connection with this also, and while one would not say that that Supreme Court decision necessarily raises tariff walls, it does suggest trade barriers.

Senator KERR. A tariff wall is nothing in the world but a tax, is it not?

Senator BUSH. That is right.

Senator KERR. And a tax on that income from the sale of a product has such a similar effect to a direct tax upon the entry into the product that to differentiate between the two would seem to me to be a distinction without a difference.

Senator BUSH. Well, Senator, maybe you misunderstood me. I was agreeing——

Senator KERR. I knew you were, and I was just trying to get my thoughts into the record at this point.

Senator BUSH. They are both barriers, that is the point. They are both trade barriers, and taxes.

Senator KERR. And since the word "tariff" is one that we have used as a kind of nice word to describe a tax, it would seem to me that it would definitely amount to a tariff although it were an income tax instead of a customs tax.

Senator BUSH. I agree with the Senator on that, and I thought of that same analogy.

If relief by legislative action is not forthcoming, then it will result in a tremendous burden of paperwork and confusion of regulations.

It would, in many cases, mean that small business companies would find themselves in a poorer and poorer competitive position due to a reduction in the already narrow margin of profit. Some companies may indeed face the danger of being forced to go out of business because of the difficulties encountered.

Most small businesses operate on a narrow margin and their success is often directly related to maintaining a low overhead factor. If corrective legislation is not forthcoming it could be a staggering blow to small business.

The problem which these decisions pose for businessmen was well stated by Mr. Justice Frankfurter in a dissenting opinion in which he pointed out that "interstate commerce will be burdened not hypothetically but practically."

Mr. Justice Frankfurter made the following analysis of the possible effects of the decision:

There are thousands of relatively small or moderate sized corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage counsel, all to meet the diverse tax laws in 49 States, with their different times for filing returns, different tax structures, different modes of determining net income, and different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with taxing requirements of different States may well exceed the burden of the taxes themselves especially in the case of small companies doing a small volume of business in several States.

Senator GORE. Could I ask a question just there, Mr. Chairman?

The CHAIRMAN. Senator Gore.

Senator BUSH. Yes, Senator Gore.

Senator GORE. As a matter of content and purport, would the statement you have just read, in your opinion, constitute an argument as to why the decision should not be made, or whether the tax levy was a legal one?

Senator BUSH. Well, I say that, Mr. Chairman, this constitutes an argument for the bill which I have introduced, and that is the reason I read it; that is the best argument I have heard on it, frankly, and I do not say that facetiously. I think it does.

Senator GORE. I did not raise the question facetiously.

Senator BUSH. I know you did not.

Senator GORE. It seems to me the argument has substance as to the effect rather than the legality of the question.

Senator BUSH. Mr. Chairman, the purpose of S. 2213 is to limit the power of the States to impose income taxes on incomes derived exclusively from the conduct of interstate commerce. The bill is brief and to the point. It reads as follows:

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That, after date of the enactment of this Act, no State, or political subdivision thereof, shall have the power to impose a net income tax on income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders in the State by such person, or by an agent of employee of such person, if such person maintains no stock of goods, plant, office, warehouse, or other place of business within the State.

If enacted, this bill will establish the minimum standard which is needed and it will provide immediate relief to a large segment of businesses, particularly the smaller ones who would be the most severely injured by the Supreme Court decision.

That concludes my statement, Mr. Chairman.

I would simply comment briefly, if I might, on the bill that Senator Sparkman was discussing which, in part, is quite similar to mine, but which calls for the establishment of a commission, and while it freezes, as he says, the situation as he sees it today as a result of that Supreme Court decision, well, my observation would be that is what we seek to do, and I think our bill may be a little clearer than his, as to what we seek to do in freezing the situation, and we seek to leave the determination of any other legislation to the legislative committees of the Congress; and it would seem to me that this particular committee is exceedingly well qualified to deal with this legislation inasmuch as it does involve taxes and revenue, if not for the Federal Government, still it is tax legislation.

Therefore, it seems to me to fit here as well as any place else.

That concludes my statement, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Bush.

Are there any questions? Senator Kerr?

Senator KERR. Senator Bush, it seems to me that the words in your bill, after the word "if", eliminates a good deal of the relief which it would provide if there were not so many words after the word "if."

Senator BUSH. I'm sorry. I do not quite get the import of that, Senator.

Senator KERR. Well, the relief you provide is not applicable unless the taxpayer maintains no stock of goods, plant, office, warehouse, or other place of business within the State.

Senator BUSH. Well, we seek to relieve from taxation in this bill the operator who does not, you might say, do business in the State. Doing business in the State would, in this instance——

Senator KERR. If he does not do business in the State there would be no tax.

Senator BUSH. But my point is, I want to say what I mean by doing business in the State, which constitutes having a plant or keeping a plant or a warehouse——

Senator KERR. I understand how that can keep it out.

Senator BUSH (continuing). Or other place of business. If you do not do that under our bill, you should not be subject to the income tax laws of a State.

This is to freeze the situation of the pecan grower that Senator Talmadge talked about.

Senator KERR. But it would not freeze the situation that Senator Gore was talking about where the fellow came there and rented a hotel room for from 2 to 4 weeks, and took orders and said, "If you want any of this, call me at this place of business, or this office, or this room."

Senator BUSH. Well, I would have classified him as a traveling salesman and, therefore, he would be exempt.

Senator KERR. I would classify him as a squatter. (Laughter.) And the State in which he was thus operating might say that that room was an office under this bill.

Senator GORE. Or other place of business.

Senator KERR. Or other place of business. It looks to me like you start out to do a pretty good job, and then cut the ground out from under yourself with that proviso, or that "if."

Senator BUSH. Well, we do not intend to cut any ground out from under ourselves, Senator. If the committee can, after it has heard other witnesses here, modify this bill in such a way as to——

Senator KERR. You would say if such person maintains no stock of goods, plant, or warehouse, but when you get "office or other place of business," it looks to me like you would eliminate the relief from at least a large percentage of people to whom it would be just as important as it would be to those who are in a position actually to get it under your bill.

Senator BUSH. Well, I think you have a very good point there, as a matter of fact. I would be disposed to accept that modification.

Senator KERR. You say this opinion came as quite a shock to a lot of people and a surprise, and I must say that I think you are correct.

Why would you make your bill applicable only after enacted, or effective only after enactment?

Senator BUSH. Are you raising the question of retroactivity there?

Senator KERR. I think that would be a reasonable inference.

Senator BUSH. I am having a little trouble with my hearing. The Senator seems to be unacquainted with the modern conveniences.

Senator KERR. I have got a new bridge, and I guess it interferes with my diction.

[Laughter.]

Senator BUSH. I thought you were opposed to these modern gadgets.

Senator KERR. I must say that is an ancient gadget.

[Laughter.]

Senator BUSH. Yes, sir. We have tried to avoid the question of retroactivity in this legislation deliberately.

Senator KERR. I see. Well, you succeeded.

Senator BUSH. We succeeded. Thank you.

Senator GORE. Mr. Chairman, may I ask a question?

The CHAIRMAN. Senator Gore.

Senator GORE. Senator Bush, you said a few moments ago that this would give relief from taxation to any company which did not do the things specified in your bill.

Now, conversely, do you mean to imply thereby that any company that qualifies under the terms of your bill would then, insofar as your bill is concerned, be subject to State taxation?

Senator BUSH. Yes. I do not think that a company that maintains branches and operates a plant within a State should be exempt from the taxation of that State.

Senator GORE. Would you be willing to give an example, if you have one in mind, of a concern or a business which would be given relief under the terms of your bill?

Senator BUSH. Well, I think Senator Talmadge gave a pretty good one with his pecan grower.

Senator GORE. That is entirely a selling by mail.

Senator BUSH. Well, I wouldn't——

Senator KERR. The example he gave was a sale by telephone.

Senator BUSH. Possibly so. If so, it was exempt. But even if he had a salesman to go out and sell his pecans in Chicago, I would still think it would be exempt under this bill.

It is the type of thing that this bill seeks to free. It would seek to free any producer or manufacturer who may send a salesman into a State to make sales and get out of the State without establishing an office or a plant or a warehouse for a stock of goods.

Senator KERR. Or other place of business.

Senator BUSH. Yes.

Senator KERR. What would this other place of business be?

Senator BUSH. Well, I don't know what it might be. I suppose it might be——

Senator KERR. He just got too generous with words there, and has already said he has taken it out.

Senator BUSH. I think you made a very good comment. We have got too many words there, and we will take it out.

Senator KERR. In other words, one foot is out of the trap and the other is in?

Senator BUSH. No.

Senator GORE. I'm not trying to trap you.

Senator BUSH. The purpose is to try to make clear that we want to relieve from income taxation the small operator who may sell goods within a State, but does not in the normal sense do business within the State by having establishments there for that purpose. That is the broad issue, as I see it.

Senator GORE. Can you think of another example, other than pecans?

Senator BUSH. Well, I think you could take almost any kind. Take the Fuller Brush man.

Senator GORE. He is a good man. Go ahead.

Senator BUSH. He is a good man.

Senator KERR. He has a stock of goods right along with him.

Senator BUSH. I had not thought of him, but he would be a good man.

Senator KERR. Senator Bush, he takes the stock of goods along with him.

Senator BUSH. He maintains no stock of goods.

Senator KERR. The Fuller Brush man?

Senator BUSH. Would you call it maintaining a stock of goods if he carries a few samples with him?

Senator KERR. Well, a lot of them take a truckload right along with them.

Senator BUSH. I beg your pardon?

Senator KERR. They take a truckload right along with them and sell it right out of the truck.

Senator BUSH. Well, I would not call it maintaining a stock of goods.

Senator KERR. Well, they would not either if they sell it.

[Laughter.]

Senator BUSH. I think the record shows that he sells it.

Senator GORE. Well, is he not an agent of the company?

Senator BUSH. Yes.

Senator GORE. All right.

Senator BUSH. He is a salesman for the company; in that sense he is an agent. He speaks for the company.

Senator GORE. You say, "by an agent or employee."

Senator BUSH. If he maintains a place of business.

Senator GORE. Can you think of other examples? The pecan grower and the Fuller Brush Co., you have said both have agents and salesmen who go to places and make sales. Can you think of another?

Senator WILLIAMS. Would the Senator yield?

Senator BUSH. Well, let us take a shoe salesman who represents a shoe manufacturer who goes into the State to sell shoes to the retail trade. Those shoes are shipped from without the State, Massachusetts or wherever they may be made. He would be what we would normally call a traveling salesman.

Senator GORE. I gave that example myself a few moments ago, as one for which I thought the bill would provide no relief. It simply came to mind because recently I was in the Andrew Jackson Hotel in Nashville, and a shoe salesman had a suite of rooms rented. The salesman had a large stock on display and he was——

Senator BUSH. Was it stock or was it samples?

Senator GORE. That I would not be sure of, but it seems to me the same thing—he would be caught because he had quite an establishment rented there. This was a place of business, and he took orders. He solicited orders, he accepted orders, he had the telephone ringing, he had a secretary helping him to take the orders, and I say under the terms of your bill and Senator Sparkman's bill, he would be an agent employee who maintained an "office" or "other place of business."

Senator BUSH. Well, I certainly—if it would lend the Senator any comfort—would be delighted to take those words out about other place of business, because the example which the Senator cites is a good example, because it is an example of how a traveling salesman works if he is selling shoes.

He will go to a hotel, he will take a showroom—they have special rooms in most hotels for traveling salesmen, and he displays his samples there, and he takes orders, and he sends those orders back to his factory, and then those shoes are delivered. That is a traveling salesman, and that company should be exempt, in my judgment, and I think our bill would exempt it.

Senator GORE. Thank you, Mr. Chairman.

Senator KERR. If it is not, you would like to have it fixed so it would?

Senator BUSH. Sir?

Senator KERR. If it does not, you would like to have it fixed so it would?

Senator BUSH. Yes. If it does not, I would like the committee to amend it so it feels that it would; taking out the words the Senator from Tennessee mentioned would help.

Senator WILLIAMS. Senator Bush, I want to say that I am in complete agreement with your objective, but I am also wondering in connection with the definition where you say, "maintains no stock of goods," now to get back to Senator Talmadge's example of the pecans—suppose this farmer or dealer, whatever he might be, arranges with a commission house in Chicago to ship these nuts by the carload, and which would be sold on commission, and——

Senator BUSH. Upon consignment, you mean?

Senator WILLIAMS. On consignment. They are his property, they are his goods until such time as they are sold, and he maintains a stock there.

Now would that come under the definition of "maintaining a stock of goods"?

Senator BUSH. Well, that is a very difficult question and I was afraid somebody would raise that. You take the business of consigning stocks of goods, that is a very common one. It used to be when I sold goods, and I imagine it is still done very generally, and it is a question of whether consignment, like if you were selling Bufferin or something in the drug trade, if you consigned a case or two to a druggist and he pays you as he uses it up, from month to month, whether that constitutes maintaining a stock of goods. Whether it does is doubtful. He does not maintain it. The druggist maintains it for their mutual convenience.

But it is a cloudy, very cloudy question, I agree, and I would say that if we had—if the bill had to stand or fall on that question, I would rather have the consigned goods classified as "a stock of goods" rather than lose the bill, so to speak.

Senator WILLIAMS. I raised that question because a large percentage of your farm produce is shipped in that manner; maybe not a large percentage, but a substantial amount.

Senator BUSH. On consignment.

Senator WILLIAMS. On consignment. It is a standard practice. I wondered if those shipping——

Senator KERR. A canner would ship that way to a commission house.

Senator WILLIAMS. Yes; and I just wondered whether that would need further clarification in the bill in order to eliminate it. I was sure you did not intend to include it.

Senator BUSH. I think the Senator has raised a very important point, and it should have clarification in the report or in the bill itself.

Senator WILLIAMS. One further question. I notice, in reading from the committee report of the Small Business Committee, on page 5, and I am reading this:

There is the danger of retroactive assessments of taxes covering many years past. In the Supreme Court's *Northwestern Portland Cement* case, the Iowa firm was held liable for taxes dating back to 1933, when the Minnesota income tax law was passed.

I appreciate the fact that you are trying to get away from retroactivity, but if we act on a projected date would it mean that companies in these various States that had been doing business could all be subject to all these back taxes under this court decision? I might add that in the absence of any legislation would it mean that any company today would have a potential tax liability back for these several years as the question arose in different States?

Senator BUSH. Well, I would think the decision of Congress on this might have a determining effect on any cases that were pending.

When the will of the Congress was stated, if it were stated, in terms of our bill, it would certainly be an indication of what the Congress intent was on that thing.

But I would personally prefer to see the bill stay away from the question of retroactivity and let any mention of that or any question

of that be dealt with in the report if the committee wants to make clear its views on that subject.

Senator WILLIAMS. Certainly, in the absence of any legislation in this field, it would mean that all of the companies today have this potential retroactive liability hanging over their heads.

Senator BUSH. Yes; but I think once this bill was passed, it would eliminate that right away.

Senator WILLIAMS. I think I would agree with you.

Senator BUSH. Yes.

The CHAIRMAN. Thank you very much, Senator Bush.

Senator BUSH. I thank the committee for its courtesy.

The CHAIRMAN. Senator Keating from New York is a copatron of the bill.

Senator KEATING. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Keating, you may proceed, sir. We are very happy to have you here.

STATEMENT OF HON. KENNETH B. KEATING, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator KEATING. Thank you, Mr. Chairman, and members of the committee.

I am a cosponsor with Senators Bush and Butler of the bill which has just been under discussion.

The Supreme Court's decision in the *Portland Cement* and *Stockham Valves Company* cases in February of this year has stimulated great interest in the problem of State taxation of multistate business activities. The inconsistent and unsatisfactory manner in which such taxes are being assessed has now been strikingly revealed. The result has been widespread consternation in the business community and a new determination to promote greater uniformity and equity in the enforcement of such taxes.

I have received dozens of letters from small business firms in my State urging action to remedy the present situation. These letters have emphasized the tremendous administrative and economic burdens which will be imposed upon such concerns if the States take advantage of the full authority in this field sanctioned by the Court's ruling. I am certain that every member of this committee has received similar letters from firms in your States.

Senator KERR. Would the Senator yield for a question?

Senator KEATING. Yes, I would be glad to yield.

Senator KERR. How do you interpret the decision of the Supreme Court with reference to the scope and effect of it? Do you cover that in your statement?

Senator KEATING. I do not fully and I will be glad to answer your question directly.

I think that, as so frequently happens, the general language of the opinion is much broader than the specific situation with which the Court was confronted, since in both cases these concerns did have places of business in the State.

But the fear in the business community which arises from the "nexus" sentence to which the Senator has referred, seems to me to be justified, because we cannot tell what the Supreme Court might

do and how far they might extend this doctrine in the next case that would be presented to them.

Senator KERR. Is the Senator a lawyer?

Senator KEATING. Yes.

Senator KERR. As a lawyer, do you not feel that if a State passed a law imposing an income tax on the profits of any goods that were sold in that State from an interstate source, that under this Supreme Court decision the probabilities are that the Supreme Court will sustain that law?

Senator KEATING. I would not sustain it as a member of the Supreme Court.

Senator KERR. Well, you would not have participated in its decision as a member of the Court?

Senator KEATING. I would have joined in the dissent of Mr. Justice Frankfurter.

Senator KERR. I understand.

Senator KEATING. But I think there is a real danger of that. I am not prepared to say that the Court would go that far. But frequently we are confronted in Congress with preventing something from happening about which there is a real fear, even though the Court has not as yet gone as far as the situation which we are seeking to avoid.

My study of this subject convinces me that these complaints are justified. I believe that legislation must be promptly enacted in order to halt potentially confiscatory burdens on the business community of this country.

Authorities in this field have pointed out that it is now possible for some firms to be "lawfully" taxed on more than 100 percent of their interstate business, as has been pointed out here, due to the varying formulas which various States use.

I have read undisputed testimony which indicates that in some industries, such as the dress industry in New York, the cost of compliance with these decisions if fully enforced would be the difference between operations at a profit and bankruptcy. This is an intolerable situation which cries out for relief.

An immediate partial solution to this problem is enactment of Senator Bush's bill, S. 2213, which I have cosponsored. Under the provisions of this bill no State or municipality could impose a net income tax on any income from the conduct of interstate commerce solely by reason of the solicitation of orders in the State unless the company involved maintained a place of business within that State. This would establish as a minimum requirement that a company enjoy at least a "business presence" in any State which sought to tax the company's income from interstate commerce.

I believe that such a concept is equitable for a number of reasons:

(1) A corporation which employs capital and labor and operates facilities within a State is an integral part of that State's economy and receives a variety of protective and other services for which the State should be compensated. Since these services directly relate to the income-producting activities of the company, a tax on income allocated to these activities is patently reasonable.

(2) On the other hand, a company which does not have a place of business in a State does not receive any benefits from the State which relate to its income-producing activities. Such a State does not put

out a fire on the company's premises, it does not insure its employees against injury on the job, it does not protect its warehouses, it does not maintain the streets and highways or subways and utilities needed for the company's functioning. The fact that the property of such a foreign corporation is delivered to one of its citizens may justify a sales tax or use tax, but it does not justify a tax on the net income of the company.

(3) Reference to a "business presence" also greatly simplifies the administrative burdens on both the taxing authorities and the taxpayer. It is true that the question of when a company is doing business in a State under such a concept is not always free from doubt.

The discussion here this morning justifies the observation that no matter how this bill is worded, we are not going to put the courts or the lawyers out of business because we are still going to have to litigate some of these questions that appeared here this morning.

But on a comparative basis, this is infinitely simpler than pursuing every sale destined for a State and analyzing it in terms of the particular sales factor in vogue. This would require the taxing authority to check post offices, railway express offices, airfreight and truck deliveries, and to investigate such questions as to where the sale was negotiated, and it will require the taxpayer to classify every invoice. Small firms simply cannot afford the electronic gadgets now used by giant corporations for such purposes. The tax collectors can rarely afford the tremendous cost of catching the little fellow under such all-encompassing systems. The result will be widespread tax evasion with all the serious moral and practical consequences which such practices entail.

(4) Finally, I believe that prior to these decisions, it was assumed that due process required a business presence in the taxing state to justify a tax on net income. I do not suppose that anything Congress now does can be made retroactive.

I might have no objection, in light of some of the discussion on retroactivity this morning, if this bill were made retroactive, and I think it would be a great relief to many who might be stuck by some of the States. But this bill does not call for it in the light of the generally recognized principle that tax bills are not retroactive.

Reestablishment of a business presence requirement could deter the imposition of severe penalties on companies who relied in good faith on previously assumed limitations and would halt any continued trend in the other direction.

I recognize that S. 2213 does not solve all the problems in this field. I therefore support proposals for a comprehensive study of all aspects of this subject as a basis for more far-reaching legislation, although I seriously question whether an independent commission is necessary for this purpose.

My very high regard for this particular committee would lead me to think that legislative committees, specifically this one, could deal with this problem perhaps better than any commission.

Ideally, the States should come up with their own solution to this problem either in the form of a uniform law or through enactment of regional compacts. I have already made such a suggestion to the Council of State Governments and have been advised that the matter is now under study by that group. The widespread reaction and far-

reaching impact of the Supreme Court's decisions should be enough to spur such cooperative State action. If such is not the case, however, Congress certainly will be forced to fill the gap.

I strongly urge S. 2213 upon the committee as an interim, but important relief measure. There is still time for action on this bill during this session of Congress. I hope the committee in its wisdom will see fit to report this bill favorably to the Congress.

The CHAIRMAN. Thank you very much, Senator Keating. We are always happy to have you before our committee, sir.

Any questions? Senator Douglas?

Senator DOUGLAS. Senator Keating, have you read an article which appeared in the Harvard Law Review for April 1941 entitled "State Taxation in a National Economy"?

Senator KEATING. No, I have not any longer an opportunity to read the Harvard Law Review, and I miss it.

Senator DOUGLAS. It is a very interesting, scholarly study.

Senator KEATING. Who was the author?

Senator DOUGLAS. The authors were Jerome R. Hellerstein and Edmund B. Hennefeld of New York.

Senator KEATING. I have heard about that article.

Senator DOUGLAS. It is a very interesting study, and they apparently propose that Congress develop standards of allocating shares of net corporate income between the States on some standardized basis.

Have you given consideration to that possibility?

Senator KEATING. I have not specifically. I would rather see the States get together and agree among themselves on a compact which Congress ratified, than I would to see Federal imposition of a standard of that kind; but, perhaps, it is not feasible.

Senator DOUGLAS. It is somewhat hard to get the States to agree.

Senator KEATING. It is hard. But the Council of State Governments has made quite significant strides in getting together among the various States on various problems of this nature, and I think we must be cognizant of the interests of particular States, as the Senator from Kansas mentioned. He has some particular problem there. But it may be that you will have to come to that. That is one of the things I have in mind as one of the things to study, when I say this is an interim measure, and we should dig into it more deeply.

Senator DOUGLAS. Would you think that if the Council of State Governments, or some other group of State authorities, agreed upon a uniform law that we should then leave this to the State legislatures to adopt a uniform law, or that the Congress, after due examination, should approve it?

Senator KEATING. I would prefer to see it done by having the States adopt laws and having those ratified by the State legislatures. It may be that there are some practical obstacles in the way of that, so that it would be desirable to take Federal action.

Senator DOUGLAS. I have not followed up with any great detail the experience in the ratification of uniform State laws by State legislatures, but it was my impression, and it may well be an uninformed impression, that the success has not been overwhelming.

Senator KEATING. No, it has not been overwhelming. But there are areas where I believe all States have agreed——

Senator DOUGLAS. Such as uniform bills of sale.

Senator KEATING. I think that is one.

Senator DOUGLAS. That is in commercial law. But where the distribution of income is involved, might there not be a great deal of rivalry between States which have purchases from other States which manufacture the articles involved?

Senator KEATING. I think taxation would be one of the most difficult things on which to get all the States together.

The CHAIRMAN. Senator Curtis?

Senator CURTIS. Senator Keating, do you believe that States have power to tax income derived from interstate commerce carried on in their State where this is no business presence in that State?

Senator KEATING. As a lawyer, I do not. But I think in the light of this decision, there is a great danger that a majority of the Court might so hold.

Senator CURTIS. The Congress is charged with upholding the Constitution, as well as the courts, is it not?

Senator KEATING. Oh, yes.

Senator CURTIS. How do we delegate to the States authority to divide up something that in our fundamental belief we do not think the States can touch?

Senator KEATING. You are referring to the suggestion in this Harvard Law Review article——

Senator CURTIS. I refer to your suggestion of settling this by interstate compact.

Senator KEATING. Well, the States can get together and agree on anything subject to congressional approval.

Senator CURTIS. I do not think so. If the theory of the Constitution is to permit the free flow of interstate commerce, how could the States by agreement agree to it?

Senator KEATING. If Congress felt that the agreement which the States had arrived at was a burden upon interstate commerce, we would not ratify the compact. The final judgment on that would always rest with the Congress, because any such compact would be invalid in the absence of ratification.

Senator CURTIS. Is it your understanding of the practice that would arise under this decision that if a State where business were transacted, if they impose a tax upon that interstate business, that that tax would be an offset against the State income tax in the State where the business was located?

Senator KEATING. I do not think that is the practice.

Senator CURTIS. Then it is more than a paper nuisance, is it not? It is double taxation.

I assume that under the State income tax laws, they have to pay an income tax only upon that portion of their business worked out on some formula in the particular State where they do actually conduct business. Of course they are also subject to Federal tax. Every New York State resident, since New York State has an income tax, is subjected to double taxation, you could say, because he is taxed on his income twice.

Senator CURTIS. You take my State, for instance, the great meatpacking center of Omaha is right on the State line next to Iowa. Iowa is an important cattle-feeding State. Many of the cattle slaughtered in Omaha are purchased in Iowa.

Considerable of the finished meat product is, in turn, sold back in Iowa.

Would you view that situation as one of concern under these two decisions that have given rise to this legislation?

Senator KEATING. I would, yes.

Senator CURTIS. I live in a small town. We have a publishing house there which sells their books to schools in every State of the Union. Their profit depends upon the sale of books. That is the thing that triggers the profit.

Do you think that under these Court decisions that there is a threat to such a business?

Senator KEATING. Do they handle that all by mail, or do they send salesmen around to the various States?

Senator CURTIS. This happens to be, I think, substantially all by mail.

Senator KEATING. I think some of the mail-order houses are greatly concerned over this decision. I believe because of the different fact situation in the case that it would not by its terms apply to mail-order business, but it is conceivable that it would be extended to that in some later decision.

Senator CURTIS. Suppose a building contractor located in one State performs a contract in another State. We will assume that it is a contract of short duration, so that all of the management, the warehouses, and so on, are in its own State.

Do you think under these decisions there is a threat that such a contractor would have to pay a tax to the State in which the work was performed?

Senator KEATING. Yes, there is. Even under the bill that we have presented, he might be subject to such tax if he was maintaining a place of business in the other State.

Senator CURTIS. Well, my first question was a contract of short duration, where he actually did not maintain a place of business.

Senator KEATING. I think he would be in danger under this decision, let us put it that way.

Senator CURTIS. Do you know what the practical situation is now with regard to that? Take, for instance, a contractor doing highway work. He bids on a contract in another State. His business is not located in that State; neither is he. He performs services there, and his total profit, his net profit, in reality, in truth and in fact, is the sum total of all of his business transactions, so that he may end up with a loss.

But it might be shown that the contract in another adjoining State, he had a profit on that.

Do you think that that under this Supreme Court decision there is a threat to that sort of thing?

Senator KEATING. I think there is a threat, but to answer the first part of what I thought you were going to ask, I am not sure what the practice is now.

I rather think that a contractor who does a substantial job in another State is subjected by the taxing authorities of that State to a tax on the proportionate part of his total business which is done in that State.

But in that case every State which has a State income tax law, I believe, gives a credit under its taxes for that amount paid in the other State.

Take the specific instance if he was a contractor in Nebraska and he did work in New York State, and New York State imposed an income tax on the amount of profit that he made in that State on that job, that would be credited in Nebraska, if Nebraska had an income tax.

Senator CURTIS. But we have no income tax.

Senator KEATING. Well, I believe he would be subject to the tax of the States where he does his business. I am not positive of that, but I think that is true.

Senator CURTIS. How about an airline flying over many States? Conceivably they make a profit on passengers that board and get off in that State.

Also they may make a profit on passengers that fly over a State if it is a nonstop flight, and it stops no place in the State.

How is that situation affected by the Supreme Court decision?

Senator KEATING. Well, in another connection I discovered, it was quite a matter of interest to me, that it was the practice of most of the States which have State income tax laws, to tax, let us say, an airline pilot on the proportion of the time that he flew over a particular State in his regular flights, and if he was flying over Massachusetts, New York, and New Jersey, and all of them had income taxes, he would be subject to an income tax in each of those States based upon the flying time that he spent over each of them.

Senator CURTIS. Suppose that in that case it is run as a nonstop flight from New York to San Francisco; his plane never lands. But during good weather he is directed and required to follow a certain course that takes him over given States.

Well, assume there is a profit. The profit is based upon the entire fare paid. Part of it was being paid to transport someone across a given State, and they fly 30,000 feet in the air.

Now, under the Supreme Court decisions are they a threat that the States may impose a tax upon——

Senator KEATING. I do not think——

Senator CURTIS. Upon the business of transporting passengers?

Senator KEATING. I do not think that the hypothetical situation suggested by the Senator from Nebraska is covered by this decision.

Senator CURTIS. In a nutshell what were the facts in this case?

Senator KEATING. There were two cases decided together.

In one of them the taxpayer had a regular and systematic course of soliciting orders in Minnesota to be accepted and filled and delivered from the plant in Iowa; and it was held to be subject to tax in Minnesota.

In that case the company had a three-room office occupied by two salesmen, a district manager and a secretary, and then two additional salesmen came in and used it as a clearinghouse. So that there was actually an office in the State of Minnesota.

But the sentence which is so serious in the prevailing opinion of Mr. Justice Clark said:

We conclude that net income from the interstate operations of a foreign corporation may be subjected to State taxation, provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same.

Senator CURTIS. Forming what?

Senator KEATING. Senator Kerr of Oklahoma is the expert on nexus. We discussed the word at some length. [Laughter.]

Senator CURTIS. I am sorry I was not here.

Senator KEATING. I would have to refer you to Senator Kerr as the real authority on what nexus means, but it is that word nexus that is causing consternation in so much of the business community. It is very broad language, as you can see.

Mr. Justice Frankfurter said that this is a burden on interstate commerce; you cannot do it, and he was joined by Justice Whittaker and Justice Stewart.

Senator CURTIS. Now the State of Iowa under this decision can levy an income tax on New York Life Insurance on the life insurance business done in Iowa?

Senator KEATING. I assume that they probably do now, if they maintain offices, and I think most of these insurance companies maintain offices.

Senator CURTIS. That is an income tax.

Senator KEATING. Well, I think they do.

Senator CURTIS. Many of these States levy a premium tax.

Senator KEATING. Well, that is true. There are many States, like Nebraska, which do not have income taxes, but I am referring only, of course, to those which do.

Senator CURTIS. That is all, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Keating.

Senator BUTLER. Mr. Chairman, may I just remind the Senator of the fact that the State of New York and several other States are now imposing an income tax upon the seamen on a vessel engaged in foreign commerce if it happens to touch the port of New York. Does the Senator know that?

Senator KEATING. I heard that alleged. I am not actually familiar with that.

Senator BUTLER. Well, I can assure the Senator that it is a reality, and that the Commerce Committee has just reported out a bill to try to relieve the shipping companies of that burden, because they touch many ports, and if each State wants an income tax on the crew simply because they tie up in a port——

Senator KEATING. It is probably true. The New York taxing authorities are very diligent.

Senator BUTLER. They have been in that case.

Senator WILLIAMS. If the Congress does not act in this field, what effect would it have on the earnings of a corporation, we will say, for instance, like the Western Union Telegraph and on a telegram that is sent from San Francisco to New York? Would it be possible to say that a portion of that was earned in each of the States as it crossed the country under this Court decision, because they certainly have got facilities in all of the States.

Senator KEATING. Yes, I suppose the State that sent it could claim it was earned there and the State that received it could claim it was earned there, and you would have a very difficult problem.

Senator WILLIAMS. But the States over which the lines crossed really that have actual physical investments in there, wouldn't there be a conflict in that?

Senator KEATING. Well, the only places where there would be income would be in the place where the telegram was sent, or in the case,

if it was a collect telegram, where it was paid in, and I suppose the income would only be taxable in the State where the money was actually paid.

Senator KERR. This decision, as I understand it, didn't go to where the income was received, but to where it was earned.

Senator KEATING. That is correct.

Senator KERR. Well, now, the Senator from Delaware is asking you if part of that Western Union fee wasn't earned in Oklahoma, if the facilities of that Western Union that transmitted that message crossed Oklahoma.

Senator KEATING. Well, I think that the decision of the Supreme Court provided for taxation of the business done in the State of Minnesota, and the amount earned on the business in that State.

The money was taken in there, as I understand it.

Senator KERR. It might not have been.

Senator KEATING. It may have been sent to the home office.

Senator KERR. Well, sure.

Senator KEATING. That is true.

Senator KERR. If nexus means the link, then every State that the Western Union transmission lines cross is a link; isn't it?

Senator KEATING. I suppose you could argue that, yes.

Senator KERR. Well, would you argue otherwise?

Senator KEATING. Yes, I would argue otherwise.

Senator KERR. Because you didn't think it was, or because you are against it? [Laughter.]

Senator KEATING. It would depend on the situation in which I was placed, whether I was arguing as a Member of Congress or a lawyer.

Senator BUTLER. Mr. Chairman, may I ask one further question?

Senator KERR. It is not necessary to be two different persons.

Senator KEATING. No.

Senator WILLIAMS. I merely raise the point of the confusion that exists if we do not act.

Senator BUTLER. May I ask the Senator this question:

Has there been any attempt made to have the Court clarify its decision in this case?

Senator KEATING. I don't know whether they asked for a reargument or not.

Senator BUTLER. Well, it wouldn't be so much a reargument as isn't there some procedure under which the litigants can ask the Court to clarify the opinion in this respect?

Senator KERR. Not without insulting the Court. [Laughter.]

You mean the right of a litigant to ask the Court what it meant by the decision it rendered?

Senator BUTLER. There have been such instances, many such instances. It is no insult to any court. Many such petitions have been filed. It is not a daily practice, but it is a common practice, and I can see no reason if all of this confusion has arisen out of this one sentence, why wouldn't the litigant ask the Court to clarify that sentence.

Senator KEATING. Well, I think the specific litigants in the cases know that they must pay the tax now. In other words, I don't think there is any doubt in their minds.

Now, there may be other, and probably are other, cases pending where the Court could well be asked to clarify what they meant in the

majority opinion. I think it is perfectly clear to Mr. Justice Frankfurter in the strong dissent which he has written that he is complety out of sympathy with what the majority are doing.

Senator BUTLER. And he feels the majority intended to tax what heretofore has been considered interstate business.

Senator KEATING. I think that is the way he feels, yes. In fact, he expressly says that, as I recall.

Senator BUTLER. But the majority doesn't expressly say, apparently.

Senator KEATING. No.

Senator KERR. They do, though, Senator; that is the trouble with the decision. It isn't explanation that people want; it is limitation that they are seeking. The reason they are seeking limitation is that they do understand it, not because they don't.

They are not afraid because they think they are going to get hurt; they are afraid because they know that under the language of that decision they are hurt. And the relief they want is from the holding of the Court, not an explanation from the Court.

Senator KEATING. Of course, they state in this decision, in the very first sentence, that these activities are exclusively in furtherance of interstate commerce. Mr. Justice Clark's first sentence is:

> These cases concern the constitutionality of State income tax laws leveying taxes on that portion of a foreign corporation's net income earned from and fairly apportioned to business activities within the taxing State when those activities are exclusively in furtherance of interstate commerce.

Senator BUTLER. Yes, but also where the company has a place of business and physical property within the State.

Senator KEATING. Yes.

Senator BUTLER. That is the big distinction.

Senator KEATING. Well, that is a big distinction.

Senator BUTLER. In other words, what the Court is saying there:

> If you have qualified to do business in this State, then you are going to be taxed on the business that you do here even though some of it may be of an interstate character.

Senator KEATING. That is correct.

Senator BUTLER. But they are qualified, they are subject to the law of the State, anyhow.

Senator KEATING. Well, if they have a three-room office with two salesman and a district manager and secretary, they would still be under the bill which we have introduced. This Northwestern States Portland Cement Co. still would be liable to taxation in the State of Minnesota. It would not disturb that. But it would prevent an extension of that into other areas such as is feared by many.

Senator BUTLER. Would that company be subject to process and subject to suit in that suit by reason of having that agent there?

Senator KEATING. I would have to know the laws of the State of Minnesota in order to answer that question.

Senator BUTLER. I think that would have a lot of bearing on it.

Senator KEATING. Well, I can't answer that because I am not familiar with the laws of Minnesota.

The CHAIRMAN. Thank you very much, Senator Keating.

The next witness is Mr. Roland M. Bixler of the National Association of Manufacturers.

STATEMENT OF ROLAND M. BIXLER, THE NATIONAL ASSOCIATION OF MANUFACTURERS; ACCOMPANIED BY ALAN M. NEDRY, ASSISTANT GENERAL COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. BIXLER. Mr. Chairman, and members of the committee, I have with me Alan M. Nedry, the assistant general counsel of the National Association of Manufacturers.

I have prepared a statement for the record. With your permission, Mr. Chairman, I will just give the highlights of that and perhaps add a few other comments, since the subject has been covered quite thoroughly earlier this morning.

The CHAIRMAN. Without objection, the complete statement will be inserted in the record.

Mr. BIXLER. My name is Roland M. Bixler, and I am president of J-B-T Instruments, Inc., of New Haven, Conn. We manufacture electrical and electronic components.

I appear here today on behalf of the National Association of Manufacturers in my capacity as chairman of its committee on taxation. We appreciate the opportunity to present our views on the legislation before your committee relating to the problem of State taxation of interstate commerce.

It might be well to add just a word of background about the National Association of Manufacturers.

The National Association of Manufacturers is a voluntary membership corporation made up of more than 20,000 manufacturing concerns of all types and sizes throughout the United States. In this regard we believe it's important to point out that more than 80 percent of our members are small business concerns, as that term is generally understood. In fact, 28 percent of the members of the National Association of Manufacturers employ 50 or fewer persons, 46.5 percent employ 100 or less, and 83 percent have 500 or fewer employees.

For example, our own company in Connecticut has 140 people and it is necessary for us to sell in every State of the Union because of the relatively small market for our specialized products.

In connection with the Supreme Court decisions that have been mentioned several times this morning, the National Association of Manufacturers presented an amicus curiae brief as a friend of the Court, and in support of the Stockham Valve Co., which is a National Association of Manufacturers member.

With your permission, Mr. Chairman, I would like to add the brief as part of the record, and the statement then calls attention to various parts of it which I won't take the time to amplify.

The CHAIRMAN. It will be filed with the committee.

(The brief referred to will be found in the files of the committee.)

Mr. BIXLER. We did predict in this brief that there would be real multiple burdens put upon taxpayers and those observations have been well founded, indeed, since the Court's decision.

Senator Bush has already referred to the dissenting opinion by Justice Frankfurter as to all of the burdens which will be put upon those engaged in interstate business.

Well, I can testify as to what those burdens are, but I think perhaps we can dramatize that far more effectively for the committee.

I brought along the State tax returns which are and which would be required as we understand the Supreme Court decision. These are not only State tax returns, but there are also some municipal tax returns, and there is now at least one county and presumably there will be many more counties that also have plans along this same line.

With the permission of the chairman, I don't ask that these be put into the record, but I would like to make them available for the files of the committee because they are a staggering and voluminous load.

The CHAIRMAN. Without objection, they will be filed with the committee.

(The documents referred to will be found in the files of the committee.)

Mr. BIXLER. As a matter of fact, these sometimes require as many as 8 and 10 pages of schedules besides, and no two States apparently approach the problem in the same way or require the same data.

The CHAIRMAN. How many State returns do you have?

Mr. BIXLER. Thirty-six States and fourteen municipalities.

The CHAIRMAN. Three States?

Mr. BIXLER. Thirty-six, and fourteen cities, one is actually a village, and I can just imagine the proliferation which is going to continue to take place.

I might say to illustrate that I know of a fellow manufacturer in New Haven who has about a thousand employees, and he has had to file a return now in a State which has passed one of these tax laws since the Supreme Court decision last February.

Senator KERR. What State was it?

Mr. BIXLER. The State of Utah, and he estimated he will have to pay $5 to Utah, but it is going to cost him $300 to do the analysis to prepare the returns.

I would further add——

Senator KERR. Uncle Sam has to pay part of that $300, doesn't he?

Mr. BIXLER. He will have to pay either 30 percent or 52 percent depending on the Federal tax bracket of the company.

Senator KERR. Yes.

Mr. BIXLER. On that point of Federal costs, also all the cost of preparation as well as the tax would be a deduction on the Federal return.

I hesitate to think of a company like ours, for example, we don't have a staff of tax experts to do all this kind of work, and I think this is going to devolve upon the management to do it, whereas we ought to be spending our time developing new products and creating jobs and doing the kind of job that our dynamic economy requires of us.

The point also has been raised this morning about contingent liability. This is certainly an issue, because one State, I understand, goes all the way back to 1911 with its laws, and I dare say that a great many of the small- and medium-sized businesses that are going to be affected by this problem don't possibly have records going back to that time. They don't have the right kind of data and there would be a completely monumental job to attack.

If no congressional action is taken presently, it seems to me that the company will be faced with two alternatives: Either it will need to withdraw from the market, and the consumer loses competitive prod-

ucts, or a company will have to add the tax to its costs, and this could well lead to product price increases and all the inflationary spiral effects of which we are so conscious.

Actually, you may wonder why does a company want to do business in every State of the Union. I think the answer so often is that there isn't sufficient market in one State to justify staying in one locality, but instead under the U.S. Constitution we have felt it was perfectly proper to do business in all the States and tap all markets.

I would like to add one other matter as to the effects on the States themselves. In many cases it is going to be so expensive to collect this tax and to administer it that no one benefits.

I quote from Commissioner Joseph Murphy of the State of New York in which he says:

> How much justice have we achieved for the business community in general if the taxpayer's costs of complying with the tax law (maintaining detailed accounting records, legal expense of preparing returns, et cetera) far exceed the amount of tax liability? Furthermore, from the public standpoint we would be saddling the State government with additional administrative expenses to collect a pittance from the overwhelming majority of these new taxpayers.

Senator CURTIS. Mr. Chairman, could I interrupt for a question?

The CHAIRMAN. Senator Curtis.

Senator CURTIS. Would you give us a hypothetical case the facts of which, in your opinion, face a threat under this decision?

Mr. BIXLER. May I give my own company, which is not a hypothetical one?

Senator CURTIS. All right, go ahead.

Mr. BIXLER. We sell as do a great many companies through manufacturers' representatives in various States. For example, we have one located in Atlanta who in turn sells all throughout the southeastern part of the United States.

Now, he is an independent contractor. He is not an employee of ours. He has no stock of goods. He cannot negotiate a sale. The sale is made only in Connecticut when we accept the order.

The customer takes title to our products at the time we put them in the mail or give them to the trucker when they leave our plant.

Now, under the *Stockham Valve* case, as we understand it, we are in jeopardy as to having to allocate the sales that are made in Georgia. We keep the sales records on a regional basis for our territory. We don't even know how much we sell in Georgia. We are selling to electronic parts distributors who in turn are going to sell to somebody else.

Well, if we are required in every place where we have this kind of an arrangement to have to file State income taxes, we think that we will be penalized in several ways.

First, we are paying on 100 percent of our income to the State of Connecticut already, so everything we pay somebody else is in addition to this liability.

The second factor is that we have all the administrative and complicated burden of first getting our records in shape. We don't have the kind of electronic equipment where you push a button and the answers come rolling out, and beyond that, it raises this whole question of retroactivity, so it is no wonder that there is a great deal of feeling about this matter.

I do notice in one of the bills before you, in S. 2281 on page 2, lines 6 to 10, it clearly defines the situation I am talking about. It says:

> For purposes of the preceding sentence—

that was the sentence about exclusion—

> the terms "agent" and "representative" do not include an independent broker or contractor who is engaged independently in soliciting orders in a State for more than one seller, and who holds himself out as such.

Now, it could be argued that the cases before the Supreme Court did not cover exactly our situation, because in these cases there were employees, in the case of the Iowa corporation there were employees in Minnesota, but they were not qualified to do business legally in the State of Minnesota because all they were doing was conducting a sales activity.

But certainly if Congress does not take remedial action, this is a flag to every State, and to every subdivision of a State, to proceed to try to collect, and we are going to have uncertainty and litigation, and some of that could be even more costly.

I have some knowledge of a company in Ohio that was subject to tax and a claim was made against them of $200,000, the most ridiculous claim. They hadn't that much in sales in the territory. They finally compromised the amount for $700, but it cost them $8,000 in fees and the like to get this accomplished, to say nothing of all the time this took from the principal executives of the company.

So these are not hypothetical cases. These are cases which are actually with us.

Senator BUTLER. Mr. Bixler, on the question of the independent contractor, you said something about holding himself out as representing more than one person.

Mr. BIXLER. Yes.

Senator BUTLER. Why would you make that distinction? As a matter of law, whether or not a man is an independent contractor and if he is no matter how he holds himself out, it should not have any bearing on it.

Take the automobile dealer, for instance, he handles but one car. Would you make him pay the tax and the man that handles maybe two or three cars wouldn't pay the tax? I think it is a matter of law, if a man is an independent contractor the tax should not apply.

Mr. BIXLER. Senator, you are going a bit beyond what I had suggested, and I certainly have no objection to that. I was trying to say that in the trade practice of a great many small companies getting started, the best way in the world to get a good salesman is to get a manufacturer's agent who already knows the market, who has three or four good lines and gives your line prestige for him to take it in and sell.

Senator BUTLER. I misunderstood you. I thought you were imposing an additional burden——

Mr. BIXLER. No, sir.

Senator BUTLER. Of making him represent more than one.

Mr. BIXLER. I say this is frequently done.

Senator BUTLER. Because the automobile dealer is an independent contractor. He has nothing to do with the company but just happens to sell their car.

Mr. BIXLER. I certainly would have no objection if that were dropped out. I was quoting from S. 2281. I mentioned the part about that and it seemed to me in line with some of the other discussions this morning about definitions, that this was the kind of clarifying definition that would be helpful, with the further suggestion that you have made.

Now, I had intended to say something about "nexus," but apparently this has been added to our vocabularly with shock treatment already.

I would like to reemphasize the point that Congress has already tackled this problem in times past by the District of Columbia interstate business tax exclusion. The scope of this law is applicable to the present situation.

My statement gives the background of that law which I think is significant in realizing that that apparently is exclusion that works out with reasonable success. Any tax liability must be determined with reasonable certainty, and the collection should not involve excessive compliance costs or we haven't gained anything but a punitive kind of result.

We understand that the question has been raised, although I didn't hear it this morning, as to whether Congress has the constitutional power to impose limitation on a State, and the Senate Select Committee on Small Business, which I quote in my prepared statement, has found that to be the case. The American Law Division of the Library of Congress has also concluded that there can be no denying that the proposed legislation would be a permissible exercise by Congress of its power to regulate interstate commerce.

A significant factor in the time element of the bills before us is that two of them provide no limitation on the duration of the exclusion, and if we can get this particular thing anchored down, then at least we will have established the all-important guidelines so that businesses will know where they stand, and not be in jeopardy about some indefinite period from now. So that it does seem that no limitation on the duration of this legislation would be in order.

This does not mean to say that we would be against further study on some of the other matters like uniform allocation and the like, which are related to the problem.

The important thing, it seems to me, in summary, is that the Supreme Court made this decision in 1959, and congressional action in 1959 is all-important to protect us against any kind of a no man's land or situation where there might well be a question as to whether we were subject to tax in this period between legislation and the Supreme Court decision.

Therefore, the urgency of the situation is one that a great many of us feel very strongly about, and we urge your present consideration.

The CHAIRMAN. Thank you.

Are there any questions?

(No response.)

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

(The prepared statement of Mr. Bixler is as follows:)

STATEMENT OF ROLAND M. BIXLER ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

My name is Roland M. Bixler and I am president of J-B-T Instruments, Inc., of New Haven, Conn. We manufacture electrical and electronic components.

I appear here today on behalf of the National Association of Manufacturers in my capacity as chairman of its committee on taxation. We appreciate the opportunity to present our views on the legislation before your committee relating to the problem of State taxation of interstate commerce.

The NAM is a voluntary membership corporation made up of more than 20,000 manufacturing concerns of all types and sizes throughout the United States. In this regard we believe it is important to point out that more than 80 percent of our members are small business concerns, as that term is generally understood. In fact, 28 percent of the members of the NAM employ 50 or fewer persons, 46.5 percent employ 100 or less, and 83 percent have 500 or fewer employees. These figures are significant since the principal impact of the problems under study by this committee falls upon the small- and medium-sized companies engaged in interstate business activities. For example, my own company has 140 employees. We must sell in every State because of the relatively small market for our specialized products.

BACKGROUND OF PROBLEM

The problem of State taxation of interstate commerce has arisen as a result of the decision of the Supreme Court of the United States in cases of *Northwestern States Portland Cement Company* v. *Minnesota* and *Williams* v. *Stockham Valves and Fittings, Inc.*[1] In these cases the Court upheld the right of the States to levy a nondiscriminatory income tax on earnings derived from interstate commerce. The Court said in part:

"We conclude that net income from the interstate operations of a foreign corporation may be subjected to State taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same."

The sponsors of the bills before you have made explanatory statements in the Congressional Record of the nature of the issues.

The NAM has been concerned with the problem of State taxation of interstate commerce for several years and has closely studied the problem during this period. This interest and concern is evidenced by the amicus curiae brief the association filed with the Supreme Court of the United States in which we supported the position of Stockham Valves & Fttings, Inc., an NAM member. A copy of this brief is submitted for the information of the committee and we hope it can be made a part of the record. We particularly call your attention to the arguments beginning at page 11 of the brief relating to the multiple burdens imposed by the States on interstate commercial activities in taxing the earnings derived from such business. The economic impact and cumulative burdens of such taxes arise as a result of the costs of recordkeeping, preparation of returns, accounting and legal services, as well as the taxes imposed. Moreover, the lack of uniformity and consistency in the scope and application of the taxes serves to compound the excessive costs and administrative compliance problems and thus substantially increases the economic thrust and pyramiding effect of such taxes.

We also invite the attention of the committee to the informal survey conducted by the association, which is reviewed in detail at pages 12 through 15 of the brief. This survey indicates the scope of the taxes prior to the Northwestern-Stockham case. At that time we informed the Court that if the tax there were to be upheld affected companies "will immediately be brought into the expanded orbit of paying such taxes, for it is apparent that if the Georgia tax statute is upheld here, other taxing jurisdictions will soon follow a similar pattern." The multiple burdens we then predicted as being imposed on interstate business are now coming to pass.

NEED FOR IMMEDIATE CONGRESSIONAL ACTION

We would like to commend this commitee and the sponsors of the bills now under consideration for their recognition and study of this problem and apparent willingness to undertake a solution. We would most emphatically reaffirm the observations of the sponsors that legislative action is needed and is urgently needed now.

The present scope of the problem in the short period since the Supreme Court spoke is of such serious consequence as to justify and demand immediate action.

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[1] 358 U.S. 450, Feb. 24, 1959.

The cumulative costs and burdens are upon us—with more to come—unless there is relief through congressional action.

A most forceful and realistic evaluation of the multiple burden problem at hand was made by Mr. Justice Felix Frankfurter in his dissenting opinion in the Northwestern case when he said in part:

"I think that interstate commerce will be not merely argumentatively but actively burdened * * * [because]:

"It will not, I believe, be gainsaid that there are thousands of relatively small or moderate size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining 'net income', and different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a far-flung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States."

Not all of the States have enacted income tax laws based upon the authority of this case.[3] Nor have all States having tax laws on their books sought to invoke the power to tax as indicated by the Northwestern case. Nevertheless, the present exposure is bad enough. For example, I have here the tax forms from many of the States where tax returns are required. In every instance these returns call for extensive supporting schedules. Even prior to completion of the forms a great deal of accounting and sales data must be accumulated and reorganized to comply with varying laws of each taxing jurisdiction. If the committee desires, I will submit these tax forms for the record.

Ever since February 24 companies have been confronted with the difficult decision of trying to determine what, if any, liability for State taxes they may have. This entails not only attempting to ascertain tax liability in the first instance, but the even more expensive and laborious task of determining what records, returns, and other data may be required in order to comply with the various laws and regulatory interpretations. This in turn raises the questions of accumulating possible reserves for contingent liabilities, dividend and investment policies, as well as loans and future financing.

Those firms which now are, or may be subject to, State tax on their earnings are going to have to decide whether to attempt to cope with the costs and complexities of these various laws or whether they should attempt to revise their business methods. The review of revision of their business methods may involve withdrawal from a market with the resultant loss to consumers of competitive products or taking on the added costs with the probably increased product prices to consumers. Decisions of such magnitude are difficult for any management to resolve. They are particularly difficult and fall with the greatest impact on the management, owners, and stockholders of the small, medium-sized, and expanding companies.

I might also note at this point that while the costs and expenses of this issue are of immediate concern to affected business management, they should also be of concern to the Federal Treasury. In addition to the State income taxes, all of these items of cost and overhead, which may far exceed the amount of the tax paid, become deductions for Federal income tax purposes.

Further, the revenue received by the State may be offset by the administrative costs of auditing, processing, or collecting such taxes. This point was recently effectively stated by the Commissioner of Taxation of New York State in his presentation to the Senate Select Committee on Small Business. Commissioner Joseph H. Murphy has this to say:

"How much justice have we achieved for the business community in general if the taxpayer's costs of complying with the tax law (maintaining detailed accounting records, legal expense of preparing returns, etc.) far exceed the amount of tax liability? Furthermore, from the public standpoint we would be saddling the State government with additional administrative expenses to collect a pittance from the overwhelming majority of these new taxpayers."

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[3] Several States have already revised their tax laws and in others the matter is being studied for possible legislative action.

SUPPORT OF LEGISLATION

Several bills to clarify the jurisdiction of the States to tax are currently pending before this committee. They would exclude from taxation by a State, or political subdivision thereof, those earnings derived from interstate commerce sales where there is no business establishment in the State.

These proposals all embrace the principle of exclusion that would be particularly beneficial to small- and medium-sized businesses. The advantage of this approach is to recognize an area of business activity and earnings that should be free from State income tax. At the same time these proposals defer to the rationale of the decision of the Supreme Court that the States may impose a nondiscriminatory levy on those local activities within a State that form a "sufficient nexus" to support the tax. The States would not be deprived of needed revenues in that there is a recognition of a right to tax certain local activities that produce income and yet there is an acknowledgment of an area of unhampered trade among the several States and the removal of undue burdens on interstate commerce.

The Senate Select Committee on Small Business has conducted hearings on this subject and has reported to the Senate.[3] After reviewing the several possible alternatives to alleviating this problem, that committee recommended the enactment of a "doing business" test to clarify the legal no man's land that exists today. Such definition would be based upon the exclusion from tax of interstate commerce earnings that has been a part of the income tax law for the District of Columbia for over a decade.[4]

As this law, which was enacted by the Congress, is referred to as establishing a logical basis for a definition of "doing business" it may be of interest to briefly review the legislative history of this amendment to the District tax law. The hearings[5] conducted by the Joint Subcommittee of the Committees on the District of Columbia show that the purpose and motivation for this amendment was to exclude from the District of Columbia income tax those earnings of companies engaged in interstate sales where there was no business establishment such as an office or warehouse maintained in the jurisdiction. The reports which were filed[6] make it quite clear that it was the intent of the supporters and sponsors of this legislation to "limit the imposition" of the District of Columbia income tax. Thus, this earlier legislation not only serves as a precedent for the imposition of the taxing power limitation in relation to earnings from interstate business but also is a precedent for congressional action in this area.

The enactment of an exclusion test such as the proposal in bills before you should serve to materially resolve the dilemma that currently exists. Taxpayers are uncertain as to their present or future liabilities and many of the States are uncertain as to how they should enforce or modify their laws. It is axiomatic that tax liability must be determinable with reasonable certainty and that the collection of taxes should not involve excessive compliance costs in relation to yield to the taxing government or burden to the taxpayer. The present posture of the law is such that it does not conform to these sound principles.

The present status of this problem leads to the inescapable conclusion that definition legislative action is required and to be effective must be done in this session of Congress. The taking of definitive action at this time could have only minimal revenue consequences for the States and yet would provide a sound basis of delineation to guide all parties concerned. Failure to take action now could only result in the compounding of confusion and the consequences of serious impact both on taxpayers and the States. We believe that the Congress can presently provide at least a partial solution to these complexities and respond to the needs for more "precise guides to the States in the exercise of their indisputable power of taxation," as noted by Mr. Justice Clark in the *Northwestern* opinion.

CONGRESSIONAL POWER TO LIMIT STATE TAXES

I understand the question has arisen as to the constitutional power of the Congress to impose such a limitation on the States. The Senate Select Com-

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[3] S. Rept. 453, June 30, 1959.
[4] District of Columbia Code, sec. 47–1551c(h)(1), as added by Public Law 509, 80th Cong., 2d sess.
[5] Hearings before the Joint Subcommittee on Fiscal Affairs of the Committees on the District of Columbia, pt. 1, Mar. 18, 19, 20, and 22, 1948.
[6] S. Rept. 1042, Mar. 31, 1948, and H. Rept. 1792, Apr. 23, 1948.

mittee on Small Business extensively explored this issue during the recent hearings.[7] Section II of the committee report of June 30, 1959, states:

"Therefore, your committee concludes that there is no serious question about the ability of Congress to act in the area of State taxation of income derived from interstate commerce and that a constitutional amendment is not required, as some observers have suggested."

Moreover, this question has been recently reviewed by the American Law Division of the Library of Congress which concluded that "there can be no denying that the proposed legislation would be a permissible exercise by Congress of its power to regulate interstate commerce."[8]

The law department of the NAM has also studied this issue and, based upon the legal precedents and statements by Justices of the Supreme Court over the years, has concluded that there is adequate constitutional authority for congressional action in defining an exclusion from State taxation.

CONCLUSION

In this brief review of the problems and multiple burdens confronting taxpayers operating in interstate commerce, we have placed great emphasis on the need for a positive guideline by which both business and State and local governments could assimilate with reasonable certainly their compliance and collective responsibilities, respectively. The enactment of the "minimum activity" or exclusion principle, without limitation as to time of duration, would serve this purpose, leaving to appropriate legislative committees of the Congress further study of other problems raised by the Supreme Court decisions. This study could include such matters as the concept and definition of income and the possible utilization of a Federal uniform allocation and apportionment of income.

The legislative determination of "minimum activity" as proposed in the bills before you would not prejudice further study but, to the contrary, would establish the basis for objective consideration of these collateral problems. In the absence of action now, during the taxpaying year in which the Supreme Court decision has been rendered, there inevitably would be a compounding of chaos and confusion in regard to the tax liabilities attaching to interstate business, which would mean greater difficulty in framing legislation subsequently. We therefore respectfully urge that action be taken during the present session of Congress.

Thank you for the opportunity to present our views on this important matter.

The CHAIRMAN. The committee will recess until 2:30.

(Whereupon, at 12:35 p.m., the committee recessed, to reconvene at 2:30 p.m., this same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

The first witness is Mr. Benjamin O. Johnson, of the American Cotton Manufacturers Institute and the National Fisheries Institute, Inc.

You may proceed, sir.

STATEMENT OF BENJAMIN O. JOHNSON, CHAIRMAN, TAX COMMITTEE, AMERICAN COTTON MANUFACTURERS INSTITUTE, AND CHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL FISHERIES INSTITUTE, INC.

Mr. JOHNSON. Thank you very much.

Mr. Chairman and gentlemen of the committee, my name is Benjamin O. Johnson of Spartanburg, S.C. I am general counsel of Spar-

[7] Hearing before the Select Committee on Small Business, Apr. 8, 1959, pt. 1.

[8] "Competence of Congress to Nullify Two Recent Supreme Court Decisions Sustaining State Income and Property Taxes Affecting Interstate and Foreign Commerce," by Norman J. Small, legislative attorney, American Law Division, the Library of Congress, Apr. 22, 1959.

tan Mills, and also serve as chairman of the tax committee of the American Cotton Manufacturers Institute which has its Washington office at 1145 19th Street NW., in whose behalf I appear today.

The American Cotton Manufacturers Institute is the central trade association for the cotton, manmade fiber and silk textile mill products manufacturing industries and serves as spokesman in matters of national affairs. The industry, employer of approximately 1 million workers with a production output valued in the primary markets at more than $13 billion a year, is therefore a major factor in the economy of our country.

The textile mill products manufacturing industry is also a vital factor in the Nation's program for preparedness. As an industry, its essentiality is probably exceeded only by iron and steel. In serving the demands of the civilian population, and from the standpoint of its impact on the typical family budgets, its importance is exceeded only by food and shelter.

It is basically an industry of small intensely competitive plants despite its aggregate magnitude. The industry operates over 8,000 plants, no one company representing more than 4 percent of the total. Thus, the textile mill products manufacturing industry has always been distinctive as the most competitive and individualistic of the Nation's major manufacturing industries, and represents, to the maximum degree, the spirit of free business enterprise. The mills and plants constituting the membership of the American Cotton Manufacturers Institute, Inc., are distributed throughout the industry's entire area, and operate about 85 percent of the industry's total spindles.

I appear before your committee today in support of legislation to limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce. The recent decision of the United States Supreme Court in the cases of *T. V. Williams* v. *Stockham Valves and Fittings, Inc.*, and the *Northwestern States Portland Cement Co.* v. *Minnesota*, has brought considerable confusion to the textile industry.

We are apprehensive that we may be forced to file returns and to pay income taxes in every State in which we sell goods. The problems this decision poses for the textile industry we feel was well stated by Mr. Justice Frankfurter in his dissenting opinion, in which he pointed out interstate commerce will not merely be argumentatively but actively burdened.

In the textile industry there are literally thousands of relatively small- or moderate-size corporations or companies doing exclusively interstate business spread over several States. To subject these corporations or companies to separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the diverse tax laws in 50 States, with their different times for filing returns, different tax structures, different modes of determining net income, and different, often conflicting, formulas of apportionment.

They will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of different States may well exceed the burden of the taxes themselves,

especially in the case of small companies doing a small volume of business in a number of States.

There can be little doubt, however, as to the serious implications which the decision holds for firms engaged in interstate commerce who now, in each State to which they ship goods, find themselves open to possible liability for income tax levied by that State on profits derived from income attributable in some fashion to that State.

In the past, companies in our industry had come to expect that such profits were not taxable by a State unless the firm was engaged in intrastate business. It is our interpretation of the Supreme Court decisions that, if a company does no more than send a salesman into a particular State for the solicitation of interstate business, then he may subject the company to income tax liability to that State. We sincerely believe that prompt definitive legislation by Congress is imperative to relieve the growing confusion and uncertain tax status of all concerns engaged in interstate commerce. With this in mind, we respectfully urge the immediate enactment of legislation that will remedy the grave situation created by these recent decisions of the Supreme Court.

Therefore, we recommend that the committee bill be designed to exclude from the taxing power of a State earnings derived from interstate commerce sales where the taxpayer maintains no business establishment within the State.

I sincerely appreciate the opportunity of appearing before your committee to present the position of the American Cotton Manufacturers Institute, and want to thank you for the courtesies which you have extended to me.

I am here today, as you note on the schedule, in a dual capacity. I am representing both fiber and fish on this occasion, and I hope that I may consistently do so.

The CHAIRMAN. Which is the fish and which is the fiber?

Mr. JOHNSON. Well, it is a little hard to distinguish at times, sir.

I have a short statement here with respect to the fisheries industry, and then I would like to offer some very brief comments about our viewpoints and position.

I appreciate this opportunity to discuss with you the position of the fisheries on this proposed legislation to define and regulate State taxation of interstate commerce.

I am president of SeaPak Corp. located at St. Simons Island, Ga. I am chairman of the legislative committee of the National Fisheries Institute, Inc., and I am here representing the institute.

The National Fisheries Institute, Inc., is the principal trade association of the commercial fisheries industries, and has its principal office here in Washington, D.C. The membership of the institute includes some 500 employers engaged in the producing, processing, distributing, and canning of fishery products in the United States and its Territories. The purpose of the institute is to promote the welfare of the commercial fisheries of the United States and its Territories.

Specifically, I wish to support in principle the well-reasoned report and recommendations of the Select Committee on Small Business of the U.S. Senate on this subject, filed June 30, 1959.

In this connection, if it is in order, I should like to request that the report of the select committee, and the hearings in which so many

able statements of competent witnesses appear, be made a part of the record here, at least by reference.

The CHAIRMAN. We could not make it a part of the record. It will be filed with the committee.

Mr. JOHNSON. Well, I do not want to suggest any uneconomic duplication of printing costs.

The CHAIRMAN. This committee stands for economy, you know.

Mr. JOHNSON. But as background for the action of this committee.

The CHAIRMAN. It will be filed with the committee, but it will not be printed as part of the hearings.

Mr. JOHNSON. We urge this committee then, therefore, first, to recommend the immediate enactment of a minimum standard for testing the authority of a State to tax outside business; and, second, to establish a commission on State taxation of interstate commerce, whose purpose would be to study and recommend permanent uniform standards which the States will be required to observe in imposing tax upon businesses engaged in interstate commerce.

The CHAIRMAN. Do you care to comment, Mr. Johnson, on the other bills before the committee?

Mr. JOHNSON. Well, I would prefer not to comment particularly on both bills. I would like to state in principle that what I think we need is prompt legislation which will hold the status quo of this problem of State taxation of interstate commerce.

In other words, that the rather broad, generalized principle which was laid down in these recent decisions will not be further extended by application to factual situations which will render these State taxes in fact prohibitive burdens on interstate commerce.

I should like to say this: I think Senate Joint Resolution 113 in principle is good, but I think certainly in terms of specifics it needs more clarification by way of definition of terms that appear in section 101 than is now the case.

I am apprehensive that should this bill be enacted in its present form it could easily lead to the creation of new problems and new decisions extending the rather loose language of the *Stockham* case to new situations which would create further embarrassment of interstate business.

I can point out two terms which, standing in the abstract, could easily lead to difficulty. One is the reference to "a stock of goods," which does not appear in some of the bills. The mere maintenance of a stock of goods, which would be irrespective of local activities forming a sufficient background to constitute business presence within the State, could be troublesome.

And, second, the rather loose designation of "representative" could be troublesome as applied to countless situations now where out-of-State concerns are, in fact, represented by brokers and other persons in an independent contractual capacity.

The CHAIRMAN. To which bill are you referring now?

Mr. JOHNSON. I am speaking of Concurrent Resolution 113.

The CHAIRMAN. Would you care to suggest amendments for the committee's consideration?

Mr. JOHNSON. Well, not in specific language at this time.

The CHAIRMAN. Not today, but you say you are not satisfied.

Mr. JOHNSON. Yes; we would like to present further recommendations.

The CHAIRMAN. I am certain the committee would like to have your suggestion in the form of amendments, and the same applies to S. 2281 and S. 2213.

Mr. JOHNSON. I would like to make just one or two other comments as to why the great confusion and lack of certainty of tax status arises.

We all know there have been countless cases in the past as to what constituted doing business within the State, what local activities were required to give business presence within a State so as to form the subject of proper taxing jurisdiction, and most of these cases in the past really followed two decisions, two basic factors, as I review them.

One is that primarily they were predicated on the benefit doctrine that an out-of-State concern must be carrying on such an extent of local activities as to give business presence within the State.

And the corollary to that was that where there was such a business presence within the State, then, from which the out-of-State concern derived local benefit, then, of course, the out-of-State concern should pay for it.

In other words, the basic question which is referred to in these cases here is: Has the State really given anything for which it can ask a return? Has it given opportunities—Is there sufficient activity there for which the State has furnished opportunities for profit? Has it given protection in any sort of way, and what benefits has the State contributed toward this so-called sufficient nexus or local activity as to furnish a solid foundation for contribution by the out-of-State concern to the revenues of the State?

Now that fundamentally runs through all these cases: business presence within the State. And I think that that is fundamental here; and all of these past cases were, of course, related to the particular factual situations in the cases.

The alarming part about these recent decisions—and when I say the "recent decisions," I want to comment about one which gives as much concern as the *Stockham* case and the *Northwestern States Portland Cement* case, and that is decision filed 1 week later by the Supreme Court in the *E. T. & W. N. C. Transportation Company* case.

That is a trucking company which serves east Tennessee and western North Carolina. In that case, the Court laid down the rather bold decision or principle that a State could levy an income tax on an interstate operation of that kind where that concern did no intrastate business; all of its business was purely movement of traffic between the States.

Senator CARLSON. Mr. Johnson, right on that point, do you think Congress has a right to limit the power of States to tax?

Mr. JOHNSON. I think Congress has the unquestioned power and the responsibility to so regulate commerce between the States so as not to permit an undue obstruction of that commerce.

I do not think Congress has power beyond the reasonable definition of "interstate commerce," and to prevent a State from levying a tax on local activities which, in fact, are not a burden on interstate commerce.

Senator CARLSON. If I understand you correctly, then you would tie this legislation to interstate commerce and be sure to keep out of the tax field.

Mr. JOHNSON. Well, I think it is essentially a matter of regulation of interstate commerce. If I may be permitted to make this statement, I think America was built on two fundamental propositions: One is the mass production of goods at a given point and the free movement of those goods within the States without undue hindrance. And I am interested to note that our friends across the seas in Europe now are beginning to realize just what made this country great; and with the European Economic Union, which has a projected program over 15 years, they are undertaking to bring about the identical situation in Western Europe among the nations parties to that pact as we have in the United States; that is, the free movement of commerce between the several States.

Senator CARLSON. If I may make this statement before you do.

The chairman and I have both served as Governors of a State, and we are a little zealous about protecting the rights of States because, after all, they are an entity of our Government, and a very important entity.

Mr. JOHNSON. I would like to make just one little observation of my personal opinion: That looking this thing through, the proposition of States levying a tax on a portion of the activities of interstate business, I just wonder how, in the end, anyone can hope to gain.

I mean by that, for example, in Georgia, where our business is in part located, and where one of these decisions originated, to the extent that Georgia may pick up revenue from out-of-State concerns, that in the normal course of events the Georgia concerns will also find themselves responsible for contribution to revenues in the other States, which will detract from revenues due the State of Georgia.

This whole problem and the burden of keeping all of the records in compliance with the State laws does not add up to anything of economic value. Not one cent is added in value to the goods or services which are being dispensed. It is only an added expense of doing business, and it analyzes into the ultimate question of how the net revenue is going to be apportioned between the States.

So I would say that the net cost is going to be increased, the net revenue allocable and divisible between the States is probably going to be decreased, no State is going to be the permanent gainer at the expense of the other, and in the end two things are going to happen: The added expense is going to be a burden on the Federal revenues, which will be paid for in major part here; and to the extent that the company may pass the cost on, the remainder of it is going to be an added expense to the consumer.

It is going to increase the economic cost of the goods and services involved, and nobody is going to be any better off. The States are not going to gain, and the consumer and the Federal Government are going to be the losers.

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

Senator CARLSON. Mr. Chairman, I just wish to state I am most sympathetic to the problem confronting us. I just raise that question because that is one thought we will have to keep in mind when we consider this.

Mr. JOHNSON. If I may be permitted one parting word, as we look at the situation, time is of the greatest essence. The situation is urgent, to prevent further deterioration before other States enter the field.

And that is our request: that a holding type of legislation be enacted to hold the status quo, give the study commission time to permit all the States to have full participation in how this problem should be handled, because certainly the States do have a tremendous and direct interest; but, under Federal guidance here. A program should be set up within an adequate but reasonably short period of time, to bring the States in and reach, once and for all, a uniform and standard measurement of the responsibility of interstate businesses for local taxation in connection with the interstate business.

The CHAIRMAN. Thank you, Mr. Johnson.

The Chair takes great pleasure in introducing the next witness. As you can imagine, he is a Virginian and one of the most notable Virginians. He has just been reelected to the General Assembly of Virginia. He has served there for a long time with splendid contributions to the Commonwealth.

I wish to present my very dear friend, Jim Roberts, who is the next witness, and express my friendship for him and my appreciation for all he has done for the State.

STATEMENT OF JAMES W. ROBERTS, CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, NATIONAL ASSOCIATION OF WHOLESALERS; ACCOMPANIED BY HAROLD HALFPENNY, GENERAL COUNSEL, NATIONAL ASSOCIATION OF WHOLESALERS

Mr. ROBERTS. Thank you, Mr. Chairman and members of the committee.

My name is James W. Roberts, and I am chairman of the board of directors, Henry B. Gilpin Co., wholesale druggists in Washington, Baltimore and in Norfolk, Va., where I make my home.

I might say, Mr. Chairman, in view of the urgency of the subject, we do appreciate the promptness with which this hearing was arranged.

I appear before you today as chairman of the Government Relations Committee of the National Association of Wholesalers, a federation of 18 national wholesale associations representing over 8,000 independent wholesale businesses in the United States.

I have with me Mr. Harold Halfpenny, of the law firm of Halfpenny & Hahn, our general counsel, and also general counsel of one of our member associations, the Automotive Service Industry Association. Mr. Halfpenny, with your permission, will file for the record two separate statements he has prepared in behalf of the two associations. He will also be available to answer any legal questions the committee may have at the conclusion of my testimony.

The CHAIRMAN. Without objection, the insertion will be made.

Mr. ROBERTS. In the interest of saving the time of the committee, Mr. Chairman, I would like to submit my prepared statement for the record, and use a very few moments here to summarize.

My primary interest in testifying here today relates to the needs of the business community.

The CHAIRMAN. Where are you reading? Are you going to read your whole statement?

Mr. ROBERTS. I am sumarizing my statement, Mr. Chairman.

The CHAIRMAN. I just wanted to follow you.

Mr. ROBERTS. I am also most sensitive to the problems that will confront the officials of many States in protecting their State revenues in

the wake of the February 24, 1959, Supreme Court decision on taxation of business earnings in interstate commerce. The latter interest stems from my long time service in the Virginia State Legislature, where I am fourth ranking member of the appropriations committee in the house of delegates.

The specific holding of the Supreme Court to which I referred was that a State has jurisdiction to levy income tax on a business organization domiciled in another State even when that business' only activities in the taxing State are soliciting orders and shipping goods to customers therein.

Simply stated, Mr. Chairman and gentlemen of the committee, our problem is one of knowing what constitutes "doing business" from a legal point of view within the framework of our various Federal and State laws.

Even though Virginia has statutory authority to tax earnings derived from interstate commerce, that machinery is not now being used.

I might quote from Judge Morrissett. He is the tax commissioner of the State of Virginia, and he says:

> If there is an active business, a corporation that maintains no place of business in Virginia whatsoever, but merely sends into the State salespeople who merely take orders, it is held that that corporation is not doing business within the State.

That, of course, would probably be changed if it developed that other States are permitted to start taxing out-of-State business in interstate commerce.

It is my belief that if no line is drawn at the level of the Supreme Court decision, our tax commissioner and our Governor may be forced to implement the legal machinery for collecting taxes such as these in order to protect our own revenue position.

I would like to take another moment of your time to explain this belief.

Our Virginia law provides, and the recent Supreme Court decision seems to require, that, in apportioning the shares of business earnings to the various taxing States, no business should be taxed on more than 100 percent of its earnings.

In Virginia, I am sure we would allow credit to our domiciled businesses for that portion of their earnings which are properly taxed by other States. If we grant such a tax credit for taxes paid to other States and do not attempt to levy and collect taxes from nondomiciled firms on earnings in our State, we will suffer serious revenue losses in the State of Virginia. And I think that is true also of our other States.

In my opinion, no State can gain materially by imposing taxes on earnings of out-of-State businesses. The laws of checks and balances would prevent gain. The businessman's costs will be substantially increased by expenses of additional recordkeeping required by an extensive system of interstate taxation. These increased costs would be reflected by serious loss in Federal revenues because of the higher costs of doing business.

In closing, Mr. Chairman, I have with me this stack of letters and telegrams from all over the United States. These letters and telegrams came unsolicited, voluntarily sent upon notice that this hear-

ing would be held. They may be left with the committee, if desired, but we do not wish to enlarge the record.

A reading of these letters makes it clear that if remedial legislation is not enacted, drastic changes may have to be made in our distributive system—the largest, most efficient distributive system in the history of the world.

(The letters submitted by Colonel Roberts for the information of the committee were from the following companies:)

Hugh T. Lindsay, president, Lindsay Bros. Co., Minneapolis, Minn.; Mr. Dickson, the Parker Co., Denver, Colo.; H. E. Linney Co., Oakland, Calif.; T. M. Reardon, Dakota Iron Store, Sioux Falls, S. Dak.; A. D. Byerline, General Implement Distributors, Inc., Boise, Idaho; A. L. Shomenta, the Midwest Co., Inc., Minneapolis, Minn.; W. E. Lamble, Jr., Southern Packing Co., Baltimore, Md.; R. M. Lewis, the H. C. Shaw Co., Stockton, Calif.; A. A. D. Rahn, Jr., Montana Oliver Distributing Co., Billings, Mont.; Robert L. Kummer, Polson Implement Co., Seattle, Wash.; Carl A. Rahn, Midland Implement Co., Inc., Billings, Mont.; G. A. McNees, Implement Sales Co., Memphis, Tenn.; J. Kent Martin, Todd Co., Inc., Norfolk, Va.; H. D. Lindsay, Lindsay Bros., Milwaukee, Wis.; L. T. McGuire, Western Machinery Co., Salt Lake City, Utah; Perry D. Riddick, Universal Farm Sales, Inc., Columbus, Ohio; W. E. Tempel, Implement Sales Co., Decatur, Ga.; R. C. Cropper, R. C. Cropper Co., Macon, Ga.; John P. Overshiner, Farm Machinery Sales Co., St. Louis, Mo.; H. R. McVicar, Farm Equipment Sales Co., Bloomington, Ill.; G. W. Hammons, Price Bros. Equipment Co., Wichita, Kans.; R. E. Moulton, Moulton & Goodwin, Portsmouth, N.H.; Charles F. Gath, Gath & Herms, Inc., Buffalo, N.Y.; George Clark, Port Huron Machinery Co., Des Moines, Iowa; W. D. Kelley, for H. J. Hunsaker, General Corp., Dallas, Tex.; W. H. Lovett and H. C. Tharpe, Lovett & Tharpe Hardware Co., Dublin, Ga.; Paige Newton, Mitchell, Lewis & Staver, Portland, Oreg.; J. H. Wehrly, Mid-Continent Sales Co., St. Louis, Mo.; Bob Erath, Sporting Goods Association, Chicago, Ill.; Roy J. Schneider, Walder Radio & Appliance Co., Miami, Fla.; and John D. Wallace, Wallace Hardware Co., Morristown, Tenn.

Mr. ROBERTS. Unless there are questions, Mr. Chairman, we do appreciate the opportunity of being permitted to appear before you and your committee.

The CHAIRMAN. Thank you very much. Your full statement will be put into the record.

(Mr. Roberts' statement follows:)

SUMMARY OF STATEMENT BY JAMES W. ROBERTS, CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, NATIONAL ASSOCIATION OF WHOLESALERS

My name is James W. Roberts, and I am chairman of the board of directors, the Henry B. Gilpin Co., wholesale druggists in Washington, Baltimore, and in Norfolk, Va., where I make my home. I appear before you as chairman of the Government Relations Committee of the National Association of Wholesalers, a federation of 18 national associations representing over 8,000 independent wholesale businesses in the United States. I have with me Mr. Harold Halfpenny, of the law firm of Halfpenny & Hahn, our general counsel, and also general counsel of one of our member associations, the Automotive Service Industry of Chicago. Mr. Halfpenny, with your permission, will file for the record two separate statements he has prepared in behalf of the two associations. He will also be available to answer any legal questions the committee may have at the conclusion of my testimony.

In the interest of saving the time of the committee, Mr. Chairman, I should like to submit my prepared statement for the record and use a very few moments here to summarize.

My primary interest in testifying here today relates to the needs of the business community. However, I am also most sensitive to the problems that will confront the officials of many States in protecting their State revenues in the wake of the February 24, 1959, Supreme Court decision on taxation of business earnings in interstate commerce. The latter interest stems from my longtime service in the Virginia State Legislature, where I am fourth ranking member of the appropriations committee in the house of delegates.

The specific holding of the Supreme Court to which I referred was that a State has jurisdiction to levy income tax on a business organization domiciled in another State even when that business's only activities in the taxing State is soliciting orders and shipping goods to customers therein. Simply stated, Mr. Chairman and gentlemen of the committee, our problem is one of knowing what constitutes "doing business" from a legal point of view within the framework of our various Federal and State laws.

At the time of the Supreme Court decision, 35 States, the District of Columbia, and at least 8 cities taxed, or had statutes under which they could tax earnings of business in interstate commerce where there were varying degrees of local activity. Of these States, I understand only about 10 have tried to collect these taxes and only 4 of them have actually taxed out-of-State businesses. Since the Court action liberalized the basis for applying tax on interstate earnings, at least three more States have enacted similar laws. It is reasonable to expect that the remaining States and perhaps as many as 150 major cities will make necessary statutory arrangements under which they can levy such a tax. I venture the guess that many of these localities will not seriously desire to take these steps but will be forced into this field of taxation to protect their own revenues.

This is the case of our own State of Virginia. Even though Virginia has statutory authority to tax earnings derived from interstate commerce, that machinery is not now being used. However, it is my belief that if no line is drawn at the level of the Supreme Court decision, our tax commissioner and our Governor may be forced to implement the legal machinery for collecting taxes such as these in order to protect our own revenue position.

I would like to take another moment of your time to explain this belief. Our Virginia law provides, and the recent Supreme Court decision seems to require that, in apportioning the shares of business earnings to the various taxing States, no business should be taxed on more than 100 percent of its earnings. In Virginia, I am sure we would allow credit to our domiciled businesses for that portion of their earnings which are properly taxed by other States. If we grant such a tax credit for taxes paid to other States and do not attempt to levy and collect taxes from nondomiciled firms on earnings in our Sate, we will suffer serious revenue losses in the State of Virginia.

In my opinion, no State can gain materially by imposing taxes on earnings of out-of-state businesses. The laws of checks and balances would prevent gain. The businessman's costs will be substantially increased by expenses of additional recordkeeping required by an extensive system of interstate taxation. It would be reflected by serious loss in Federal revenues because of the higher costs of doing business.

Congress dealt with this problem on a local basis when the District of Columbia business earnings tax law was passed. That law restricts District of Columbia business earnings tax application to only those businesses having permanent establishments in the District, such as plants, warehouses, stocks of goods or offices. Such a minimum activities definition applied on a National scale at this time would largely alleviate the difficulties I have described with respect to doing business across State lines. The wholesaling industry urges this committee and the Congress to favorably act during the present session of Congress on one of the measures now pending to bring order out of the chaos wrought by the Supreme Court decision in regard to interstate taxation.

In closing, Mr. Chairman, I have with me this stack of letters from wholesalers throughout the country pleading for relief from the tax situation I have described. A reading of these letters makes it clear that, if remedial legislation is not enacted, drastic changes may have to be made in our distributive system: The largest, most efficient distributive system in the history of the world.

OPINION FROM JUSTICE MORRISSETT, VIRGINIA TAX COMMISSIONER, RICHMOND, VA.

If there is an active business, a corporation that maintains no place of business in Virginia whatsoever, but merely sends into the State salespeople who merely take orders, it is held corporation is not doing business within the State.

Letter from Virginia State Tax Commissioner to Commerce Clearing House, Inc., June 3, 1959, Chicago, Ill.

These cases will have no material effect on the construction that we have heretofore put upon our State income tax laws. Certainly, we do not propose to begin any new campaign for the assessing or collecting of taxes on account of this decision.

We have always held that if a foreign corporation maintains or operates an office in the State, whether it be a sales office or some other kind of office, such a corporation is liable to file a Virginia income tax return.

STATEMENT OF JAMES W. ROBERTS, CHAIRMAN GOVERNMENT RELATIONS COMMITTEE NATIONAL ASSOCIATION OF WHOLESALERS

My name is James W. Roberts and I am chairman of the board of directors, Henry B. Gilpin Co., wholesale druggists in Washington, Baltimore, and in Norfolk, Va., where I make my home. I appear before you today as chairman of the Government relations committee of the National Association of Wholesalers, a federation of 18 national wholesale associations representing over 8,000 independent wholesale businesses in the United States.

I am also a member of the Virginia State Legislature and fourth ranking member of the appropriations committee of the House of Delegates. I make this reference, Mr. Chairman and gentlemen of the committee, since what I have to say here today vitally concerns the welfare of the States as well as that of the Federal Government.

I am not a lawyer, but I have with me Mr. Harold Halfpenny of the law firm of Halfpenny & Hahn, our general counsel, and also general counsel of one of our member associations, the Automotive Service Industry Association of Chicago. Mr. Halfpenny, with your permission, will file for the record a legal brief he has prepared in behalf of our two associations. He is also available, Mr. Chairman, to answer any legal questions the committee may have at the conclusion of my testimony.

As you know, Mr. Chairman, I have, for many years, wrestled with the problem of maintaining adequate revenues with which to meet the needs and responsibilities of our great State of Virginia to its citizens.

On February 24, 1959, the Supreme Court of the United States handed down decisions in the cases of *Northwestern Portland Cement Company* v. *The State of Minnesota;* and *T. V. Williams, as State Revenue Commissioner (Georgia)* v. *Stockham Valves and Fittings, Inc.* These decisions, and those in other cases that have followed, have created great controversy and uncertainty in the minds of businessmen, our tax lawyers and accountants from coast to coast. The specific holding of the Court was that a State has jurisdiction to levy an income tax on a business organization domiciled in another State even though that business' only activities in the taxing State were soliciting orders in that State and shipping goods to customers therein. Simply stated, Mr. Chairman, our problem is one of knowing what constitutes "doing business," from a legal point of view, within the framework of our various Federal and State laws. The lack of uniformity in State laws, the contradictory formulas for apportioning income to the various taxing jurisdictions, plus the burdens facing us businessmen in complying with a multiplicity of State and municipal earnings tax laws and regulations, threaten the continued existence of many of our companies.

At the time of the Supreme Court decision, 35 States, the District of Columbia and at least eight cities taxed business earnings, or had enabling statutes under which they could tax earnings derived from interstate commerce in which there were certain degrees of local activity. Since the Supreme Court decisions liberalized the basis for applying tax on interstate earnings, at least three States, Idaho, Utah, and Tennessee, have enacted similar laws. It is reasonable to expect that soon the remaining States and possibly as many as 150 larger cities will make necessary statutory arrangements under which interstate business earnings can be taxed unless Congress steps into this vacuum and restores order to the chaotic conditions that have come about since the Supreme Court decisions.

We wholesalers look upon this as an emergency situation requiring immediate action. Prior to February 24 of this year, if a business had no factory, warehouse or inventory in a State, but merely solicited business in that State, the sales were made in interstate commerce and, we thought, protected from taxation by the interstate commerce clause of the Constitution. Nevertheless, the February 24 decisions involved State taxation of income derived exclusively in interstate commerce. In both cases, the taxpaying businesses had restricted their

activities to those previously considered nontaxable since their operations and inventories were entirely outside the taxing States. The only activities carried on within those States were, basically, the maintenance of a sales office and the solicitation of orders. The Court did, however, impose two qualifications: (1) That the income taxed must be fairly apportioned to the activities within the taxing State, and (2) that the business must have some minimum connection, or as the Court put it, "nexus," with the State.

If all States were prepared to restrict their taxes to those companies which have an established business or manufacturing operation, warehousing or selling operation—nexus—within their borders, the burden on firms doing interstate business would be held to manageable proportions. However, in two other recent cases, the Supreme Court has refused to review State court decisions upholding a State tax on the earnings of businesses which merely solicited orders or shipped goods into the taxing State. In neither case did the company have an office or business operation of any kind there. We do not know why the Supreme Court refused to review these decisions, or what action would have been taken had these cases been considered on their own merits.

Pending further decisions by the Court or action by the Congress, we businessmen fear that by merely sending our salesmen into a State other than our own, we subject ourselves to such State's taxation of our earnings.

Not only are businessmen perplexed and confused by the Supreme Court decisions, but the States, including our own State of Virginia, Mr. Chairman, are now in a dilemma. If our revenue level is to be maintained, it will be incumbent on Virignia to begin levying and collecting taxes on the earnings of businesses having no operations in our State, but who merely make sales and shipments of goods into our State. It is apparent that the position of our Virginia State Tax Commissioner and our Governor in the past has been not to do this, and rightfully so. In order to protect out-of-State revenues, however, it may be necessary for them to reverse their positions unless Congress acts to hold the line at the Supreme Court's decision.

I would like to take a moment to explain why I believe this to be true, and why all States and responsible subdivisions may have to come to the same action if Congress does not quickly act in this area.

Our Virginia law provides, and the recent Supreme Court decisions would seem to require, that, in apportioning the shares of business earnings to the various taxing States, no business should be taxed on more than 100 percent of its earnings. In other words, I am sure that under Virginia law we would allow credit to our domiciled businesses of that portion of their earnings which, in our opinion, has been properly taxed by other States. Failure to allow such credits would unduly burden our own State's industry with excessive and unfair taxation, perhaps in excess of 100 percent of their earnings. If, on the other hand, we do allow a credit for earnings taxes paid to other States by businesses domiciled in our State, and do not attempt to levy and collect earnings taxes from nondomiciled businesses—those companies domiciled in other States—we will suffer serious loss in business income tax revenues in the State of Virginia.

In other words, if we give credit to Virginia businesses for earnings taxes paid to Maryland, Kentucky, the District of Columbia, West Virginia, Tennessee, and North Carolina—our surrounding States in which many Virginia businesses sell goods and services—and do not attempt to tax businesses located in those States and selling goods and services in Virginia, I think, Mr. Chairman, it is quite obvious that we would suffer serious revenue loss in our Virginia treasury.

We are not attempting to tax nondomiciled businesses in the State of Virginia, although our statute books provide the means to do so. Prior to the Supreme Court's decision only a very few States were actively trying to levy and collect a tax on out-of-State businesses. Since the decision, there has already been a beehive of activity in this area, and still other States, as I have pointed out, are enacting legislation to permit such taxation.

The Congress dealt with this problem on a local basis when it enacted the District of Columbia business earnings tax in 1947. At that time, and I think wisely so, Congress restricted the District of Columbia business earnings tax application to those businesses which had permanent establishments in the District, in the form of plants, warehouses, stocks of goods, or offices. Such a "minimum activities" definition applied on a national scale at this time would largely alleviate difficulties now being experienced by businessmen doing business across State lines, and it would not in any way change or disturb the effect of the Supreme Court decisions.

The bills and joint resolution before this committee for your consideration would all attempt to draw a line at the level of the Supreme Court decisions. I repeat, Mr. Chairman, and gentlemen of the committee, we wholesalers are convinced that the Supreme Court decisions pose an emergency situation that calls for immediate action by the Congress. Not only are all businesses which operate across State lines confronted with a maze of confusion and threatened with additional costs of doing business; we are seriously concerned about the ability of many small businesses to cope with the situation or bear the threatened expenses. It has been reliably estimated that about 20 percent of all office, clerical, and accounting time in the wholesaling industry is spent, not in working to further the interests of the business or increase its profits, but in keeping records, filing reports, working on complicated forms, and in one way or another working for the local, State, or National Governments. To permit the confusion wrought by the Supreme Court decisions to continue and grow will only increase that ratio to the detriment of all taxing authorities and, possibly, lead to the ultimate inability of some small businesses to survive.

We would not presume to choose between the bills and resolutions now pending before this committee. We would prefer to see permanent legislation settling this question once and for all, but we realize that the time remaining in this session of Congress is short. If, in the view of this committee, time is too short to reach a permanent decision before adjournment, then we strongly urge you to enact stopgap legislation to hold the line where the Court has drawn it and where the Congress has drawn it in the District of Columbia law. If your committee feels that a period of study should be devoted to a permanent solution to this problem, we ask you to approve stopgap legislation to expire at some date sufficiently in the future to permit adequate study of this problem by the Congress and recommendations for permanent legislation. We wholesalers do not feel that an independent study commission is required or necessary; the regular legislative committees of the Congress, with their able staffs, can properly come to a reasonable solution, a solution that would simplify the taxpayer's problems and adequately protect the revenues of the States and the Federal Government.

In this latter connection, Mr. Chairman, knowing of the deep concern of this committee for the protection of Federal revenues, I should like to point out that all the added expenses incurred by the business community in assembling data, hiring legal and accounting talent necessary to prepare, file, and pay the numerous tax bills each interstate business would be faced with would be deductible business expenses and, as such, would certainly be reflected by reduced payments of Federal taxes. This could well run into tens of millions of dollars loss to the Federal Treasury, and not one penny of additional taxes would be paid by any business if all States enact laws and collect tax on interstate earnings, as I have pointed out may happen.

We wholesalers are willing to pay our fair share of Federal, State, and local taxes. We insist, however, that all taxes be levied, and collected in as simple, inexpensive, and fair a manner as possible. We believe that the situation created by the Supreme Court decision calls for tens of thousands of State revenue agents roaming the Nation, harrassing small- and medium-sized businessmen who, in the aggregate, will be liable for no more taxes than prior to the Court case. Certainly not as much tax will be paid, due to the added clerical and bookkeeping expenses. Certainly the net revenue to the States will be reduced by enforcement expenses. And very certainly all this adds up to less revenue to the Federal Government.

Taxing only those businesses having nexus with the States, under the minimum activities formula, would be almost completely self-policing, which, we believe, is sound taxing policy.

We strongly urge favorable action by this committee on this vital matter at the earliest possible time in this present session of Congress.

Mr. HALFPENNY. Mr. Chairman, as Mr. Roberts stated here, I have a statement which I am to incorporate in the record in behalf of not only the National Association of Wholesalers but also the Automotive Service Industry Association, which is the national association of manufacturers of automotive parts and suppliers thereof, as well as a legal statement.

The CHAIRMAN. They will be inserted in the record.

(The statements referred to follow:)

STATEMENT OF HAROLD T. HALFPENNY ON SENATE JOINT RESOLUTION 118 (TAXATION OF INTERSTATE COMMERCE)

Mr. Chairman and members of the committee, my name is Harold T. Halfpenny, of Chicago, Ill. I appear here as legal counsel for National Association of Wholesalers, and the Automotive Service Industry Association.

National Association of Wholesalers, with a membership of 18 nationwide wholesaler associations, represents over 8,000 wholesalers. Hon. James Roberts has clearly pointed out the problems confronting wholesalers, based upon a lifetime of practical experience. I will not repeat what he has told you.

The Automotive Service Industry Association is a trade association with a membership composed of approximately 400 manufacturers and 4,500 wholesalers of automotive parts, accessories, supplies, and equipment located in the 49 States.

During the past 50 years the automotive service industry has become one of the largest in the United States. The business of the industry, estimated annually in excess of $6 billions, is essentially a service operation in the distribution of automotive parts and in the repair of automotive powered vehicles and equipment interwoven with the manufacture, sale, and purchase of such parts. Ready availability of automotive parts and technical service are the keynotes that distinguish this industry from others. Fulfilling the demand for automotive repairs is highly complicated and is paralleled with an equally complex market structure.

The automotive service industry is composed of approximately 2,500 independent manufacturers who manufacture, sell, and distribute automotive replacement parts; several integrated vehicle manufacturers who manufacture or purchase automotive parts which they sell and distribute for replacement purposes; approximately 42,431 car and truck dealers; and approximately 13,258 independent distributors and jobbers. In addition, there are approximately 300,000 retail outlets including car and equipment dealers, general and specialist repair shops, garages, gasoline filling stations, jobbers with repair facilities, chainstores, and mail-order houses who sell and distribute replacement parts to the car owners. One out of every seven persons gainfully employed in this Nation work in some phase of the automotive industry.

Ready availability of automotive replacement parts and technical service is necessary to meet the demand of repairmen to obtain without delay, through jobbers, and distributors from manufacturers, the particular parts required to put a disabled vehicle in operating condition. The time saved in obtaining the necessary parts means money saved for all concerned.

Providing daily service to the repairmen in sparsely populated areas where large stocks of automotive parts cannot be maintained by the average jobber except at prohibitive costs to the owner of the vehicle needing repairs, and in the metropolitan areas where deliveries from manufacturing plants take days and weeks, is the most important problem facing this industry, and has been met successfully only because of the freedom of interstate commerce in the United States from local burdensome State regulations. The automobile industry and wholesaling knows no State boundaries, as our members must do business in all of the States. By the very nature of this business, automotive parts, accessories, equipment, and supplies are and must be available in all the States

The recent Supreme Court decisions allowing the States to tax the net income of a company's interstate business, with little or no intrastate facilities, is of greater concern to our industry probably than any other, for this reason. These decisions are a direct invitation to all States to enact statutes levying taxes on all corporations doing interstate business, and will not only affect vitally the growth and economic welfare of our members; it will affect all transportation in this Nation.

Congress must find an equitable solution between the taxing needs of the State and the necessity to eliminate the unfair burden on companies selling in interstate commerce by the enactment of legislation permitting the States to tax only companies that have permanent facilities within their States.

The basis of success of the automotive replacement industry, and in fact the entire American free enterprise system, is the initiative of the individual in business and the right of mobility without State restrictions.

THE SPECIFIC PROBLEM

The free and unimpeded flow of commerce among the States is vital to the economic well-being of our Nation. This freedom from Balkanizing restrictions

of the States has permitted, even fostered, the tremendous growth and prosperity of our Nation, its business, and its people. This is especially true of wholesaling and the automotive industry. To insure this continued free flow of commerce, it is imperative that the State's power to tax income derived solely from interstate commerce be exercised in accordance with reasonable and uniform standards. There must be some specific requirement of a company before it can be taxed. The responsibility lies with Congress to specify that requirement. Otherwise confusion will continue to exist as to what constitutes "doing business within a State."

The commerce clause of our Constitution denies to the States the power to regulate interstate commerce. It vests that power exclusively in Congress. The Congress should not delegate to the States or the courts the solution of this problem.

It is well recognized that the field of taxation is one of the most complicated in the law, and when you add to that the problems of interstate-intrastate commerce and the different taxing laws of the 49 States, the complications are almost insurmountable for small business. Therefore, the Congress must give business specific rules as to when a State can tax interstate commerce and when it cannot. Right now almost all of the 35 income tax States have a different definition of the word "sale."

Most of our members, large and small, must by necessity sell in States other than that of their domicile. Some companies now pay taxes on the amounts of intrastate business done within a State because they have some real intrastate facilities, such as an office or plant. Wholesalers conducting predominantly a local intrastate business often sell in neighboring States, yet they have no goods, office, or plant in such State. Allowing the States to tax such a sale will result in tremendous burdens on such sellers, endless litigation and ill feeling between the various States, with the strong possibility of small business being taxed out of existence.

We all recognize that the taxing bodies of the States are all looking for new revenues. However, not only business, but the individual citizens of this Nation, are not urging but are demanding relief from taxes rather than seeking additional taxes. Overburdened taxpayers look to Congress for relief from unreasonable tax demands.

THE ACCOUNTING AND TAX PROBLEM

Most of our members merely send salesmen or technicians periodically into their neighboring States. The companies have no plant, office, or stock there. As a general business practice salesmen travel in more than one State. Most American companies do not maintain income and expense records on a State basis, but rather on a broad national basis.

The burden on small interstate business to comply with the many different present State tax laws is extremely heavy. As stated in the Supreme Court's dissenting opinion in the *Northwestern* and *Stockham Valves* cases, "This will involve large increases in booking, accounting, and legal paraphernalia to meet these new demands." It must be remembered that the cost of this is in addition to the tax. The cost will be as much for a small concern as a large one because these requirements do not differ much whether the tax assessed is large or small.

PRECEDENT BY THE CONGRESS

We have precedent for the enactment of legislation in this field. Congress in 1947 enacted legislation to allow taxation on a local basis in the District of Columbia. Congress restricted the business income tax for the District of Columbia to those businesses which have an actual place of business within the district. Exactly what was done in this instance, a minimum activities standard, is what is needed nationally now to eliminate the present confusion.

FAILURE OF CONGRESS TO ACT NOW WILL MEAN LOSS OF REVENUE

The new burden placed on the thousands of businesses in the Nation to comply with paying the various State taxes, will cost them a substantial amount of money. The companies will incur expenses in employing legal, accounting, and clerical personnel to figure the taxes.

Under the Internal Revenue Code of 1954, all of this is considered a business expense and is deductible. Therefore, the loss to the Federal Government in

revenue will be in the millions of dollars each year, money which it can ill afford to lose. The enactment of legislation now will eliminate this possible loss.

RECOMMENDATIONS

I therefore strongly recommend the enactment of legislation at this session of Congress, which establishes some ascertainable minimum activities standard that a company must meet before a State may tax its net income derived from interstate sales. The standard, I would suggest, should be maintenance of an office or warehouse within the taxing State. The temporary standard set forth in Senate Joint Resolution 113, section 101, although helpful, is too broad. The wording in lines 8, 9, and 10 on page 2, "or has had an officer, agent or representative who has maintained an office or other place of business in such State," is misleading and will cause endless litigation. If such language is to be included, then some definition of "agent or representative" is required for clarification.

Our associations do not believe that it is warranted at this time to establish a Commission on State Taxation of Interstate Commerce as recommended in title II of said Senate Joint Resolution 113. This will only cause additional delay. The issue is obvious, and requires action rather than additional study other than being given by this committee.

Already three States have enacted legislation in this area. It is imperative that Congress act now. The problem is here. Action should be taken before the States move into this field of taxing interstate commerce. Solution of this problem now will not only preserve interstate business; it will prevent States from relying upon this source for its revenues.

LEGAL BRIEF: TAXATION OF INTERSTATE COMMERCE

I. THE CONSTITUTION OF THE UNITED STATES VESTS EXCLUSIVE CONTROL OF INTERSTATE COMMERCE IN THE CONGRESS

The problem

An urgent need exists to clarify the present confusion of the constitutional right of the States of the Nation to tax interstate commerce.

The judicial application of constitutional principles to State statutes has caused much misunderstanding.

The Congress has not specifically regulated the taxation of interstate commerce, and thus the States have endeavored to act in this area. One of the cardinal principles of taxation by a government is that it must be fair and clearly understood by those who are to pay the tax. Therefore, in view of this present situation, it is logical to start a discussion of the taxation of interstate commerce at the source of the authority to tax.

Constitutional authority

The Constitution of the United States gives this power to the Congress in article I, section 8, clause 8, when it says, "The Congress shall have Power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes * * *" This is very precise and clear. There should be little doubt that for a State to tax a business, there must be some real intrastate activity.

Gibbon v. *Ogden*

One hundred and thirty-five years ago, Chief Justice Marshall in speaking of the power of Congress to regulate interstate commerce said: "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution" (*Gibbon* v. *Ogden*, 22 U.S. 1 (1824)).

This case stands for the principle that the Congress has exclusive control over interstate commerce, and when a State law and a Federal law come into conflict, then the Federal law is supreme.

The facts of the case reveal that the laws of the State of New York granted to two persons the exclusive right to navigate all the waters within the jurisdiction of the State of New York. The Supreme Court held that such laws were inoperative as against the laws of the United States regulating the coastal trade,

and cannot restrain vessels licensed to carry on the coastal trade under the laws of the United States from navigating those waters.

Case law

Through the years, the rule of law and the express understanding of most American tax lawyers was that for a State to tax a company doing business within its borders, there must be some real intrastate business activity. This was held to mean an office, warehouse, stock, bank accounts, etc. The right to tax interstate commerce was delegated to the Federal Government exclusively. There were no State barriers to be surmounted in order to send goods to customers or make products available to citizens in another State. For example, in the case of *Leloup* v. *Port of Mobile* (127 U.S. 640, 648), the Supreme Court said: "No State has the right to levy a tax on interstate commerce in any form * * *. The reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress."

The Supreme Court in specific reference to the commerce clause said that clause "by its own force created an area of trade free from interference by the States" (*Freeman* v. *Hewit*, 329 U.S. 249, 252).

A case which expressed the law on taxation of interstate commerce by a State was *Sprout* v. *South Bend* (277 U.S. 163, 171). Justice Brandeis said, "in order that a (State) fee or tax shall be valid, *it must appear that it is imposed solely on account of the intrastate business;* that the amount exacted is not increased because of the interstate business done; that *one engaged exclusively in interstate commerce* would not be subject to the imposition; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business." This case was followed in *East Ohio Gas Co.* v. *Tax Commissioner* (283 U.S. 465, 470), and *Cooney* v. *Mountain States Tel. Co.* (294 U.S. 384).

Taxation which constitutes an attempted regulation of interstate commerce by imposing a burden on such commerce has been held invalid. In the case of *Gwin, White and Prince, Inc.* v. *Henneford* (305 U.S. 434), the Supreme Court said: "* * * under the commerce clause, in the absence of congressional action, State taxation, whatever its form, is precluded if it discriminates against interstate commerce."

State taxes on exclusive interstate commerce are illegal

The following cases held State taxes on businesses which were exclusively interstate to be illegal: *Cheney Brothers Co.* v. *Massachusetts* (246 U.S. 147); *Ozark Pipeline Corp.* v. *Monier* (266 U.S. 555); *Apha Portland Cement Co.* v. *Massachusetts* (268 U.S. 203); *Spector Motor Service* v. *O'Connor* (340 U.S. 602). Therefore, the Supreme Court's opinions when properly analyzed and categorized reveal that a State may not tax a company's exclusive interstate commerce.

Tax on privilege of doing business

A recent case by the Supreme Court stated: "This Court heretofore has struck down, under the commerce clause, State taxes upon the privilege of carrying on a business that was exclusively interstate in character. The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to business done within the State.

"Our conclusion is not in conflict with the principle that where a taxpayer is engaged both in intrastate and interstate commerce, a State may tax the privilege of carrying on intrastate business and, within reasonable limits, may compute the amount of the charge by applying the tax rate to a fair proportion of the taxpayer's business done within the State * * *" (*Spector Motor Service* v. *O'Connor*, 340 U.S. 692, 609–10).

The change of the law

Until February 24, 1959, it was well understood from the cases as shown above that the Congress has the exclusive power to regulate exclusively interstate commerce. On that date, the Supreme Court handed down the *Northwestern* and *Stockham Valves* cases. These cases held that the net income from the interstate operations of a foreign corporation may be subject to State taxation provided the levy is not discriminatory and properly apportioned.

State statutes held constitutional

The following statutes were held not to be in violation of the commerce clause:

The Minnesota statute states: "An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed

upon the taxable net income for such year of the following classes of taxpayer (1) Domestic and foreign corporations * * * whose business within this State during the taxable year consists *exclusively of* * * * *interstate commerce.*"

The Georgia statute was comparable: "Corporations, allocation and apportionment of income. The tax imposed by this law shall apply to the entire net income * * * received by every corporation, foreign or domestic, owning property or doing business in this State. Every such corporation shall be deemed to be doing business within this State if it engaged within this State in any activities or transactions for the purpose of financial profit or gain * * * whether or not any such activity or transaction is connected with interstate or foreign commerce."

The Supreme Court of Georgia said it found that "(W)ithout dispute (Stockham) was engaged exclusively in interstate commerce insofar as its activities in Georgia are concerned." Yet despite this, the U.S. Supreme Court held that the State could still tax the company's business, which was exclusively interstate.

By holding these statutes constitutional, it is very possible that all of the other States of the Union will enact comparable legislation. The end result will be the complete taxation by the States of a company's exclusive interstate commerce.

On March 2, 1959, the Supreme Court refused review of the *International Shoe* and *Brown Forman* cases. It upheld the Louisiana court's decision that a State can tax a foreign corporation's net income derived from within the State even though the company's business is exclusively interstate business. In fact, in the *Brown* case, the company was not qualified to do local business in Louisiana, and in neither case did the company have an office in the State.

Two weeks ago, on July 2, the Supreme Court's rule in the *Northwestern-Stockham*, that a State may levy a fairly apportioned nondiscriminatory tax upon income derived wholly from interstate commerce, was held applicable to the Wisconsin income tax by the Dane County circuit court.

The court ruled that an interstate motor carrier, not licensed to do any intrastate business in Wisconsin, is subject to tax because of rather extensive local activities around its freight terminals which they felt was sufficient to justify taxing.

CONCLUSION

The Constitution of the United States vests power in the Congress to regulate interstate commerce. Although the Supreme Court has reversed all prior decisions which prevented the States from taxing purely interstate commerce, the Congress is yet invested with the power to control the States in their taxation of such interstate commerce. Unless Congress acts businesses will have to comply with 49 different taxing laws. The cost of compliance and the cost of the tax will discourage remaining in business or tax the business out of existence. The Congress must act now to preserve our economy and our free and independent way of life by establishing limitation of the States' power of taxation over purely interstate commerce.

HAROLD HALFPENNY,
Halfpenny & Hahn, Chicago, Ill.

Mr. HALFPENNY. In closing, I did want to call your attention, on behalf of the National Wholesalers, Mr. Chairman, that the automotive service industry sent a survey out to their members, and they had replies from a great number, and in analyzing those it showed that out of 79 wholesalers of automotive parts and supplies in the country, 55 of them stated that they did business in more than one State, 44 of them in only three States, and practically all of them stated that if it became necessary to pay taxes in those States, they would abandon that type of business in other States.

We have those, if the committee would be desirous of seeing any of those replies.

The CHAIRMAN. Would you care to suggest any amendments to any of the three bills before the committee?

Mr. HALFPENNY. Yes, we would desire that opportunity, if the chairman would see fit to grant it.

The CHAIRMAN. We would be pleased to have you do it.

(The following letter was subsequently received for the record:)

LAW OFFICES, HALFPENNY & HAHN,
Chicago, July 27, 1959.

Re taxation of interstate commerce.

Hon. Senator HARRY F. BYRD,
Senate Finance Committee,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR BYRD: I want to thank you for the kind courtesy you showed to both Colonel Roberts and myself last week when we appeared before your committee to testify regarding the taxation of exclusive interstate business by the States.

Many members of your committee showed that they felt the language of the pending bills were not sufficiently detailed to meet all situations. At that time you requested we submit our recommendations in regard to the language in the bills.

Careful examination of all seven pending bills would indicate Senator Saltonstall's language, S. 2281, is preferred. However, we enclose our suggestions as follows:

1. Section (a), lines 1 through 7: No changes.
2. Section (b) is changed to read as follows:

"(b) For purposes of subsection (b), a person is not carrying on a trade or business in a State solely by reason of one or more sales of tangible personal property in the State (whether title to such property passes in or outside of the State), if such person does not have or maintain an office, plant, store, or warehouse in the State, and does not have an officer, agent, or representative in the State who has a permanent place of business in the State. For purposes of the preceding sentence, the terms "agent" and "representative" do not include the registered agent or representative that a corporation must list to do business within a State, and it does not include an independent broker or contractor who is engaged independently in soliciting orders in the State."

The reason we eliminated "or other place of business" in lines 3 and 5, page 2, is because the language is too broad and inclusive, and is without definite meaning.

The words "plant" and "store" were added to line 3, page 2, because it is better to be specific and not leave it to interpretation.

We defined an "agent" or "representative" as not to include a person who is the registered agent or representative that a corporation must list to do business within a State as every State requires such registration and that in many cases it is merely the lawyer who files the articles of the company to do business in the State.

We eliminated "for more than one seller" in line 9, page 2, as it is too ambiguous, and members should not be the basis, but rather status.

Section 2, page 2: There should be a separability clause inserted here as this section may be unconstitutional.

Section 3, page 2: No changes.

I hope that this will be of help to you. If there is anything further I can do, please feel free to call upon me.

Very truly yours,

HAROLD HALFPENNY.

The CHAIRMAN. The chairman has been tremendously impressed with the importance of this legislation, but he is also impressed with the fact that the wording of it must be very carefully considered, because it is possible to pass a bill here which may not help things but make them worse. So we would like to get all the information we can.

I think this is one of the most important bills that has been before our committee in my service of 26 years. I hope the committee can take prompt action, but take action which will effectively remedy the situation.

Senator Williams.

Senator WILLIAMS. No questions.

The CHAIRMAN. The next witness is the Honorable Leverett Saltonstall, senator from the State of Massachusetts.

Please proceed, Senator.

STATEMENT BY HON. LEVERETT SALTONSTALL, U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator SALTONSTALL. I appreciate the opportunity to appear before you and testify in support of legislation which would define and limit the scope of power of the States to tax income derived from interstate business.

Judging by the volume of correspondence which I have received on this subject, much of it in the form of copies of letters addressed to the chairman. I am confident that you are all well aware of the tremendous interest in this legislation.

Knowing that you will be hearing in detail from many well qualified witnesses about the importance and urgent need of prompt action by Congress on such legislation, I will not take the time for an elaborate statement on these points.

Rather, I would like simply to call your attention to the report of the Select Committee on Small Business entitled "State Taxation on Interstate Commerce" (S. Rept. 453) which contains what I believe is a rather complete and helpful discussion of the subject.

In addition, I offer for insertion in the record of these hearings, following my statement a copy of my remarks made on June 25, 1959, on the floor of the Senate when I introduced S. 2281 and an explanation of S. 2281. These are appended to my statement. Also I offer for insertion in the Record an excellent statement on the problem of State taxation of interstate commerce income and the importance and need for prompt congressional action. The statement was prepared by John Dane, Jr., a Boston tax attorney and former State tax commissioner of Massachusetts. Finally, I commend to your consideration the special July 7, 1959, issue of State Tax Review published by Commerce Clearing House, Inc. This issue deals exclusively with State income taxation and contains at pages 16–21 a report of 1959 State legislative action and official State comment on the Supreme Court decisions in the *Stockham Valves and Fittings* and *Northwestern States Portland Cement* cases.

As the author of S. 2281 and a cosponsor of Senate Joint Resolution 113 and having presided over Small Business Committee hearings on this subject in Boston on May 1, 1959, I am completely convinced that Congress has full power to act and that it should act at this session.

Congress should adopt a permanent law defining the scope of the States' power to tax income from interstate commerce. As I have sought to provide in S. 2281, the limitation should be such as to provide that only businesses having a substantial permanent physical presence in a State should be subject to such State's income taxing power. S. 2281 would limit taxation to firms which have an office, warehouse, or other place of business in the taxing State or an officer, agent, or representative who maintains an office or other place of business. The foregoing standard which is provided in section 1 of S. 2281 is patterned after section 47–1551c(h) of the District of Columbia Code.

The scope of permissible State taxation under S. 2281 is in one respect somewhat narrower than that provided in S. 2213 and Senate Joint Resolution 113, both of which would permit taxation of a firm which maintains a stock of goods within a State even through the

situs of such stock of goods were not maintained by the firm. S. 2281 would not allow taxation in such instance. In this respect S. 2281 seems preferable because the mere maintenance by a firm of a stock of goods seems to be an insufficiently substantial physical presence in the State to warrant State taxation, absent the maintenance by such firm of any warehouse or other structure in which the stock of goods is kept.

The scope of permissible State taxation under S. 2281 and Senate Joint Resolution 113 is in another respect considerably broader than that provided in S. 2213. S. 2281 and Senate Joint Resolution 113 would permit State taxation of firms which do business in the State merely by having an officer, agent, or representative in the State who has an office or other place of business in the State. Firms doing business in any State in such a limited manner would not be subject to taxation by such State under S. 2213. Based on study which I have given to the subject since I filed S. 2281 and in the light of a number of thoughtful comments which I have received, I have come to feel that in this respect S. 2213 is preferably to S. 2281 and Senate Joint Resolution 113. I feel that a State should not have the power to tax a business which, although it has a representative working in a State, for example soliciting orders, maintains no place of business whatsoever in the State. The maintenance by the representative of some place of business for himself should not, as I now believe, be sufficient reason to subject his principal or employer to taxation.

Accordingly, I suggest that S. 2281 be amended (1) by striking the comma at the end of line 3 on page 2 and inserting in lieu thereof a period, and (2) by striking all of lines 4 through 10 on page 2. It would be my intention that, as so amended, S. 2281 should be construed to permit State taxation of a business whose representative maintains an office, warehouse, or other place of business in the name of and for his firm. It would not be my intention that a firm doing business in a State and maintaining an office there, could escape taxation by such State, merely by having its representative maintain the office in his name and apparently for himself.

Section 2 of S. 2281 would make the limitation on State taxing power contained in section 1 of the bill retroactive. I think this is an important and highly desirable feature which I hope the committee will incorporate in whatever legislation it reports to the Senate. Considerable concern has been expressed that failure to adopt such a provision would open the door to very substantial and hitherto completely unanticipated tax liabilities for past years being asserted by States against foreign business. Such taxation could constitute a very serious and inequitable burden on interstate commerce.

Some question has been raised about the constitutionality of making retroactive a limitation of the power of the States to tax. The constitutional objection of ex post facto legislation has been cited. I have given this question close study and concluded that there is nothing to such an objection, since this is a constitutional principle applicable only to criminal legislation. It is designed to protect individuals from unfair laws and has no application to Congress' constitutional power to safeguard interstate commerce from burdensome action by the States.

The following quotation from the discussion of ex post facto law in "Black's Law Dictionary" (3d ed.) puts the matter clearly and succinctly.

> The plain and obvious meaning of this prohibition is that the legislature shall not pass any law, after a fact done by any citizen, which shall have relation to that fact, so as to punish that which was innocent when done; or to add to the punishment of that which was criminal; or to increase the malignity of a crime; or to retrench the rules of evidence, so as to make conviction more easy.

Where to make a limitation on State taxing power retroactive is solely a question of policy. In the situation which confronts us, I believe, as I have said, that it is distinctly desirable that we do so.

The last point on which I wish to comment is the proposal contained in title II of Senate Joint Resolution 113 to establish a Commission on State Taxation of Interstate Commerce. If the committee decides that there is need for such a Commission, I suggest that consideration be given to the possibility that this need may be fulfilled by a bill which is under active consideration in the Committee on Government Operations. I understand this bill, S. 2026, would establish a permanent Advisory Commission on Intergovernmental Relations with specific authority to deal with the problems of State taxation of interstate commerce. It would appear to me desirable not to establish two separate commissions with duplicate authority.

Mr. Chairman, I am confident that you and your committee will give this legislation your most careful and prompt attention. I hope you will report a bill which will impose reasonable limitations on the taxing power of the States designed to assure the healthy integrity of interstate commerce and of the businesses throughout the country which are engaged in it. Such legislation will benefit business firms and their employees and thereby all of our 49, soon to be 50 States.

(Appendix material follows:)

REMARKS BY SENATOR LEVERETT SALTONSTALL

Made on the floor of the U.S. Senate on June 25, 1959, upon the introduction of S. 2281, a bill to prescribe limitations on the power of the states to impose income taxes on business entities engaged in interstate commerce

Mr. President, I introduce, for appropriate reference a bill which I hope will preserve the rights of our States to reasonable tax revenue from businesses operating within their borders, but at the same time will protect the Nation's business enterprises and their commerce from undue burdens of multiple taxation, and uneconomic accounting and legal costs.

Mr. President, in the cases of Northwestern States Portland Cement Co., against State of Minnesota, and T. V. Williams against Stockham Valves & Fittings, Inc., the Supreme Court held on February 24, 1959, that "net income from the interstate operations of a foreign corporation may be subjected to State taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same." The Court's decision left some doubt as to what it would regard as a "sufficient nexus" to expose an out-of-State corporation to State taxation of its income.

Thirty-five States now impose direct net income taxes on corporations. In his dissenting opinion Justice Felix Frankfurter pointed out that this decision will "stimulate every State of the Union, which has not already done so, to devise a formula of apportionment to tax the income of enterprises carrying on exclusively interstate commerce." The Supreme Court's decision is also

likely to stimulate States to apply their taxing power to as many business firms as possible, regardless how tenuous their physical presence in the State may be.

Businessmen are understandably alarmed by the prospect of tax problems which this decision may prove to have created. Overlapping and varied State formulae may result in the taxation of more than 100 percent of a corporation's net income. Frequently, the cost of segregating sales by States, and preparing many State tax returns may far exceed the amounts of tax to be paid.

Our Founding Fathers created the United States of America as a free-trade territory, and through the commerce clause of the Constitution they tried to outlaw those impediments to commerce which had long plagued the Old World. They gave Congress the power to regulate interstate commerce, and we have done so frequently in many fields. However, we have never exercised that great power in relation to the scope of State taxation. As Justice Frankfurter wrote in his dissenting opinion, "the problem calls for solution by devising a congressional policy."

Mr. President, the time for a firm statement of that congressional policy is now at hand. The Senate's Select Committee on Small Business has held hearings and received much information and advice. A report of its work with recommendations will be filed with the Senate today.

All who have studied the problem—business organizations and trade associations, tax scholars from our universities, the staff of our Small Business Committee and your committee—all are convinced that Congress has the power to act without the need for a constitutional amendment. I think this plainly so.

How shall we act? This is the only question that remains for us to decide.

I believe that much informed opinion has now crystallized upon the proposal contained in my bill. I believe this is a practical bill. It would be fair to the States because it would preserve for them most of the revenue they are now receiving from interstate commerce.

And it would be fair to business by insulating concerns from State taxation unless they have offices or warehouses, that is, a substantial physical presence, in the taxing State. Most large businesses are already paying such taxes and have expressed no objection to their continuation. However, Congress should draw a firm, clear line to define the limits of the State's taxing power. Thus small business concerns may be protected from the burdens, costs, and difficulties of irrational and duplicative multiple taxation of their income that is otherwise likely to follow in the wake of the Supreme Court's decision.

EXPLANATION OF S. 2281, A BILL TO PRESCRIBE LIMITATIONS ON THE POWER OF THE STATE TO IMPOSE INCOME TAXES ON BUSINESS ENTITIES ENGAGED IN INTERSTATE COMMERCE

Section 1 of the bill would prohibit a State, or political subdivision thereof, from imposing any income tax on an out-of-State business firm unless such firm maintains an office, warehouse, or other place of business within the State. Any firm doing business in a State only through an independent broker or contractor would not be subject to taxation nor would firms doing only a mail-order business or merely sending traveling salesmen or shipping merchandise into the State.

Section 2 would make the bill's limitation on the taxing power of States and their political subdivisions operate retroactively as well as for the future by barring any State from assessing or collecting any tax prohibited by the bill after its enactment.

Section 3 defines "income tax" as "any tax imposed on or measured by net income."

(The statement referred to is as follows:)

THE INTERSTATE COMMERCE INCOME TAX CASES—IS THERE A CASE FOR ACTION BY CONGRESS?

(Remarks of John Dane, Jr., before 27th annual meeting of National Association of Tax Administrators, Buffalo, N.Y., July 10, 1959)

Regardless of whether the recent Supreme Court decisions in the *Stockham Valves and Fittings* and *Northwestern States Portland Cement* cases[1] repre-

[1] *Northwestern States Portland Cement Company* v. *State of Minnesota; T. V. Williams as State Tax Commissioner* v. *Stockham Valves and Fittings, Inc.*, 358 U.S. (1959), 79 Sup. Ct. 357.

sent the blazing of new judicial trails, as the minority of the Court felt, or whether they are merely a reiteration of previously well-established principles, as was stated by the majority, small- and medium-sized businesses now find themselves faced with new and pressing problems. Basically, these problems arise from the fact that such concerns will be required to file tax returns in many more States than heretofore; and everyone knows that the more States there are in which you are required to file a return, the more likely it is that lack of uniformity in State apportionment and allocation formulas will work substantial injustices.

The Pandora's box of uncertainties which has been opened by these decisions must be closed soon if serious damage is not to be done. As it is, corporate treasurers are receiving tax bills from States which had previously been nothing more than names on salesmen's expense accounts. Auditors are burning the midnight oil in an effort to decide on the form of their certificates and to arrive at a proper answer to the question of what reserves should be made for previously unsuspected State tax liabilities. Bankers are worried as to whether tax liabilities for prior years are going to render meaningless the balance sheets they had relied on in making loans.

Fortunately for all concerned the Senate Select Committee on Small Business moved swiftly into the field, holding hearings in Washington on April 8 and in Boston on May 1. As a result of the testimony offered at these hearings the committee has published a comprehensive and well-reasoned report[3] and a number of bills have been placed in the legislative hopper. But before discussing these bills in detail it seems advisable to go into the background of the problem and take a sharp look at what may happen to our economy if the doubt and uncertainty as to the scope of the new tax jurisdiction granted to the States is not dispelled and such jurisdiction accurately defined.

HISTORY OF STATE TAXATION OF CORPORATE INCOME

Two very important issues arise when a State seeks to tax a corporation which has been incorporated in another State. First, has the State jurisdiction to tax the particular corporation; and second, assuming that it has jurisdiction to tax, how do you determine what proportion of the corporation's income is subject to tax?

When corporate income taxes were originally imposed by the States—the first significant one being in Wisconsin in 1911—the tax was justified on the basis of the benefits which the corporation was presumed to receive from the taxing State.

Such benefits consist of the various protective and economic services which the State furnishes to the corporation and which assist it in operating and earning an income. The amount of the State-furnished benefits was supposed to be measured in terms of the income which the corporation earned in the State.

Two corollaries flowed logically from this benefit theory: First, jurisdiction to tax existed only in the case of corporations which operated property or maintained permanent business establishments in the taxing State; second, a tax could properly be imposed only with respect to that portion of the corporation's income which was reasonably attributable to its productive activities in the taxing State.

As can readily be seen, these original concepts of jurisdiction and allocation were strongly oriented in favor of the State where manufacturing activity took place or where stocks of goods and branch offices with authority to accept orders were located. States in which the sole corporate activity was confined to solicitation of orders by traveling salesmen or drummers had no jurisdiction to tax.

There were some earlier attempts to deviate from this pattern, but it was not until World War II that the voice of the "market" States, as distinguished from the "producing" States, began to be heard in earnest. Generally speaking, no States attempted to collect income taxes from companies engaged solely in sales activities until the early 1940's. California was the first State to construe its corporate income tax to apply to sales activities, its lead being followed by Georgia, Louisiana, Minnesota, Oregon, and Mississippi.

Paralleling this trend to extend tax jurisdiction to reach corporations which enter a State solely for the purpose of soliciting orders and have no manufac-

[3] S. Rept. 453, 86th Cong., 1st sess.

turing facilities, stock of goods, or permanent establishment within the State, attempts were made by "market" States to allocate to themselves a greater proportion of corporate income in cases where admittedly there was jurisdiction to tax. The earlier practice was to attribute a sale to a State only if it was accepted at an office in the State or if the goods were shipped from a warehouse in the State, thus adhering to the theory that the State where the firm had property or a permanent establishment of some kind supplied more benefits and therefore had a greater claim on the firm's tax dollar. More recently States have sought to allocate sales to themselves where solicitation has been made or where goods were shipped to purchasers within their borders.

DIFFERENTIAL EFFECT ON SMALL BUSINESS

It seems quite clear that the impact of the new Supreme Court decisions will fall most heavily upon medium and small businesses by making it more difficult for them to compete with countrywide concerns which are already paying taxes in all or almost all 50 States. For such concerns the new extension of State tax jurisdiction will mean little if any increase in overhead expense. But take the case of a typical small business which has, for example, its manufacturing plant in one of the Middle Atlantic States. Salesmen from the main office cover the Atlantic seaboard. It also has a warehouse and sales office in St. Louis to cover the Midwest.

Under the former theory of jurisdiction to impose an income tax, only its home State and Missouri, where the warehouse and sales office were located, could have imposed taxes on this company.

Now it would appear that this concern may be liable to taxation in every State which its salesmen enter to solicit orders even though such salesmen may not live or have an office in the taxing State.

This is no fanciful case. Out of 139 replies received in a recent National Association of Manufacturers questionnaire, 65 companies paid income taxes in 5 States or less. Yet out of this same sample, 102 companies had salesmen who traveled with some degree of regularity in 21 or more States. For 65 reporting companies with gross annual sales under $25 million, only 21 paid income taxes in more than 5 States. Forty-one companies paid taxes in one State or less. Yet of these same companies, 37 had salesmen who traveled regularly in more than 21 States.[8]

ADMINISTRATIVE IMPLICATIONS OF RECENT DECISIONS

The pyramiding of the overhead expenses of taxpayers arising from an increase in the number of States in which returns must be filed is paralleled by a comparable increase in the administrative costs of the States. Auditing a $10

[8] The following graphic presentation of the problem which business faces under the new Supreme Court decisions is contained in the defendant's brief in the *Stockham Valves and Fittings* case:

"Just to catalog the various criteria used to allocate income points up the tremendous burden which will result from efforts to comply with these laws. The interstate company must first obtain an analysis of the income tax laws of all the States in which it carries on sales activities. Based on these laws, it must tabulate the criteria by which income is allocated to each of those States. It must then set up recordkeeping procedures so that this information will be available at the end of the year. Sales must be tabulated by origin, destination, place of goods when ordered, location of negotiating personnel, location of office out of which such personnel worked, place where order was accepted, and whatever other elements a State may consider material. This information must be tabulated with respect to every invoice so that the taxpayer can determine which sales to include in the gross receipts ratio for each State. In like manner, data for every factor used by a State in its apportionment formula must be collected and tabulated. Thus, payroll accounts must be broken down as to type of compensation and as to type of employees compensated. Average property ratios must be calculated with respect to all real and tangible personal property, with respect to intangible property and with respect to inventories. From day to day, records must be kept so that this information will be available at year end. Accounting procedure for tabulating this data must be adopted.

"At the end of the year the corporation must prepare income tax returns in each State in which it carries on selling activities. The information required on each return differs and the legal, auditing, and clerical job of preparing and filing the returns, in and of itself, will constitute a tremendous burden.

"Filing a return is not, however, the end of the problem. The interstate concern must look forward to periodic audits by representatives of the taxing authorities in each jurisdiction where it pays income taxes. Not only are these visits time consuming, but the States have now adopted a practice of making the company pay the expenses of the auditor. Unless the concern pays such costs, the State threatens to subpena all of the company's records and cause the company to produce its records in the office of the tax commissioner.

"Finally, there are the costs of resolving controversies and the costs of possible litigation to prevent unreasonable State exactions."

return is often as complicated as auditing a $500 return. It takes up just as much filing space. Just as many accounting entries must be made in order properly to cashier the tax payment.

But even more important is the problem of enforcement. So long as liability for taxation is confined to companies having manufacturing facilities, warehouses, or sales offices in a State, efficient and effective enforcement is possible at reasonable cost. However, the mere identification of out-of-State firms which do business in the State only through traveling salesmen is a tremendously time-consuming task, nor is identification the end of the problem. It is one thing for a State tax official to know that a particular out-of-State firm has been sending salesmen into his State. It is quite another to secure a tax return from such a firm, check the correctness of its preparation and after all that has been done, enforce the payment of the tax against an absent and perhaps recalcitrant taxpayer.

To make matters worse, in many cases the tax liability of an out-of-State firm may well be less than the cost of collection. This will leave the State tax administrator faced with an unhappy choice—should he try for complete coverage of all taxpayers even if some of them do not pay their way, or should he confine his collection activities to just those larger taxpayers where the game is worth the candle, and wink at widespread tax avoidance on the part of smaller firms?

Recent reports from a number of States indicate that many State tax administrators are moving into this area with great caution. New York has taken the position that it does not wish to discourage foreign corporations from entering the local market and has made the announcement that it will make no attempt at present to impose its tax on corporations with no regular place of business in the State. Arkansas and New Mexico will continue to enforce their pre-existing rules. In the former liability attaches to corporations which engage in organized sales activity and own tangible property within the State. In the latter, solicitation of orders by nonresident salaried representatives which are filled outside the State will not result in tax liability even in the case of a foreign corporation authorized to do business.[4]

EFFECT OF DECISION ON FEDERAL REVENUE

If any substantial number of States follow the footsteps of Georgia and Minnesota, and with the blessings of the Supreme Court already secured, tax out-of-State firms which merely solicit sales within their borders, the economic implications for the economy of the entire country may be both very substantial and very unfortunate.

This country has outpaced even such highly developed industrial areas as Western Europe because it has presented a single market. Business firms have been able to spread their operations widely with a minimum of governmental interference.

If mere solicitation of orders in a State is now going to subject a firm to that State's tax requirements, the small businessman will think twice before extending his operations into areas where profit potentialities, even leaving out the danger of additional tax liabilities, may be conjectural at best. This will invariably tend to leave the market to larger firms whose activities are already widespread and which can better absorb the overhead expense both of securing the best tax advice and of keeping adequate tax accounting records segregated on a State-by-State basis.

It should not be assumed that this additional overhead expense of keeping accounting records, preparing tax returns, and securing legal advice is a concern solely of the particular businesses involved. All these nonoperating expenses, all these costs of complying with diverse State requirements and nonuniform apportionment formulas, represent deductions in the computation of net income subject to Federal tax. Thus 52 percent of the burden—the amount of the Federal tax on corporate income—is borne, not by the individual firms involved but by the Federal Treasury—which is another way of saying that it is borne by the general body of taxpayers.

POSSIBLE METHODS OF PREVENTING DISCRIMINATIONS AGAINST SMALL- AND MEDIUM-SIZED INTERSTATE BUSINESS RESULTING FROM RECENT SUPREME COURT DECISIONS

Small- and medium-sized businesses operating across State lines should pay their fair share of the overall State tax burden. On the other hand, they

[4] CCH State Tax Review, June 29, 1959, vol. 20, No. 26, p. 3.

should not be saddled with discriminatory tax and compliance costs in comparison with businesses operating in only one State. However, the new Supreme Court decisions open up two possible areas where such discrimination may develop. First, due to the divergent apportionment formulas which are to be found in the various State tax statutes, any interstate business may be forced to pay a tax on more than 100 percent of its income. Second, even though a particular interstate business is not taxed on more than 100 percent of its income, it may be required to file returns in such a large number of States, in some of which the tax due is less than the cost of preparing the return, that its cost of complying with the various State tax laws is vastly greater than the corresponding costs of a firm doing business in but a single State.

Several solutions to these two possibilities of discrimination against interstate businesses suggest themselves. The solution that has had the most publicity over the years is the proposal that all the States adopt by statute a uniform allocation and apportionment formula. The enactment of a uniform formula would remove one of the possible sources of discrimination against interstate business in that it would eliminate the risk that a corporation would be taxable on more than 100 percent of its income. It would not, however, in any way reduce the risk of discrimination arising from inordinately high compliance costs. On the contrary, if it required the computation of the sales fraction on a State-of-destination basis, it would guarantee that interstate business would be required to file in the maximum possible number of States.

To these theoretical objections to a uniform apportionment formula as a solution to the problem of discrimination against interstate business is to be added a basic practical objection. Tax practitioners and administrators have been debating a uniform apportionment statute for years, but there would seem to be little more chance of the adoption of such a statute now than there was 25 years ago. The type of formula that would be acceptable to the manufacturing States is unacceptable to the market States and vice versa.

It would seem, therefore, that if a solution is to be found, it must be at the Federal level. At this point, the objection may well be raised that Congress has no power to regulate State taxation of income from interstate commerce. However, a reading of the conclusions reached by the Small Business Committee on this issue, as set out in its report (2), will satisfy all but the most doubting of Thomases.

The second possible solution is the one suggested in Mr. Justice Frankfurter's dissenting opinion in the *Stockham Valves* and *Northwestern States Portland Cement* cases, namely that Congress enter the field by enacting a statute which would permit the various States to tax income from interstate commerce on condition that they adopt a congressionally devised uniform apportionment formula. This solution seems little better than the first. If the various State legislatures cannot get together on an apportionment formula, what reason is there to believe that their elected representatives in the Congress, representing as they do various conflicting points of view, would have any more success?

There is, however, one solution which has the dual advantage of providing very substantial relief to interstate business with not inconsiderable potentialities of congressional approval. This solution would follow the pattern already adopted by the Congress in enacting a corporation tax statute for the District of Columbia and would prohibit a State from taxing the income of a person doing solely interstate commerce within its borders where such person does not have or maintain an office, warehouse, or other place of business in the taxing State, and has no officer, agent, or representative having an office or other place of business in such State. "Agent" or "representative," for these purposes, would not include an independent broker engaged in regularly soliciting orders in the State for sellers and who holds himself out as such.

S. 2281 filed by Senator Saltonstal on June 25 and H.R. 8019 filed by Representative Conte on the same day impose these limitations on State taxing power. They also provide further that States may not, after the enactment of the bill, assess or collect any income tax, or make any levy with respect to such a tax, if the imposition of such a tax would have been prohibited under the bill because the requisite minimum activities were absent.

Senator Sparkman, for himself and other members of the Small Business Committee, has filed Senate Joint Resolution 113, which contains a somewhat similar minimum-activity limitation but restricted to taxable years ending after December 31, 1958, and beginning before January 1, 1961. This bill also provides for the creation of a five-man commission, to study the question of State taxation of income from interstate commerce for the purpose of enabling the commission to

recommend legislation "providing for the establishment of uniform standards which the States will be required to observe in imposing income taxes upon businesses engaged in interstate commerce. Such standards shall be designed to permit any State to require businesses engaged in interstate commerce which operate or do business in such State to assume a fair share of the tax burden of such State, but shall, at the same time, be designed to protect such businesses (particularly small business) from being unduly hampered or embarrassed in their operations by reason of being subjected to a multiplicity of income tax laws which are independently imposed by the various States in which such businesses operate or do business and which not only are not uniform either in substance or application but which are often inconsistent in theory and administration."

A large number of other bills have been filed adopting the minimum activity approach, and the House Judiciary Committee has appointed a special subcommittee under the chairmanship of Representative Willis of Louisiana to study the problems of State taxation of income derived solely from interstate commerce.

While the "minimum activities" type of Federal statute would not, in and of itself, prevent a corporation from being taxed on more than 100 percent of its income, it would restrict jurisdiction to tax to those States where the corporation had some sort of permanent establishment. With taxing jurisdiction so restricted, the risks of taxation on more than 100 percent of income would be greatly reduced. Such a statute would also go a long way toward solving the compliance problem for small- and medium-sized businesses which have permanent establishments in only a relatively few States but send salesmen into a majority, if not all of the 50.

The final and by no means the least persuasive argument in favor of such legislation is that it would not put the Congress in the position of overruling the recent decisions of the Supreme Court. If such a statute had been in force during the taxable years involved, the right of Georgia to tax Stockham Valves and of Minnesota to tax Northwestern States Portland Cement would in no way have been affected.

The crying need at the moment would seem to be to bring the greatest possible measure of certainty into this area. So long as every corporation selling outside of its own State is in doubt as to its tax liabilities, a serious restraint is being imposed on the development of the American economy. Corporate management, being confused as to its tax obligations, will in many cases resist all new tax claims until the smoke has settled. Tax administrators, quite understandably, will, on their part, be engaged in staking out the widest possible claims for themselves. All that this can add up to is greatly increased administrative costs, both direct and indirect, for everyone concerned.

Few people will contend that the minimum activities approach represents the only solution to the problem in the long run. It may quite possibly offer too great an opportunity for artificial sales procedures designed primarily to reduce tax liability. On the other hand, it is, in the judgment of many who have given it very considerable thought, the best solution that has been offered to date. If adopted, it will provide a period of certainty during which the issue can be studied, both in and out of Congress, from all angles. It may well be that the States will get together on a uniform allocation and apportionment formula which will effectively reconcile the various conflicting interests or that such a formula will be devised by the Congress. But until this time comes, it seems essential that the management of industry devote its full energies to building up a stronger and more vigorous economy and that tax administrators direct their unimpeded efforts to the collection of taxes unquestionably due. Neither group can fulfill their allotted function in the present atmosphere of doubt and uncertainty.

The CHAIRMAN. Our next witness is the Honorable Winston L. Prouty, U.S. Senator from the State of Vermont.

Please proceed, Senator.

STATEMENT OF HON. WINSTON L. PROUTY, U.S. SENATOR FROM THE STATE OF VERMONT

Senator PROUTY. Mr. Chairman, I appreciate the opportunity to appear before the committee on behalf of S. 2281 which I have cosponsored, together with the senior Senator from Massachusetts, Mr.

Saltonstall, and the junior Senator from Pennsylvania, Mr. Scott. I am pleased that the committee has been able to act swiftly and to have these hearings upon the several pieces of legislation which have been introduced to prescribe limitations on the power of the States to impose income taxes on income derived exclusively from interstate commerce.

Until the decisions in *Northwestern States Portland Cement Co.* v. *State of Minnesota*, and *T. V. Williams as State Tax Commissioner* v. *Stockham Valves and Fittings, Inc.* on February 24, 1959, the constitutionality of a tax levied by a State on that portion of a foreign corporation's net income earned from and apportioned to business activity within the taxing State derived exclusively from interstate commerce was in doubt. In the *Northwestern States* case, the Supreme Court by a 6-to-3 decision removed the doubt and held that such a tax was constitutional. Unfortunately, while it removed a doubt in one area, the decision created serious problems in another.

Immediately following the decision small businessmen doing business across State lines became concerned with the possible implications of the decisions and the effect which these decisions might have upon their tax liability in the numerous States in which they might transact business. This problem is especially important to small businessmen because there are some 35 States, plus the District of Columbia, and at least 8 cities, which levy a tax upon business income including earnings derived from interstate commerce where there is some local business activity. The decision of the Supreme Court, when it upheld the constitutionality of taxes levied upon exclusively interstate commerce net income, did not provide for the small businessman, or for the large businessman either, much in the way of a clear guide to determine whether and where they would be subject to such taxes.

It is especially difficult for the small businessman to know whether from a legal point of view he is "doing business" within a particular State so as to become liable for this type of income tax. To make matters more difficult, the State laws and the formulas for apportioning income between intrastate and interstate business are not uniform.

For those engaged in intrastate business there is no difficulty in determining what amount of tax should be paid since all of the business can be attributed to the State within which it is conducted, but those doing business across State lines find it infinitely more difficult to determine what taxes they are expected to pay in the several States in which they do business. Most small businessmen do not apportion their business from State to State and as a general rule they cannot afford the expenses which would be required in order to employ the legal counsel and auditing services which would be necessary in order to determine how their business was to be apportioned and in what States and in which amounts they were liable for this type of business tax.

The Senate Select Committee on Small Business, of which I am a member, conducted a series of hearings in which the problems facing small businessmen as a result of these decisions were graphically illustrated. It was also shown that it is actually possible under the situation in which the small businessmen now find the law for them to be taxed on more than 100 percent of their net income derived from interstate commerce. This results from the varying formulas used by

many of the States in apportioning business income derived from interstate commerce.

In his dissenting opinion, Mr. Justice Frankfurter pointed out some of the serious problems which will face small businessmen in particular as a result of these decisions. He had this to say:

> I think that interstate commerce will be not merely argumentatively but actively burdened for two reasons:
>
> First: It will not, I believe, be gainsaid that there are thousands of relatively small- or moderate-size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the diverse and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining "net income" and different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States.

These difficulties, and others resulting from the decisions, were clearly pointed out in the series of hearings conducted by the Senate Small Business Committee. The committee has recommended that a commission be appointed to study the problem and to present an equitable solution having in mind the problems faced by businessmen, and particularly the small businessmen, and the needs of the various States in which such business is conducted to assure that these businesses will assume a fair share of the tax burden necessary to be imposed upon the residents and businesses located within the taxing State. I think it clear that small business wants to pay its fair share of taxes which are assessed upon the residents and businesses of the State in which its business is conducted, but under present circumstances the situation is confused and the confusion seems to be growing worse.

The Senate Select Committee on Small Business also recommended temporary legislation restricting the power of a State to impose a tax upon the income of a business engaged in interstate commerce within the taxing State. The recommendation of the select committee was upon a temporary basis during the period when the Commission which the committee proposes would be studying what should be done.

I prefer the approach of S. 2281 of which I am a cosponsor. It too will restrict the power of a State to impose a tax upon income derived from a trade or business by a person engaged in interstate commerce. Under this bill, a State or its political subdivisions may not assess or collect such a tax unless the person is carrying on a trade or business in the taxing State as that term is defined in the bill. I believe that S. 2281 contains a clear definition of what shall constitute carrying on a trade or business for the purpose of this type of tax and that it will relieve small businessmen of a major portion of the confusion which now surrounds their decisions with respect to their liability for such taxes.

It does not go the whole way in relieving them of liability for the tax and I am not certain that as some suggest, this type of tax ought to be forbidden to the States. Neither does it relieve the small businessmen of the liability for compliance with the several differing

State tax formulas and it may well be that the Congress should enact a uniform allocation formula.

During the hearings before the Select Committee on Small Business these and other suggestions as to how this problem might be solved were given to the committee. The most generally accepted recommendations seemed to be that the Congress either ought to prohibit this type of tax entirely, or permit it to be assessed only as a result of a uniform allocation formula. My colleagues on the committee believe that these are matters which the Commission could inquire into and make recommendations to the Congress.

The problem is a serious one, as I am sure this committee knows, and we have to consider not only what is fair and equitable for those engaged in business in interstate commerce, but also what is fair and equitable for the States in which such business is carried on.

I believe that S. 2281 is a step in the right direction and that it will relieve a great deal of the confusion which now exists in the minds of a major portion of the country's small businessmen. It will, at least, enable them to know with some degree of certainty when they are liable for the taxes which are now levied upon business income derived from interstate commerce by some 40 or more taxing jurisdictions.

The overall solution may well require more study than this committee can devote to the problem at this time, but the enactment of S. 2281 will provide some immediate relief for the most pressing problems and permit further study without jeopardizing the ability of small business to continue to engage in interstate commerce activity.

I hope the committee will look with favor upon S. 2281.

The CHAIRMAN. hThank you, Senator Prouty.

The next witness is Mr. Rolla D. Campbell, of the National Coal Association.

STATEMENT OF ROLLA D. CAMPBELL, TAX COMMITTEE, NATIONAL COAL ASSOCIATION; ACCOMPANIED BY RICHARD L. HIRSHBERG, ASSISTANT COUNSEL, NATIONAL COAL ASSOCIATION

Mr. CAMPBELL. Mr. Chairman, I have prepared a formal statement which has been filed with the committee. I would like to submit that for the record and supplement it with a few oral remarks.

The CHAIRMAN. Without objection.

Mr. CAMPBELL. I appear here on behalf of the National Coal Association. For the record, my name is Rolla D. Campbell. I am general counsel of the Island Creek Coal Co. of Huntington, W. Va., and its subsidiaries; and, Senator, we have mines in the Commonwealth of Virginia.

I am also senior partner of the law firm of Campbell, McNeer, Woods & Bagley, of Huntington, W. Va. I appear here today as a representative of the tax committee of the National Coal Association, and also speak for the American Coal Sales Association, the Anthracite Institute, and the Southern Coal Producers Association.

The position of these particular groups is that they are very strongly in support of immediate legislation which will tie down, until something further can be done by the Congress, the tax situation

which has been precipitated by the recent decisions of the Supreme Court which have been discussed here.

Based upon the discusions which I have heard from the bench, it would appear that there are really two different subjects which have been before the members of the committee: One is the general subject and question of the extent to which Congress should act, under its power to regulate commerce between the several States, to prevent the further erection of what are, in effect, tariff barriers between the States by reason of the income-tax laws which are being assessed against the income from interstate commerce, and possibly the removal of some of the barriers which have already been erected. That is one problem.

But that is not the problem which is presented by the bills before this committee. These bills are directed more to the solution required now to remove doubts raised by these decisions so that the status quo can be held, as it were, until further legislation can be studied out and enacted.

The decisions to which reference has been made are pretty clear, it seems to me, in what they hold. They hold, first, that there is no restraint on the States, in imposing their income taxes on the income realized from strictly interstate activities within the State, arising under the interstate commerce clause, and that the only restraints which are applicable to the States are those which arise under the 14th amendment.

Those restraints are generally covered by the statement that for a tax to be valid, there must be some connection between the revenue-producing activities and the State or, in legal shorthand, which is the phrase Mr. Justice Frankfurter seems to have invented, there must be some nexus connecting the activities with the State law.

The trouble arises because nobody knows what this nexus is, but the drift of decisions of the Court is such as to indicate that it can be almost any minimal activity.

Two actions of the Supreme Court occurred this year which I have not heard mentioned here this morning or this afternoon, and they relate to this subject. The Court refused certiorari in one case and dismissed an appeal in another case, both of which arose from Louisiana.

The Louisiana taxing authorities had levied an income tax under their State law on incomes arising from the sale of goods by two out-of-State concerns to customers in Louisiana. The out-of-State concerns had no offices or employees within the State of Louisiana, and their sole activities consisted of sending in salesmen who solicited orders which were accepted outside the State; the goods were shipped from outside the State, title passed outside the State, and collections were not made by the salesmen.

I think in one of the cases the activity was even less than that. It consisted more or less of just sales promotion without any orders being solicited.

At the same term at which these decisions were made involving the right of Minnesota and Georgia to tax out-of-State concerns on local business of an interstate character, the Court refused to hear these two cases. I am firmly convinced that it refused to hear them, although it stated no reason why, because it was of the opinion that the rules governing the cases had already been laid down in the two

cases involving Minnesota and Georgia. If the Court had not felt that way, if they felt that Louisiana was trespassing on the interstate commerce power, it seems to me they would have, of necessity, granted review in those cases and reversed the Louisiana court.

So I think you can say that there is real reason for fearing that, under the nexus problem, the Court will say that soliciting orders in a State through the medium of traveling salesmen is a sufficient nexus on which to found the jurisdiction of the tax, free from the inhibitions of the interstate commerce clause of the 14th amendment.

If that is true, then can you draw the line and say that if you solicit sales within a State by mail or by telephone or by advertising, where that is a part of a consistent course of action, that you still have not established a sufficient nexus on which to base a jurisdiction to tax the proceeds of the interstate activities?

Certainly we know that in other branches of the law, a State can take jurisdiction to punish people for acts resulting within its borders from conduct arising in another State, and a typical example is shooting a bullet across a State line.

If you shot advertising across the State line or you telephoned orders, or wrote letters, are you not acting within the State?

It is the fear that these decisions will be extended expressly by the Court, when the cases arise, to these situations, whether only out-of-State traveling salesmen are used or whether orders are solicited by mail or telegram or by telephone, that we are concerned about. We think that it is highly important that this matter be tied down right now so that the status quo cannot be further disturbed by Court opinions as to what is a proper nexus.

The CHAIRMAN. Mr. Campbell, will you explain to the committee how you can tie it down?

Mr. CAMPBELL. Well, you can tie it down in this way: By providing, as is provided in some of these bills before you, that a State shall not have the right to tax net incomes arising from interstate commerce activities within a State unless it has certain things within the State, such as an established place of business, and I think that is the rule which Congress has already provided for the use of the District of Columbia, and that type of rule——

The CHAIRMAN. Which of these bills pending would tie it down, as you expressed it?

Mr. CAMPBELL. Well, Mr. Chairman, if I were sitting in your position, and writing the legislation, I would take Senator Bush's bill (S. 2213), with a change or two.

The CHAIRMAN. Would you indicate to the committee what changes you would make?

Mr. CAMPBELL. Yes, sir, I will.

In line 5, after the word "impose," I would insert the words "or collect."

The CHAIRMAN. All right.

Mr. CAMPBELL. And then in line 9, I would insert after the word "no" the word "established."

The CHAIRMAN. What word?

Mr. CAMPBELL. "Established." In other words, a place of business in the State should not be merely a transitory place, but something of an established or permanent nature.

Then I would delete from line 10 the words "or other place of business."

(Mr. Campbell subsequently submitted the following draft of the bill which incorporates the changes in S. 2213 as suggested above:)

A BILL To limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce and to bring about greater uniformity in State taxation of business income derived from interstate commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, after the date of the enactment of this Act, no State, or political subdivision thereof, shall have the power to impose or collect a net income tax on income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person, if such person maintains no permanent or established stock of goods, plant, office, or warehouse within the State.

The CHAIRMAN. What do you mean by an "established" stock in trade?

Mr. CAMPBELL. Well, something to distinguish it from merely a transitory situation.

The CHAIRMAN. Who would interpret the word "established"?

Mr. CAMPBELL. Well, that, of course, could be determined either by further definition or by——

The CHAIRMAN. Would not the Supreme Court——

Mr. CAMPBELL. The Supreme Court would have to do that.

The CHAIRMAN. They have already ruled on it.

Mr. CAMPBELL. No; I do not think so. I do not think they have ruled——

The CHAIRMAN. Are you willing to trust the Supreme Court? [Laughter.]

Mr. CAMPBELL. Mr. Chairman, the Supreme Court has overruled so much of my knowledge that I hesitate to say.

The CHAIRMAN. I doubt that you have less faith in them than I have. [Laughter.]

Mr. CAMPBELL. The reason I suggest that you insert the words "or collect" is because a business may have unwittingly accumulated quite a large contingent liability for taxes under existing law.

The CHAIRMAN. Can we not get some language here which is so clear that the word "established" would not have to be interpreted by the courts?

Mr. CAMPBELL. Well, if you go a little further, you can say "permanent," if you wanted to have it a little more fixed than "established."

Senator WILLIAMS. How could you tell what is going to be permanent or not, without waiting for some indefinite date in the future and then looking back?

Mr. CAMPBELL. If I would be the one to say, I would employ the concept of using the word "domicile."

The CHAIRMAN. You said you would say so-and-so, but you are not the person who is going to have the say.

Mr. CAMPBELL. No, I am not.

The CHAIRMAN. It is going to be Mr. Warren and his associates.

Mr. CAMPBELL. Well, I think that would be a very simple type of bill which would do two things.

The CHAIRMAN. Do you favor that bill rather than the Sparkman bill or the Saltonstall bill?

Mr. CAMPBELL. I think the Sparkman bill is a little complex, and it calls for the setting up of a commission to do what I think the committees, the Senate Finance Committee and the House Ways and Means Committee, ought to do, and I do not think they ought to transfer their jurisdiction to some commission.

The CHAIRMAN. What do you think about the Saltonstall bill?

Mr. CAMPBELL. The Saltonstall bill is a—I would prefer it to Senator Sparkman's bill, but he gets into—one thing I like about it is that it prevents the collection of any past taxes, any past due taxes, which become due under this decision.

I do not like that phrase—

and does not have an officer, agent, or representative in the State who has an office or other place of business in the State.

I do not know that that helps the situation at all, and I think Senator Bush's bill, personally, is simpler and, with slight amendment, would do the trick.

The CHAIRMAN. You made concrete suggestions, and we appreciate that.

Mr. CAMPBELL. Mr. Chairman and gentlemen of the committee, the coal industry, which I have not talked about yet, has a very vital stake in this legislation, because most—I won't say most of it, but a very large part of all the coal produced is shipped in interstate commerce in this country.

You may recall that we once had some legislation which regulated all sales of coal because they were either in interstate commerce or directly affected interstate commerce. I refer to the Bituminous Coal Acts of 1935 and 1937.

But in West Virginia, for example, over 90 percent of all the coal produced in West Virginia is sold and shipped to other States or to foreign countries for consumption. And not only that, but the industry is made up of a very large number of very highly competitive producers.

You gentlemen know the history of the coal industry about as well as I do, because we have told it to you on many occasions in connection with coal price regulation and in connection with taxation, but just to bring you up to date, I looked the thing up last night, we have approximately, we do not know exactly, from 5,000 to 7,500 separate producing economic units.

I mean by that either corporations or partnerships or something of that sort. And they are producing and selling coal from more than 8,000 mines. That figure 8,000 seems to have some magic today, because there are more than 8,000 cotton manufacturers, and more than 8,000 wholesale houses in a certain business. But those are the figures.

If there is any industry in the country which could be characterized as being small business, I would say that the coal industry would fit under that description. The largest single unit in the industry produces less than 10 percent of the national production, and we also have a practice of selling through selling agents who represent a large number of small producers, and those selling agents like to keep their customers secret from the producers, and I know there are many, many instances where the miners—the operating companies which sell through these wholesalers, who are called "del credere factors" because they guarantee accounts, but really they are agents—

the producers do not know where the coal goes or who consumes it, and that would throw an extra burden on them to comply with all of the income tax requirements which will inevitably be imposed upon them unless this committee and this Congress take action forthwith.

We believe that in our competitive struggle with oil and natural gas we will be hurt by failure to pass this legislation. The natural gas companies are practically all regulated companies, and they are entitled to pass the taxes on to their customers, and they do.

The oil companies generally are very large economic units, and most of the small companies producing oil sell their oil at the well mouth, and so they are not concerned with the problem.

Whereas in the coal industry, practically all of the coal is sold by agents, and the title passes f.o.b. the mines in most cases.

As I say, we are having our troubles anyhow, as you gentlemen well know. Our production has not kept up with the economy of the country. Our production last year dropped to 400 million tons, roughly, from 500 million tons the year previous, and it has not been restored yet by the boom in business which has occurred this year, and we cannot stand any more tax burdens than are absolutely necessary if we are to continue to serve the country.

I want to thank you gentlemen very much for the opportunity of appearing before you and stating our views.

The CHAIRMAN. Thank you very much.

Senator CARLSON. Mr. Chairman, I have no questions, but I would feel remiss as a member of this committee if I did not make a statement that I think it was 20 years ago, when I was a member of the House Ways and Means Committee, that Mr. Campbell appeared and testified on many occasions on the House side, and since I have been a Member of the Senate he has appeared, and never once has he appeared but what he had something constructive to offer. And today I personally appreciate your suggestions. I think you have rendered a real service to the committee.

Mr. CAMPBELL. Thank you very much, Senator Carlson. I appreciate your remarks.

The CHAIRMAN. Thank you, Mr. Campbell.

Mr. CAMPBELL. Thank you, Mr. Chairman.

(Mr. Campbell's prepared statement follows:)

STATEMENT OF ROLLA D. CAMPBELL, TAX COMMITTEE, NATIONAL COAL ASSOCIATION

My name is Rolla D. Campbell. I am general counsel of the Island Creek Coal Co., Huntington, W. Va., and its subsidiaries, and senior partner of the law firm of Campbell, McNeer, Woods and Bagley, of Huntington, W. Va. I appear here today as a representative of the tax committee of the National Coal Association.

The National Coal Association is the trade organization of bituminous coal mine owners and operators throughout the United States. Its members mine more than two-thirds of the commercially produced bituminous coal in this country. We have also been authorized to speak for the American Coal Sales Association, the Anthracite Institute, and the Southern Coal Producers Association.

My purpose in testifying before your committee is to explain the coal industry's position on Senate Joint Resolution 113, S. 2213, and S. 2281,[1] all of which relate to the power of the States to impose taxes on income from interstate commerce. The general purpose of these bills is that stated in the title of Senate Joint Resolution 118; namely, "to bring about greater uniformity in State taxation of business income derived from interstate commerce."

[1] Copies attached.

The coal industry, like many other members of the business community, markets its products in various parts of the United States. Until recently, we had assumed that selling goods across State lines would not subject a company to State income taxes in the absence of manufacturing facilities and other permanent establishments in the importing States. This sort of transaction is commonly called, or at least used to be described as, exclusively interstate commerce.

The basis for the assumption that interstate activity is immune from State income taxes has gradually been disappearing, as reflected in a line of Supreme Court decisions which have relaxed the constitutional bars against such taxation. The latest pronouncement of the high court[3] has virtually obliterated the doctrine that no State tax can be upheld where there is a total absence of intrastate activity. The ultimate test now appears to be whether a corporation is engaging in substantial income-producing activity in the taxing States. If so, the Federal Constitution offers no protection against the imposition of a fairly apportioned, nondiscriminatory State income tax. The theory that no State tax can be upheld where there is a total absence of local activity which is intrastate in character seems to have disappeared.

In its recent decisions, the Supreme Court seems to have departed from the original purpose of the commerce clause. As stated by Chief Justice Marshall in *Brown* v. *Maryland*:[4]

"It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise, that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the States. To construe the power so as to impair its efficacy, would tend to defeat an object, in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity."

Contrary to the recent efforts in Western Europe to provide a free market area, the current trend of the Supreme Court decisions allows the several States increasing freedom in setting up trade barriers, in seeming disregard of the principle that the commerce clause * * * by its own force created an area of trade free from interference by the States."[5] As pointed out by Mr. Justice Frankfurter, in his dissenting opinion in the most recent cases, "the policy that underlies the commerce clause" is that "whatever disadvantages may accrue to the separate States from making of the United States a free-trade territory are far outweighed by the advantages not only to the United States as a Nation, but to the component States."[6]

We want to express our appreciation of your committee's prompt action in scheduling hearings, which reflects a commendable recognition of the seriousness and urgency of this problem and a desire to accomplish in the immediate future a partial solution which ought to be applauded by State tax administrators as well as by taxpayers. We also appreciate the expeditious consideration of the matter by the Senate Select Committee on Small Business, which resulted in one of the legislative proposals being considered today (S. J. Res. 113).

All of these proposals would prescribe limitations on the power of the several States to tax income from interstate commerce in those cases where a company's activities within a particular State were less than the activities involved in the recent Supreme Court cases, where State taxing power was held to have been constitutionally exercised. In other words, they would eliminate from the potential grasp of the State tax collector those selling activities which are carried on across State lines without the substantial connection (nexus) with the importing State which was found to exist in those recent cases.

We are heartily in favor of this "minimum activities" approach as an immediate, practicable step which can be taken by Congress now as a starting point toward reaching the ultimate goal of uniformity. This proposed legislation would restrict State tax jurisdiction to situations where the taxpayer has a permanent establishment within the taxing State, such as a plant, warehouse, or sales office. If enacted, it would alleviate the income tax problem in a way

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[3] *Northwestern States Portland Cement Co.* v. *Minnesota* and *Williams* v. *Stockham Valves and Fittings, Inc.*, 358 U.S. 450 (1959).
[4] 12 Wheat. 419, 446 (1827).
[5] *Freeman* v. *Hewit*, 329 U.S. 249, 252 (1946).
[6] Cited footnote (2), *supra*.

which would represent a fair compromise between the revenue requirements of the States and the need to preclude the possibility of unduly burdening interstate commerce with troublesome, and relatively unproductive, tax levies.

If States are allowed to tax income based on the mere presence of salesmen within the State or even on sales solicitation without the physical presence of sales agents, the Federal Government (as well as taxpayers) will be the loser. For most corporations, 52 percent of the State tax bill is paid by the Federal Government in the form of an allowable deduction for Federal income tax purposes. Also, the Federal Government picks up the tab for 52 percent of all costs of determining State tax liability and filing State tax returns, which costs often exceed the amount of the tax itself.

The coal industry is especially hard hit by the potentialities of the recent Supreme Court decision. Other industries can move their plants, assembly points, and so forth, to take advantage of favorable tax climates. There is, however, no mobility possible when one is dealing with coal mines, and thus we have no ability to protect ourselves from possible double taxation of income by the various States. Many of the markets for coal lie outside the producing States. For example, over 90 percent of the coal mined in West Virginia is consumed outside our State.

In order to illustrate the effect of the present situation of tax uncertainty on our industry, I should like to refer briefly to a recent survey conducted by the National Coal Association. Member companies were asked the following five questions:

1. In what States does your company sell its products, where you have no office, warehouse, stock of goods, or other place of business?
2. In which of the States listed under No. 1 is your selling activity carried out by salesmen physically present in the particular State?
3. In which of the States listed in No. 1 is your selling activity carried out by some other method of solicitation, such as telephone or mail (without having salesmen physically present within the particular State)?
4. In how many of the States listed above does your company file an income tax return?
5. In how many of the States listed in No. 4 was your income tax liability for 1958 (or the comparable fiscal year) less than $100?

Practically all of the companies replying to this questionnaire reported selling their products in a State or States where they had no office, warehouse, stock of goods, or other place of business. If the present uncertainty as to the limits of State taxing power is not immediately removed by Congress, the result will be that each of these companies will have to file, or may have to file, income tax returns in any of about 35 States which levy a tax on net income. Only a few of them would be relieved of this burden by reason of shipping solely into States having no income tax. It should be borne in mind that all of these filing requirements and potential tax liabilities are in addition to those which were generally assumed to have existed before the Supreme Court decision early this year.

Most of these coal companies sell products in income tax States through the efforts of salesmen physically present there at some time during the taxable year. Many of these States (as yet an undetermined number) are quite likely to assert tax liability in this situation, in the hope that such authority will be upheld by their own courts and ultimately by the Supreme Court. Even the considerable number of companies which accomplish sales in some States without the physical presence of salesmen may be in jeopardy if the revenue officials desire to push their taxing powers to the supposed constitutional limit.

Finally, our survey shows that very few companies filed income tax returns last year in States where they had no offices. If the taxing power of the States is not circumscribed by Congress in the manner suggested, such filings will now have to be increased many times, in order to avoid the possibility of assessments, interest, and penalties for failure to report. In this connection, it should be noted that many of the States have no statute of limitations on the assessment of back taxes in the event of failure to file returns.

In conclusion, we wish to emphasize that the type of "minimum activities" legislation now being considered by your committee would eliminate State taxing power only in those situations where potential revenue collection is the least and foreseeable difficulties in collection are the greatest. It would not reverse, or "roll back," the application of the recent Supreme Court pronouncements to the facts before the Court. It would simply preclude the extension of State income tax jurisdiction beyond the factual situations in which such power has

already been expressly upheld by the Court in the cases hereinabove referred to. Thus, it would prevent States from basing income tax liability upon the mere presence of salesmen within their borders or even upon solicitation by mail, telephone, or other means without the physical presence of sales representatives.

The benefits of this legislation to the country as a whole, in protecting the free flow of commerce, would far outweigh the modest loss of revenue suffered by those States which might be tempted to push their taxing powers into the "gray area" left undefined by the Court. For this reason, we believe that the proposed bills should be regarded as minimum, but permanent, legislation pending further study of a full-scale solution to the State tax problem.

(The following letter was subsequently received for the record:)

NATIONAL COAL ASSOCIATION,
Washington, D.C., July 28, 1959.

Hon. HARRY FLOOD BYRD,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: During the hearings of the Senate Finance Committee July 21, 1959, on State taxation of income from interstate commerce, Rolla D. Campbell, representing the Tax Committee of the National Coal Association, testified in favor of S. 2213 with some modifications. Mr. Campbell was also authorized to speak for the American Coal Sales Association, the Anthracite Institute, and the Southern Coal Producers' Association. We understand that the American Mining Congress also favors this legislation.

The recommended language was adopted in H.R. 8341, introduced by Representative Elizabeth Kee on July 23, 1959, and made a part of the record of the hearings of the Finance Committee, as a supplement to Mr. Campbell's testimony. This bill would prohibit State taxation of income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person, if such person maintains no permanent or established stock of goods, plant, office, or warehouse within the State.

The purpose of the words "permanent or established" is to prevent States from taxing a person engaged exclusively in interstate commerce solely on the basis of his setting up a temporary place of business, such as a display room in a hotel. H.R. 8341 would also expressly provide that States may not retroactively apply the principles of the Supreme Court decision in the *Northwestern States Portland Cement Co.* and *Stockham Valves and Fittings, Inc.*, cases to assert tax liabilities for past years.

I hope that this proposed legislation will receive your favorable consideration when the Finance Committee votes on measures to limit the power of the States to tax income from interstate commerce.

Sincerely yours,

TOM PICKET,
Executive Vice President.

The CHAIRMAN. The next witness is Mrs. Pauline Dunckel, Institute of Appliance Manufacturers.

Take a seat, please.

STATEMENT OF MRS. PAULINE DUNCKEL, EXECUTIVE SECRETARY, INSTITUTE OF APPLIANCE MANUFACTURERS

Mrs. DUNCKEL. Mr. Chairman and members of the committee, I am Pauline Dunckel, executive secretary of the Institute of Appliance Manufacturers, a trade association made up of producers of many types of major appliances and charcoal grills; and their principal suppliers who sell raw materials and components.

Because much of what I have to say has already been said, I should like to file my brief, if I may, Senator Byrd.

The CHAIRMAN. Without objection.

Mrs. DUNCKEL. And make one or two suggestions and perhaps cite a case history to you.

I think one of the two most important things we have to do today is to try to define what one of your witnesses, I think perhaps Senator Sparkman, calls business presence in a State. None of us denies the States the right, Senator Carlson, as you suggested, to assess out-of-State corporations for their fair share of the costs of running the State.

However, there must be some limit. Congress cannot vacate its obligation to regulate interstate commerce.

I feel very presumptuous to suggest a definition to men so well qualified as you, but since you have asked a definition of most witnesses, I should like to take the definition sponsored by Mr. Saltonstall and eliminate the references to "other places of business" on page 2 of the bill.

The CHAIRMAN. Let us see. You take the Saltonstall bill and suggest what amendments? Is that the bill ou prefer, the Saltonstall bill?

Mrs. DUNCKEL. Yes, S. 2281. On page 2, line 2——

The CHAIRMAN. Page 2, line 2.

Mrs. DUNCKEL. At the end of the line, after the word "maintain" strike out the remainder of the sentence and substitute:

* * * a permanent office, warehouse, or plant in the State, and does not have an officer, agent, or representative in the State who has an office in the State.

The CHAIRMAN. What would be your own definition of the word "permanent"?

Mrs. DUNCKEL. I think any office that had a commercial lease on it would be permanent, wouldn't you think so? I wouldn't think a hotel room would be permanent unless you had a lease on it.

The CHAIRMAN. You mean it would not be the length of time, but where it was located?

Mrs. DUNCKEL. I think commercial leases are pretty much a matter of custom in localities and States, and there is usually a minimum of 1 year for a commercial lease.

The CHAIRMAN. Is there any legal definition of the word "permanent"?

Mrs. DUNCKEL. I am sure there are many, but a word that connotes permanency is the best I can come up with. There are, I am sure, many legal precedents already established by the courts.

The CHAIRMAN. Would you regard an office that had been there 3 months as permanent?

Mrs. DUNCKEL. I should think it would depend on whether he had taken a lease for a longer period. I am trying to get around the type of display they mentioned this morning about shoes. I would not consider that——

The CHAIRMAN. I am just wondering if there is not some other word which would tie it down more closely.

Mrs. DUNCKEL. Well, maybe 1 year.

The CHAIRMAN. It may be they would not want permanently to lease it.

Mrs. DUNCKEL. In the committee's judgment, they can define a period if they want to tie it down to a time limit.

I think the principal confusion is in the "other place of business" parts of these definitions, and that is what I would like to see you eliminate, if you can.

I also like the Saltonstall bill because it does provide for a definition of "manufacturers' agent." I do not think it is particularly important that an agent should represent more than one seller, because perhaps at any one time he might have only one client. His function would still be that of a factor.

The Saltonstall bill also protects us from any retroactive claims for taxes, interest, and penalties, of which industry is fearful.

This morning, several requests were made for case histories of how this thing would actually affect an industry or a company in interstate commerce. I have three examples which I picked from many replies. One is from a small company in Ohio employing 175 people which sells gas ranges in 28 States. The treasurer of the company tells me that under present laws he is already getting some taste of the problems arising from doing business as a foreign corporation. They are required to qualify in 10 States which have various applicable taxes, including income tax. He says in part:

> Most of the income tax returns are considerably more complicated than the Federal income tax returns and, in addition, it is necessary to maintain throughout the year, special records of sales from within and without the State as well as monthly inventory balances for each location.

I do not believe that has been mentioned earlier today, but for a small company to maintain inventory records in all these various locations is a big job.

He says it takes a man on his staff at least 1 day to compile a State tax return, and often the tax is only $10 or $25.

In the first 6 months of this year, this company, with 175 employees, filed 63 special tax returns in only 8 of the 10 States in which it is qualified. He says that the cost of the returns was several times the cost of the taxes, although the tax itself was fairly burdensome.

I took another larger company, also in the State of Ohio. This one employs, I should say, 1,200 to 1,500 persons, and they tell me that they file quarterly reports on unemployment taxes in 32 States. That is 128 a year. They withhold taxes on incomes of employees in three States.

They file 40 personal property tax returns, 7 franchise taxes, 7 corporate income tax forms, 3 corporate franchises based on income, 7 sales tax forms, 4 intangible property taxes, 3 business licenses, and 5 information returns. That is more than 200 returns for a single company. He says he has a full-time employee paid $7,500 doing nothing else, and that does not include his keeping of the records or his overhead for that employee. He pays $5,000 for special tax and accounting services. Commerce Clearing House service and others cost several hundred dollars a year. Stacks and stacks of pages of tax information have to be analyzed.

As I said, we reconize the rights of the States to impose taxes, but we do not think that the mere solicitation of sales through salesmen, manufacturers' agents, telephone, or correspondence, is anything but interstate commerce and, therefore, subject to the regulatory powers of Congress, and Congress alone.

Another problem which seems to me important and has not been mentioned today is this: If you were running a business in the neighborhood of Washington, D.C., and you wanted a salesman to cover

Delaware, Maryland, Virginia, West Virginia, you would have to analyze all the State laws to decide where it would be most advantageous for him to live and have an office.

I am not sure that just the establishment of a sales office, if you do not maintain an inventory of goods, is a good test of "business presence." That was the principal problem in the Georgia case, because the salesman who was involved covered three States, as I remember, perhaps five States. He merely happened to have his office in Georgia.

That is one problem which must be worked out. How are you going to define interstate commerce so you can have a clear line of demarcation for tax purposes between the States and the Federal Government's jurisdiction?

The second problem is probably much more complicated, and I doubt that it can be handled at this session, but I hope the stopgap measure can be enacted—that is to develop appropriate formulas under which States may tax out-of-State companies.

Many lawyers feel that Congress can develop some such formula and not override the States' legal jurisdictions regarding taxes.

Some States, as you know, use a percentage of sales as the measuring stick for tax allocation. Others compare property held within the State to national property holdings. Some use payrolls. Some use a combination of two or more of these factors.

It is because of this variety of formulas that it is possible that more than a company's total income will be taxed.

At this point I should like to use my last reference to a member of the industry. This is a small company in Tennessee with less than 500 employees, which makes about 8 or 10 different kinds of appliances. The president of this company says:

> In attempting to expand our markets into new States, we frequently spend more over a period of time than the gross profits from sales. How can we fairly apportion this development cost when the same representative may cover two or three States? What about voluntary mail orders?

He mentioned a customer in Illinois who buys by phone or by letter, picks up the goods in his own truck, strictly an interstate transaction. Yet he says that Illinois may try to impose a corporate income tax of some form or franchise tax on his business.

He goes on to ask:

> What are taxable profits? This can vary from State to State. It takes a lawyer to tell the difference. Are they net before or after Federal income taxes? If after, then all these State taxes are deductible before computing Federal tax.

He has a little marginal note. He says:

> Tell Senator Byrd if too many of these State taxes are collected, he may have to raise his Federal tax rate, because the imposition of the State taxes could shrink the net profits of the company to an extent, as previously pointed out, where Uncle Sam would be paying half the bill.

We all know how great the pressures are for rising tax revenues in the States, and they are certainly not going to lessen. We also know that it is natural for any legislative body to prefer a tax which will have the least effect on the nearby ballot box.

The CHAIRMAN. I think we will have to suspend to vote.

Mrs. DUNCKEL. I appreciate the chance to testify, and thank you very much.

(Mrs. Dunckel's prepared statement follows:)

STATEMENT ON BEHALF OF INSTITUTE OF APPLIANCE MANUFACTURERS BY MRS. PAULINE DUNCKEL, EXECUTIVE SECRETARY, RE NEEDED LIMITATIONS ON THE POWER OF THE STATES TO IMPOSE TAXES ON INCOME DERIVED EXCLUSIVELY FROM THE CONDUCT OF INTERSTATE COMMERCE

Mr. Chairman and Members of the Committee; I am Pauline Dunckel, executive secretary of the Institute of Appliance Manufacturers, a trade association made up of producers of many types of major appliances and charcoal grills, also their principal material and component suppliers.

The institute appreciates this opportunity to appear in support of the principles set forth in S. 2281, S. 2213, and S. J. Res. 113. Such legislation is much needed to clear away the confusion resulting from U.S. Supreme Court decisions in the cases of *Northwestern States Portland Cement Company* and *Stockham Valves and Fittings, Inc.* which broadened the area where the State may tax interstate commerce.

The industry for which I speak is made up of a relatively few large companies and a great number of medium- and small-sized concerns. These smaller units do not have the benefit of full-time legal counsel on tax matters. Their accounting departments are small and handle the already multitudinous reports required by local, State, and Federal authorities.

One small company in our industry employing 175 to 250 persons reported a few days ago:

"Our sales are made direct in 28 States. Under present laws, we are getting a taste of some of these problems in States where we are qualified for doing business as a foreign corporation. We are now qualified in approximately 10 States that have various applicable taxes including income tax.

"Most of the income tax returns are considerably more complicated than the Federal income tax returns and, in addition, it is necessary to maintain throughout the year, special records of sales from within and without the State as well as monthly inventory balances for each location. The recordkeeping is a tremendous problem.

"Preparation of one of the various tax returns will, in most cases, require the time of an individual for at least a day and then in many instances, the tax obligation will be for the minimum of $10 to $25.

"In the first 6 months of this year, we have prepared and submitted 68 special tax returns to eight of these States. Each of these has required a considerable amount of time for preparation. It is possible that a large company, using puncheard equipment, might be able to accumulate the information and prepare these returns more economically. However, the size of our operations certainly does not justify the added expense for such equipment.

"In addition, there are costs involved in legal and tax services, and I haven't mentioned the actual taxes paid. They are not all as small as $10 to $25.

"If the other States, in which we sell, were to enact income tax or franchise tax laws applicable to us, it is conceivable we would require three additional people maintaining records and preparing returns."

I have another report from one of the larger units in the industry whose treasurer says he is required to file under present regulations a total of 76 tax reports annually to States outside of Ohio where his manufacturing facilities are located. These returns are subdivided as follows:

Personal property taxes	40
Franchise taxes	7
Corporate income	7
Corporate franchise based on income	3
Sales tax	7
Intangible property tax	4
Business licenses	3
Information returns	5
Total	76

In addition, this company is required to file quarterly reports on unemployment taxes in 32 States and withhold State income taxes on employees residing in 3 States—a total of more than 200 returns.

This man estimates that the direct cost of preparing these returns is $7,500 per year and to that figure must be added $5,000 in tax services and attorneys' and accountants' fees. Bear in mind this is the cost of filing the returns and does not include the cost of setting up the necessary records and paying the taxes.

He points out that these are in addition to reports required by Ohio and by the Federal Government including Internal Revenue, Securities and Exchange Commission, and Social Security.

There are several excellent State tax services published in this country. One of the better known costs $700 a year and that cost alone would work a hardship on a small business. But the greater burden is in analyzing the various local rules to determine whether or not a company is subject to the tax and, if so, going through the tremendous detail required to calculate the tax, make the return, and finally pay the amount due.

We recognize that the individual States have the right to tax an out-of-State company if that company "does business" and operates an office, plant, warehouse, or other place of business in the taxing State, but we cannot accept the idea that the mere solicitation of sales through salesmen, manufacturers' agents, telephone, or correspondence is anything but interstate commerce and therefore subject to the regulatory powers of Congress and Congress alone.

In this, as in other areas, the decisions of the Supreme Court are continually being molded and gradually changed to conform to new conditions in this country. This is as it should be. However, in the field of interstate commerce where the power to regulate is so specifically reserved to Congress by article I, section 8, clause 3 of the Constitution, Congress has an obligation to clarify at least two major points:

1. The definition of interstate commerce. A limiting definition is set up by all three of the bills under consideration at this hearing. We respectfully request that the wording in S. 2281, section 1(b) be adopted. This would have the effect of limiting a State's power to tax any out-of-State individual or company which solicits business only through nonresident salesmen, letters, wires, etc., or through manufacturers' agents who may reside in the taxing State but who handle several lines.

2. Develop appropriate formulas under which the States may tax out-of-State companies which maintain offices, warehouses, plants, or other places of business within the taxing State. Some States use a percentage of sales made within the State compared to a company's total sales as the measuring stick for determining how much tax is owed to the State. Others use a comparison of the amount of business property, capital assets, and inventory owned within the State compared to the total of such properties owned by the company. Some use a formula which combines both factors.

It is entirely conceivable (and here I am agreeing with no less an authority than Mr. Justice Frankfurter) that because of the multiplicity of taxing formulas, a company might be forced to pay the various States on amounts of business which, when totaled, would be more than the company's actual sales for the tax year.

This statement from a third member of the industry throws light on this particular problem:

"In attempting to expand our markets into new States, we frequently spend more over a period of time than the gross profits from sales. How can we fairly apportion this development cost when the same representative may cover two or three States? What about voluntary mail orders?

"As an example we do a sizable business with a concern in Illinois. No salesman calls on them. All quotes, orders, etc., are handled by mail or telephone. We do not even deliver to railroad, but instead their truck picks up at our plant. If there is such a thing as a purely interstate transaction this certainly qualifies, yet under the ruling we are doing business in Illinois and could be subject to tax.

"What are taxable profits? This can vary from State to State. Are they net before or after Federal income taxes? If after, then all these State taxes are deductible before computing Federal tax. If before, then it is conceivable that the amount for Federal tax could shrink to such an extent that an increase in Federal rates would be necessary."

We all know that with the rising costs of Government and the natural desires of people for more and better hospitals, schools, roads, police and fire departments, recreational facilities, there is an ever-increasing pressure for higher taxes at the Federal, State, county, and municipal levels.

A very understandable trait of State legislatures is to impose taxes which have the least possible impact on the State ballot boxes. This is one of the reasons why State taxes on out-of-State corporations could become a heavy burden to interstate commerce.

The appliance industry is important in the American economy, selling necessities of life, but this industry is also very sensitive to changing business conditions. For instance, the recent recession which lasted 8 to 10 months for most industries ran a course of more than 3 years, from August 1955, to the late months of 1958, before any real recovery was felt by the appliance industry. We are not a high-profit industry.

We have had a great many changes in our industry in the past two decades and those changes—mergers, consolidations, liquidations—still continue. This is a part of the free enterprise system and I mention business casualties only to indicate that the industry is not too stable financially even when business is good. To impose a multiplicity of State taxes on purely interstate transactions would add a burden which some of the smaller appliance companies would find extremely difficult to carry.

We as an association—and I am sure you gentlemen will agree with me on this premise—are of the opinion that our industry will serve the country best if it continues to be made up of many small- and medium-sized companies as well as the larger units which have contributed greatly to our progress.

We respectfully request your favorable consideration of S. 2281 and of that portion of Senate Joint Resolution 113 which provides for the appointment of a commission to study appropriate formulas for determining the tax base for out-of-State companies which actually maintain offices, plants, warehouses, or other places of business in the taxing States.

Thank you for giving me this opportunity to appear before you.

(Short recess.)

The CHAIRMAN. Our next witness is Mr. Frase.

STATEMENT OF ROBERT W. FRASE, ASSOCIATE MANAGING DIRECTOR AND ECONOMIST, AMERICAN BOOK PUBLISHERS COUNCIL

Mr. FRASE. Mr. Chairman, my name is Robert W. Frase. I am associate managing director and economist of the American Book Publishers Council, of 24 West 40th Street, New York, N.Y.

The council is the general association of book publishers in the United States. Its 154 member firms include almost all general or "trade" book publishers, such as the Viking Press, Charles Scribner's Sons, Harper & Bros., and Random House; most scientific and technical book publishers, such as McGraw-Hill and D. Van Nostrand; many medical publishers, such as Paul B. Hoeber, Inc., the Blakiston Co., and W. B. Saunders; almost all university presses; publishing houses of many of the major religious denominations; the larger book clubs; and the major publishers of inexpensive paperbound books.

I am also authorized to speak today on behalf of the American Textbook Publishers Institute, a similar organization representing substantially all major publishers of elementary, high school, and college textbooks and encyclopedias and other similar works of reference.

Together the members of these two associations publish perhaps 90 percent of the books appearing in the United States.

The council and the institute are grateful for the opportunity of presenting this statement on the effect on book publishing and book distribution of further State laws which would tax the income of corporations doing business in a national market.

In view of the limited amount of time available for these hearings, I shall not attempt to cover this subject in complete detail nor to duplicate the competent analyses of the problem which have been made

by others, including the Select Committee on Small Business of the Senate in its report of June 30, 1959.

Rather, I should like to concentrate on the particular burden that State taxation of this nature would place on book publishing and the damage which would consequently be done to the educational, scientific, and cultural life of this country.

The three bills being considered today by this committee, Senate Joint Resolution 113, S. 2213, and S. 2281, are all designed to assert the power of the Congress over interstate commerce by prohibiting the State taxation of income derived from interstate commerce unless the business firm has a stock of goods, an office, a warehouse, or other physical facility in the States imposing such a tax. Federal legislation of this nature is being proposed because it is feared that the States will be encouraged to enter this field of taxation by the Supreme Court decision of February 24, 1959, in the *Northwestern States Portland Cement Co.* case.

It has been pointed out that, by and large, the States have hitherto collected business or corporate income taxes from large corporations which had branch offices or other physical facilities in these States, but such taxes have not been imposed on smaller firms which had no such facilities but merely sold goods either through salesman or by direct mail.

If the States were to extend their laws to tax the income of all corporations selling goods in interstate commerce, an enormous burden would be placed upon small firms doing business in a regional or national market. The cost of the paperwork involved in filing 40 or 50 State corporate income taxes would make it impossible for some small business firms to stay in business at all, and would probably force others to stop doing business in States where the volume was small.

Let us see how the further extension of State taxation in this field would affect the publishing and distribution of books in the United States. First of all, book publishing firms are small businesses. Of the 154 members of the American Book Publishers Council, probably only about 10 percent have sales of over $10 million a year and the great bulk of our member firms have sales of less than $5 million a year.

Yet all these companies must attempt to sell their books in every State in the Union. They cannot restrict their sales to a single State or a small group of States as some types of small businesses are able to do. Only a very few book publishers have any branch offices or resident agents scattered around the country. They do their selling through traveling salesmen who call on book stores, educational institutions, and libraries in the various States, and they also sell directly by mail to these several types of customers as well as to individual consumers as in the case of book-club operations.

Therefore, at present, book publishing firms are not, with very few exceptions, now subject to State corporate income taxes except, of course, in the States in which they have their principal offices.

If the States proceed further to tax income from interstate commerce, these small publishing firms would be required to file reports and to pay these State taxes. The preparation of the reports would

frequently be much more burdensome than the actual amount of tax assessed.

For example, in some States, especially in the South and West, a small book publisher may frequently have less than $100 of annual sales and a net profit after taxes on such sales of $2 or $3 or less. The filing of State corporate income tax reports in such cases would cost as much in staff time as the gross amount of sales in such States.

Faced with such a situation, publishers might even be forced to consider refusing to sell books to book stores, libraries, and other institutions in these States because the cost of doing business would be many times the revenue obtainable from doing so.

Other small publishers might find this added burden so severe as to require them to discontinue their operations entirely. Those which did stay in business would be forced to pass on increased costs to their customers in the form of higher prices, since low profit margins would not be sufficient to absorb additional expenses of this magnitude.

The ultimate effect would be detrimental to education, scientific development, and cultural activity in the States imposing such business taxes, and to the country as a whole, to a degree far outweighing the benefits derived from the negligible amount of additional revenue which would accrue to the States from such taxation.

We strongly urge favorable action by this committee on one of the bills before you, drawing a line beyond which State taxation of interstate commerce shall not be permitted to go. All of the three bills under consideration propose drawing a similar line based upon the present practice of most of the States—permitting no taxation of business income unless the business firms to be taxed have physical facilities or resident agents in the States in question. Beyond this, Senate Joint Resolution 113 also proposes the establishment of a Commission on State Taxation of Interstate Commerce to study this whole question further and to formulate an equitable solution to problems experienced by small businesses subject to a multiplicity of State income taxes, while at the same time giving due weight to the revenue requirements of the States. We would favor such a further study, but only after action is first taken to prevent the problem from getting worse while the study is being made.

After listening to the discussion in these hearings this morning, I feel that I should say a few further words on the matter of definitions in the several bills. The question has been raised as to whether the phrase "other place of business in the State," which occurs in all three bills, should not be dropped because it might permit State taxation of business income which should not be taxed by the States. I believe that this phrase should be dropped because it might conceivably subject a book publisher to State taxation if his salesman or agent had his home in one of the States in which that salesman or agent solicited orders, interpreting a residence as coming within the phrase "other place of business." The same question of interpretation might conceivably also arise in connection with a temporary exhibition of samples in a hotel or elsewhere.

Also, in S. 2281, I believe that an independent contractor should not be defined as one who solicits orders for more than one seller. Selling through an independent contractor should not subject a firm to State taxation, regardless of whether the independent contractor solicits orders for only one single firm.

The CHAIRMAN. Thank you very much.

Our next witness is Mr. Sewall Strout, of the New England Council for Economic Development.

STATEMENT OF SEWELL STROUT, VICE CHAIRMAN, TAX AND FISCAL POLICIES COMMITTEE, NEW ENGLAND COUNCIL FOR ECONOMIC DEVELOPMENT

Mr. STROUT. My name is Sewall Strout, and I am representing the New England Council for Economic Development, of which I am vice chairman of the tax and fiscal policies committee.

I am also an officer of the Canal National Bank in Portland, Maine.

The New England council is an organization supported by business, industry, and commerce in the six-State area. We have approximately 3,100 members, representing all segments of our economy. The statements and positions taken by this organization, therefore, truly represent the composite thinking of the region rather than just separate industrial or business groups.

I would like to confine my remarks for the next few minutes to the problems inherent in the recent decisions by the U.S. Supreme Court, involving the corporation income tax laws of Georgia and Minnesota.

It is the considered opinion of this organization that these decisions have opened up a Pandora's box so far as State income tax laws pertaining to interstate commerce are concerned. This is something which will have a far-reaching and costly impact upon the economy of not only our New England region, but the Nation as a whole.

I think that Justice Frankfurter in his dissenting opinion states very well the situation now facing us. He said:

> My objection is the policy that underlies the commerce clause, namely, whatever disadvantages may accrue to the separate States from making of the United States a free-trade territory are far outweighed by the advantages not only to the United States as a nation, but to the component States. I am assuming, of course, that today's decision will stimulate, if indeed it does not compel, every State of the Union, which has not already done so, to devise a formula of apportionment to tax the income of enterprises carrying on exclusively interstate commerce. As a result, interstate commerce will be burdened not hypothetically but practically, and we have been admonished again and again that taxation is a practical matter.
>
> I think that interstate commerce will be not merely argumentatively but actively burdened for two reasons:
>
> It will not, I believe, be gainsaid that there are thousands of relatively small- or moderate-size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining "net income," and, different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States.

Ninety-two percent of the business in New England and 90 percent of the business in the United States is in the small business category, I am informed. Many of the States have already indicated their intention to take advantage of the Minnesota-Georgia decision. The impact of existing as well as future State laws imposing an in-

come tax on interstate commerce transactions will be exceptionally severe on our smaller companies.

In New England, for example, where our States are relatively small, even a very small business soon finds itself engaged in business crossing many States lines. Markets today do not follow the arbitrary geographic boundaries of political entities. The whole northeast section of this country from Maine to Delaware is rapidly becoming a single strip city, an integrated market area oblivious to State boundaries, and this is also true of other sections of the country.

In many instances the profit margins of our smaller companies are already shrinking, and one of their most important assets in competing with their larger cousins is their flexibility. If they are forced to add costly overhead, their competitive advantage has once again been minimized and many of them may be forced out of interstate business, if not out of business entirely.

We have already had indications from our membership that this will happen. This obviously would have a very depressing effect on our national economy.

The Supreme Court has acted, and the die is cast. The precedent for our 50 States to enact legislation levying income taxes on nonresident corporations doing business within their borders has been set. The only solution here is for the legislative branch of our Government to remedy this serious situation.

In this connection, I think that there are certain angles that require careful consideration. Under several of the proposed bills to correct this situation, it is provided that States and political subdivisions thereof shall not be permitted to impose an income tax on income derived from a trade or business by a person engaged in interstate commerce unless such person is carrying on such trade or business in such State. They then state that a person is not carrying on a trade or business in the State solely by reason of one or more sales of angible personal property in the State if such person does not have or maintain an office, warehouse, or other place of business in the State, and does not have an officer, agent, or a representative in the State who has an office or other place of business in the State.

These bills further provide that the terms "agent" and "representative" do not include an independent broker or contractor who is engaged independently in soliciting orders in the State for more than one seller and who holds himself out as such.

This is certainly a step in the right direction, but I merely wish to suggest that further consideration be given to the following situations:

1. What about companies selling services and not tangible personal property?

2. What about a situation where a company may have a sales representative residing in a State which imposes such an income tax? If the representative acts for two or more concerns as an independent contractor, the tax could not be imposed; but if he acts for only one concern and it should be held that his residence was the equivalent of an office, as is likely, then the concern which he represents would be subject to the tax.

3. Should the maintenance of an office solely for the purpose of sales solicitation where no plant or warehouse is located in the State be sufficient to justify the imposition of the tax?

I do not know the best answers to these questions. I only know that it is of vital importance, particularly to small business, that every effort be made to control the taxing power of the States as it affects interstate commerce so that our economy will not be seriously injured.

I thank you, both for myself and the 3,100 interested members of our organization, for your interest in listening to our views today. All of us are deeply interested in the survival of small business in this country, and here is an opportunity to provide for and safeguard its needs.

I believe Congress should act with respect to State taxation of interstate commerce, and not rely on the States to pass uniform laws.

I also believe that there was general agreement that if a person, a corporation, maintains a manufacturing or assembling plant, warehouse, or stock of goods for sale, he or it should be subject to the State's income tax.

The serious difficulties seem to me to arise when the maintenance of an office or other place of business—and let me emphasize those words—also subjects the person or firm to such income tax.

For example, under the Saltonstall bill, a representative or agent is defined. Under that bill there would be a serious question if a concern had a salesman resident in a State who had no office there outside his home, which would probably be held to an office if he used it for telephone calls or mail purposes; whereas when he operates among the adjoining States there would be no imposition of tax in those States.

Also, it seems to me that providing that a manufacturers' agent, so-called, who represents two or more concerns shall not incur a tax for his firms, is rather farfetched in comparison with the proposition of the same man representing a single concern.

In other words, from the hearing today the gist of this matter seems to be the difficulty under all the bills of determining just what "office" or "other place of business" means, and I would suggest at this time that perhaps the solution would be to eliminate both of those tests, or defining them more closely by stating that an office should not include an office maintained merely for the solicitation of orders.

Thank you very much.

I would like the opportunity of submitting, on behalf of the New England Council, some suggested amendments to the pending bills.

(The suggested amendment subsequently submitted by Mr. Strout follows:)

SUGGESTED AMENDMENT TO S. 2213

Of the three bills discussed at the hearing on Tuesday, July 21, 1959, before the Senate Committee on Finance, Senate Joint Resolution 113, S. 2213, and S. 2281, I prefer the S. 2213, which I will refer to as the Bush bill, seems to me the best provided certain amendments are made to it. The principal reason why I do not favor S. 2281, the Saltonstall bill, is that it does not include service businesses in those that would not be subject to State's income tax. Senate Joint Resolution 113 and the Bush bill do take care of this situation.

I would suggest an amendment to the Bush bill, striking out the words "office" in line 9 and the words "or other place of business within the State" in line 10. To make the sentence read properly, I would suggest inserting the word "or" before the word "warehouse" in line 9.

As I pointed out in my statement and in my supplementary remarks at the hearing, it seems to me that the principal difficulties with the problem arise because of the inclusion of the word "office" and "or other place of business." This is also true of the other bills.

If the words "office" and "or other place of business" are left in the bill then all kinds of questions arise as to what is an "office" or "other place of business." For example; a manufacturer in an eastern State having a sales representative in the Western States who for the purpose of convenience resides in one of the Western States, may be held subject to income tax of the State where the salesman resides simply because his residence may be held to be "office" or "other place of business." The same question arises with a traveling salesman who may stop for a week or two in a hotel.

There seems to be enough protection in the other language of the Bush bill which reads as follows: "solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person."

Respectfully submitted.

SEWALL C. STROUT,
Chairman, Tax and Fiscal Policy Committee, New England Council.

Mr. STROUT. I appreciate the opportunity you have given to me to present this statement on behalf of the New England Council.

The CHAIRMAN. Thank you, Mr. Strout.

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

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

STATEMENT OF AMERICAN ASSOCIATION OF NURSERYMEN, INC., ON TAXATION OF INTERSTATE COMMERCE, RICHARD P. WHITE, EXECUTIVE VICE PRESIDENT

The American Association of Nurserymen is composed of approximately 1,575 members located in 47 of the 50 States and doing business in all of them. By all standards, the firms making up our membership are small businesses, averaging less than 10 permanent employees, frequently with only 1 or 2 and are generally family owned. Part of the operation of a great many of these nurseries involves sales across State lines and well over 100 of them are in the full-time mail-order business, mailing catalogs and accepting sales at the home office as a result of catalog orders from many different States. Some nurseries send salesmen on commission into various States soliciting orders. Rarely does a nursery maintain facilities in a State other than that in which its farms and warehousing facilities are located.

This statement is in support of the various bills which are designed to alleviate the tax burden placed on small businesses in this country as a result of the recent Supreme Court decisions in the *T. V. Williams* v. *Stockham Valves & Fittings, Inc.*, and the *North Western States Portland Cement Co.* v. *Minnesota* cases. These decisions support the State's authority to tax the net income of a foreign corporation derived from sales within the State even though the transaction is exclusively in interstate commerce provided the tax is nondiscriminatory and is properly apportioned.

This decision will necessarily result in a tremendous burden of paperwork to maintain records in order to be able to determine taxes due the various States. Most nurseries operate on a narrow margin and their success is often directly related to maintain a low overhead factor. They do not find it necessary nor can they afford to employ tax accountants, tax lawyers, and statisticians to help them in the operation of their business. The hiring of such personnel would be absolutely necessary under the Supreme Court decision in order for a nursery to avoid violating the law of some State in which it makes a sale. Few nurseries if any, maintain records of business done in each State. Territories are not broken down in this manner and to reorganize them on such a basis would be costly and artificial with respect to their normal business operation.

We have already received information that certain wholesale nurserymen will reduce the number of States in which they solicit orders on account of the added burdens imposed in record keeping. The small volume does not justify the added cost.

Strictly mail-order concerns, which are obviously now taxable on net income in all States in which orders are generated only by the mailing of printed mate-

rial will be forced to reduce their mailing lists. This will automatically reduce their volume of sales. -As a consequence it will reduce postal revenues for third-class catalogue mailing and parcel-post revenues for delivery.

The nurseries of this country are perfectly willing to pay their fair share of the tax burden necessary to keep our economy healthy. They are very much afraid, however, that under the law as it now stands, there will be many instances where, in addition to the greatly increased operational costs for complying, a nursery will find that more than 100 percent of its net has been taxed.

Many bills have been introduced to the Congress which will have the effect of alleviating this problem. The American Association of Nurserymen wishes to record its support of the immediate adoption of any bill which would prohibit a State from taxing income derived by a business whose only activity within the State is solicitation of orders.

We wish to thank the committee for this opportunity to express our views on this subject which is of such immediate and great importance to the nursery industry.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., July 22, 1959.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As managing director of the American Trucking Associations, Inc., I take this opportunity to discuss a few of the problems of the taxation of interstate commerce and the bills relating to that taxation as presently considered by your committee.

The American Trucking Associations, Inc., is a federation that was established in 1933 as the national trade association of the trucking industry representing all types of motor carriers of property, both for hire and private. We have affiliated associations in all 48 States and in the District of Columbia and by reason of said associations, we are fully cognizant of the present problems relating to the taxation of motor carriers which have sharply increased since the decisions of the Supreme Court in *Northwest Portland Cement* v. *Minnesota*, *Williams* v. *Stockham Valves* and *ET & WNC* v. *Curry*. For the first time in the history of constitutional law, the Supreme Court of the United States by those cases ruled income from interstate commerce taxable. This novel doctrine has resulted in problems of added taxation, retroactive assessments, and multiplicity of apportionment formulas resulting in the possibility of over 100 percent taxation of income of interstate businesses and a maze of reporting which burdens the resources of even the larger businesses to say nothing of the smaller trucking companies.

As Judge Frankfurter said in his oft quoted dissenting opinion in the *Minnesota* case, "This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States."

Perhaps the following individually discussed subjects will point up the problems.

(*a*) *Added taxation.*—The additional taxation borne by small businesses is obvious. Not only will the cost of competing with the corporate giants be greater but smaller businesses will be forced to withdraw from interstate activity and restrict themselves to smaller realms. Now we are not advocating that any business or class of businesses should escape or be immune from taxation. We do state that the motor carrier industry is unique. Unlike manufacturing companies which although they operate interstate are primarily for legal purposes in intrastate commerce, the trucking industry is to some extent involved solely in moving freight between the several States in interstate commerce. Such a movement was and has always been guarded from State taxation by the commerce clause because the States had no constitutional right to regulate, burden, or tax interstate commerce. It is against this backdrop that one must view the motor carrier problem of added taxation in a field previously not taxed or taxable.

(*b*) *Retroactive taxation.*—Motor carriers, particularly common carriers, primarily operate interstate. For many years they have relied upon the decision of *Spector* v. *O'Connor* which prevented the taxation of interstate commerce by

means of privilege taxes. Privilege taxes were a nebulous area which from the decisions could have been construed to be "Privilege taxes," "doing business taxes" and other such levies except direct net income taxes. The Supreme Court of the United States has now permitted retroactive assessments despite taxpayer reliance on previous decisions. This retroactivity will permit back assessments to be levied upon small corporations who may be totally incapable of meeting those assessments. In addition, it will severely limit the working capital of those who survive and will make borrowing a calculated risk on the part of the lender.

(c) *Multiplicity of taxation and allocation factors.*—Certainly an area of complete chaos exists in determining the portion of income that should be allocated to each taxing State. One has only to look at the State apportionment factors to determine this. Washington, D.C., uses the single factor of sales or receipts, 5 States use two-factor formulas of property and receipts and 23 States use the three-factor formula of property, receipts, and payroll. While generally speaking, the formulas appear identical, one would have little difficulty finding a State official to tell him that although such formulas do appear simple, just, and equitable, that in effect, few if any are comparable in interpretation and application. For example, sales or receipts are used in the numerator in Kentucky if negotiated there; in Missouri if the sale is received or approved in that State and in Georgia if the goods are delivered there. Thus, a sale negotiated in Kentucky, received or approved in Missouri, and delivered in Georgia could result in the taxation of 300 percent of income if only that point were considered.

The payroll factor is equally confused. Only those wages paid employees working in or from State located offices are includible in the numerator in some places such as Kentucky. Other States use payroll on the basis of time used or compensation earned in the State. Pennsylvania uses both rules. Thus, for truckdrivers, wages paid drivers chiefly assigned from Kentucky offices, driving through Pennsylvania would be used twice in the payroll factor. The entire wages would be used in the Kentucky factor and the compensation earned in Pennsylvania on a mileage basis would be included in the Pennsylvania factor. It is certainly obvious that over 100 percent of income would be taxed in this example.

In addition some States apportion motor carrier income on the basis of mileage and other factors.

(d) *Increased reporting.*—We again refer to Mr. Frankfurter's statement on the vast amount of increased reporting required by small business. From the rooftops small business shouts by its small voice for Congress or perhaps the courts to curtail or severely limit the wide reach for additional and perhaps unjustified income by the States. They await action that is so urgently needed.

While several bills have been prepared and presented on the interstate taxation problem there appears little in those proposals which would alleviate the present problems as they relate to motor carriers. The bills primarily apply to companies which sell tangible property and admittedly do not curtain the effect of the recent Supreme Court decisions. Actually the bills proposed do no more than restate the effect of the Supreme Court cases in question. But this is an area of regulation and interpretation reserved not for the courts, but by constitutional grant, to Congress to define. There is certainly no question that the regulation of interstate commerce is a field wholly within the jurisdiction of Congress. This power to regulate has been recognized and formalized in the report of the Committee on Small Business. Mr. Justice Frankfurter in his astute dissenting opinion in the *Northwest Portland Cement* and *Stockham Valves* cases stated that the solution to the inequity of those decisions rested with Congress and charged Congress with solving the problem with legislation, and an affirmative congressional policy. The following is a direct quote from Mr. Frankfurter's decision:

"The problem calls for a solution by devising a congressional policy. Congress alone can provide for a full and thorough canvassing of the multitudinous and intricate factors which compose the problem of the taxing freedom of the States and the needed limits on such State taxing power. Congressional committees can make studies and give the claims of the individual States adequate hearing before the ultimate legislative formulation of policy is made by the representatives of all the States. The solution to these problems ought not to rest on the self-serving determination of the States of what they are entitled to out of the Nation's resources. Congress alone can formulate policies founded upon economic realities, perhaps to be applied to the myriad situation involved by a properly constituted and duly informed administrative agency."

We believe that Congress should not only investigate and consider but affirmatively act in the following two areas on the taxation of interstate commerce particularly as it effects the motor carriers:

1. Initiate and pass a bill to prohibit taxation of interstate commerce. Bills presently considered by the committee are to preserve the present "status quo." We believe that a bill should be passed maintaining the status quo as it existed before the recent Supreme Court cases. We should revert to the historic principle of no taxation of interstate commerce.

2. Require rather than urge the adoption of uniform allocation formulas by States. While this proposal would appear to be contrary to No. 1 above, actually such is not the case. Companies operating in interstate and intrastate commerce jointly have always been subject to State income tax on their intrastate activities. The whole of their operations (including interstate business) have always been used to measure the apportioned, taxable, State income. Failure of the States to institute reasonable, fair, and workable apportionment formulas has been the tax problem of the decades. Thus, whether interstate commerce is or is not taxable, fair and uniform apportionment formulas must be enacted. If the States cannot and will not put their house in order, then Congress must intercede.

We respectfully request that this letter be made a part of the record in the current hearings.

Very truly yours,

JOHN V. LAWRENCE.

AMERICAN MINING CONGRESS,
Washington, D.C., July 23, 1959.

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

DEAR SENATOR BYRD: This statement is presented on behalf of the American Mining Congress, representing the various branches of the mining industry throughout the country.

The recent Supreme Court actions which appear to permit State taxation of interstate commerce, even where no office or warehouse is maintained in the taxing State, can easily have a very damaging effect upon commerce. The problem of complying with a multitude of State regulations will unduly hamper business transactions out of all proportion to the revenue which might be collected by the particular States involved.

The mining industry believes that Congress should, as a minimum corrective action, enact legislation, such as that now being considered by your committee, to prohibit State taxation of income which is derived exclusively from interstate commerce when no permanent or established stock of goods, plant, office or warehouse is maintained within the taxing State.

There are many instances where the failure to correct this situation will be damaging to mining companies. For example, a coal company producing coal in Pennsylvania and soliciting orders in New York should not be required to cope with allocation of income problems in the State of New York, particularly when no stock of goods, plant, office, or warehouse is maintained in the State of New York. Further, the amount of revenue that might be collected by the State of New York in such an instance would not warrant the accounting and administrative burden imposed on the coal company. The same type of situation occurs with frequency throughout the entire mining and minerals industry.

Unfortunately, it appears that the disruption to business inherent in the recent Court actions will be multiplied many times unless corrective action is taken promptly. Already there are indications that many States which now make no attempt to levy a tax upon such income from interstate commerce will, in the absence of corrective legislation, soon amend their laws to try to obtain a share of tax income from this source.

The American Mining Congress takes the position that business generally, including the mining industry, will be unduly burdened if Congress fails to take corrective action in this field.

It is requested that this statement be made a part of the record of the hearings currently being held by the Finance Committee on the subject of State taxation of interstate commerce.

Respectfully submitted.

AMERICAN MINING CONGRESS,
LINCOLN ARNOLD,
Chairman, Tax Committee.

THE PLASTIC COATING CORP.,
Holyoke, Mass., July 22, 1959.

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

DEAR SENATOR BYRD: As the president of the Plastic Coating Corp. I would like to place my company's name on record as favoring the enactment of S. 2281 which was filed by Senator Saltonstall.

My company is primarily involved in the paper processing industry and its operations are of an interstate nature. Due to the decisions of the Supreme Court in the *Northwestern States Portland Cement Company* and *Stockham Valves and Fittings, Inc.* cases, I am very concerned about the future tax status of this company's operations.

According to the opinion of the company's counsel, and the reports of hearings held by the Senate's Select Committee on Small Business, I understand that the Federal Government has the power to remedy the problems created by the present and prospective imposition of taxes by the several States on income derived from interstate commerce within their boundaries. Senator Saltonstall's bill would resolve the problem of determining when a company is doing sufficient business within a State to be subject to the State's taxing power. Inasmuch as the determination of this issue is a prerequisite to the solution of other problems, such as the method of allocation of income to the States, I urge your committee to make a favorable recommendation of S. 2281. The bill creates a good balancing of the interests of the States in obtaining revenue for the services they provide against the interests of companies in being free from unreasonable restrictions on their interstate operations.

On July 13, Representative Edward P. Boland introduced H.R. 8175, which seems identical to S. 2281. It is my hope that these measures will be enacted soon so that further considerations can be given to the other problems set forth in the select committee's report.

Very truly yours,

WALTER V. SHEARER, *President.*

DRAPER BROTHERS CO.,
Canton, Mass., July 21, 1959.

Hon. HARRY F. BYRD,
Senate Finance Committee,
Senate Office Building, Washington, D.C.

SIR: During the past 40 years, shifting Supreme Court decisions regarding the authority of States to tax out-of-State businesses on income derived from interstate commerce have been most confusing. The majority opinion handed down in the recent *Northwestern States Portland Cement Company* and *Stockham Valves Company* cases ruled on the constitutionality of a State's right to levy income taxes on that portion of a foreign corporation's net income earned from activities within the taxing State. That opinion did not expound on what might constitute income earned in the taxing State nor did it set any standard of fair apportionment to business activities within the taxing State. Without a proper and uniform interpretation and application of these two points, gross inequities will result.

The Congress of the United States has the responsibility and power to provide a clear-cut, uniform and equitable code of laws governing the taxation of interstate commerce.

Hearings are scheduled to begin today with respect to the bills filed by Senator Saltonstall (S. 2281), Senator Bush (S. 2213) and Senate Joint Resolution 113 by Senator Sparkman. We feel that legislation authorizing State taxation upon income derived by a foreign corporation engaged exclusively in interstate commerce is a burden upon interstate commerce and that it is unconstitutional. However, the Supreme Court has ruled differently. Therefore, in considering the above-mentioned Senate bills and joint resolution, we urge you to favor S. 2281 which would prohibit a State or political subdivision thereof from imposing any income tax on an out-of-State business concern unless it maintains an office, warehouse or other place of business in the taxing State.

Unless the power of the State to tax is limited to that degree, many small businesses will undoubtedly have to liquidate because of their inability to absorb the expenses of additional recordkeeping, filing returns to most of the States in the Union, tax counsel, etc.

Those firms which are able to survive the impact of such additional expenses will, of course, be permitted to deduct the clerical, legal and other costs involved before arriving at their income taxable by the Federal Government. Furthermore, presumably many States which do not have all-inclusive income tax laws at the present time, will adopt one in order to capture their portion of the tax on income derived within their borders by foreign concerns. Thus, there develops another form of Federal tax deduction. What impact these elements will have upon Federal tax receipts is perhaps beyond all comprehension. If it proves to be substantial, it very well could mean an increase in Federal income taxes also.

In conclusion, we again request that you help small business by supporting S. 2281.

Very truly yours,

JOHN H. DRAPER, Jr., *President.*

STATEMENT BY ELTON KILE, PRESIDENT, NATIONAL ASSOCIATED BUSINESSMEN, INC., WASHINGTON, D.C.

National Associated Businessmen, Inc., is concerned mainly with the preservation of the free-enterprise system through the elimination of unfair competition by Government's competitive business enterprises, and through the imposition of fair and equitable taxes at all levels of the economy.

We are disturbed at this time by recent decisions of the Supreme Court which would apparently make it possible for State governments to level income taxes upon the earnings of companies that do business in States where they have neither factories, nor offices, nor warehouses, nor stocks of goods.

Heretofore, it has been generally recognized that a corporation, a partnership, or an individual businessman would be taxed in the State in which he concentrated his business activities in a major way, but that he would not be taxed in States where his salesmen developed incidental business, or where such business was developed by mail. We believe that the tax system should remain as it has been in the past.

These are unscrupulously predaceous times in the field of taxation. Practically every level of government is in financial trouble. Practically every level of government is rapaciously looking for new victims whom it may plunder to pay the bills for its own extravagances.

The Supreme Court's decisions have opened a new avenue of attack, especially on little companies, and unless Congress acts promptly, these smaller enterprises, many of them now in their growth period, are likely to be struck down by such a burden of multiple taxes at the State level as will leave few of them able to fulfill the happy destiny that now lies before them.

We ask you, very simply, to write out of the various good bills that are before you a measure that will prohibit any State from taxing the income of a corporation, a partnership or an individual proprietor that is doing business within its borders, unless such a company has an office, a warehouse, or other place where it actually does business in the taxing State.

STATEMENT ON THE IMPACT OF MULTI-STATE TAXATION ON THE APPAREL INDUSTRY, PRESENTED IN BEHALF OF THE APPAREL INDUSTRY BY SIDNEY S. KORZENIK

The 35 trade associations subscribing to this statement represent the diversified apparel industry of the Nation. They have joined in presenting this statement to your honorable committee to express the concern felt throughout the apparel industry over the consequences of the recent decisions of the U.S. Supreme Court upholding the power of the States to tax the net income of out-of-State corporations for business activities conducted within the taxing State when those activities are exclusively in furtherance of interstate commerce. We respectfully urge congressional action in the present session to alleviate some of the consequences of those rulings.

The apparel and apparel-accessory industry is characterized by a multitude of small enterprises. The industry as a whole is large: it provides a livelihood for approximately 1¼ million men and women, furnishing an annual payroll of over $3½ billion and producing an essential commodity whose value at the wholesale level is estimated at over $13 billion a year. It is estimated that there

are about 34,500 employers in this field of enterprise and that the average establishment employs less than 40 persons.

Significant for the purpose of your committee's present study is the fact that the apparel manufacturer, small though he is, typically distributes his products throughout a large number of States. It is not uncommon for a company with no more than $1 or $2 million of annual sales to sell to customers in nearly all of the States. Orders are solicited usually by means of traveling salesmen and sometimes by local agents.

To illustrate the impact of the tax decisions referred to above upon the apparel and apparel-accessory industry, we made a brief survey preparatory to our appearance before the Senate Small Business Committee. The survey covered 122 firms drawn from various branches of the industry and doing a total annual business outside of their home States of approximately $260 million, or an average of about $2 million each. In all cases, sales are made on the basis of orders solicited by traveling or resident salesmen and in few cases were any offices or any establishments maintained outside of the home State. The number of States in which the firms covered by this sample study distributed their goods appears in the following table:

Grouping of 122 apparel firms by the number of States in which goods are sold

Number of States:	*Number of firms*
40 States or more	113
30 to 39 States	7
20 to 29 States	2
Less than 20 States	0
Total	122

NOTE.—The firms in this sample were picked at random, except that out of 124 firms whose data were received, 2 were excluded from this summary because their sales were exceptionally large for the apparel industry. One had sales of approximately $25,000,000, the other $20,000,000; and they solicit orders in 48 and 50 States, respectively. The firms covered in this cross-section appear to be somewhat larger than average for the industry, the average sales of the group being about $2,500,000 yearly and sales outside of the home State being a little more than $2,000,000, as shown above. But their widespread distribution is typical.

What makes the burden particularly grievous is the fact that this industry is highly competitive and operates on a very thin margin of profit. The ratio of profit to sales in apparel manufacture, according to the most recent "Quarterly Financial Report for Manufacturing Corporations," issued by the Federal Trade Commission and the Securities Exchange Commission, ranged, after taxes, from a low of 0.3 percent in the second quarter of 1958 to a high of 1.7 percent in the third quarter of 1958. The profit on sales in the first quarter of 1959 is reported as 1.6 percent.

Assuming a typical apparel producer with sales of approximately $1.5 million outside of his home State and with a profit within the range shown in the quarterly report referred to above, it is apparent that if he were obliged to file tax returns in 30-odd States at a legal and accounting cost of, say, $300 per return, the filing requirements alone would consume a substantial portion if not all of the profits, to say nothing of the taxes involved. These facts clearly answer the question of whether such multiple State taxation constitutes a burden on interstate commerce.

This and other material was presented by us to the U.S. Senate Small Business Committee. Rather than repeat that entire statement here, we submit a copy of it herewith.

We respectfully urge immediate action by Congress, declaring it a burden upon interstate commerce for States to tax foreign corporations whose activities within the taxing jurisdiction are confined to the solicitation of orders and which have no place of business therein. Specifically, we advocate the minimum standard set forth in title I of the proposed Senate resolution on this subject introduced by Senator Sparkman (S. 2213) and others as favorably reported upon by the Select Committee on Small Business of the U.S. Senate, though the temporary character of that standard will in our opinion create unnecessary uncertainty. In any case, we ask that the standard be not limited in its application to taxable years which end after December 31, 1958, as its terms presently provide, but that it cover taxable years prior thereto. We feel that such limitation as the bill contains on this point is likely to sanction inequities in an area already troubled with considerable confusion.

This brief is filed in behalf of the 35 trade associations listed below with the name of the chief executive in each case:
Affiliated Dress Manufacturers, Abraham Katz.
Allied Underwear Association, Jacob P. Rosenbaum.
American Knit Glove Association, Harry A. Moss.
Associated Corset and Brassiere Association, Jed Sylbert.
Associated Fur Manufacturers, J. George Greenberg.
Boys' Apparel & Accessories Manufacturers Association, Leon M. Singer.
Corset & Brassiere Association of America, John C. Conover.
Covered Button Association of New York City, Abraham Edelman.
Eastern Women's Headwear Association, Louis Levitas.
Fashion Originators Guild of America, Leonard W. Gendler.
House Dress Institute, Max Milstein.
Industrial Council of Cloak, Suit & Skirt Manufacturers, Bertram Reinitz.
Infants' & Children's Coat Association, Joseph L. Rubin.
International Association of Garment Manufacturers, Jules Goldstein.
Lingerie Manufacturers Association of New York, Jack Gross.
Manufacturers of Snowsuits, Novelty Wear & Infants' Coats, Inc., Joseph Rubin.
Merchants Ladies' Garment Association, Joseph L. Dubow.
Naational Association of Blouse Manufacturers, Leonard Hammer.
National Association of House & Daytime Dress Manufacturers, Erwin Feldman.
National Association of Shirt, Pajama & Sportswear Manufacturers, Max J. Lovell.
National Authority for the Ladies' Handbag Industry, Max Berkowitz.
National Coat & Suit Industry Recovery Board, Joseph L. Batchker.
National Dress Manufacturers Association, Isidore A. Agree.
National Knitted Outerwear Association, Sidney S. Korzenik.
National Outerwear & Sportswear Association, Jules Goldstein.
National Skirt & Sportswear Manufacturers Association, David Eichen.
National Women's Neckwear & Scarf Association, George Marlin.
Negligee Manufacturers Association, Jack Gross.
New York Clothing Manufacturers Exchange, Aaron D. Endler.
Popular Priced Dress Manufacturers Group, Louis Rubin.
Southern Garment Manufacturers Association, Gordon McKelvey.
Trouser Institute of America, Jules Goldstein.
Tubular Piping Association, Sam Scholnick.
Underwear Institute, Robert D. McCabe.
United Infants' & Children's Wear Association, Max H. Zuckerman.

STATEMENT PRESENTED TO THE U.S. SENATE COMMITTEE ON SMALL BUSINESS IN BEHALF OF THE APPAREL INDUSTRY BY SIDNEY S. KORZENIK

The consequences of the Supreme Court decisions in the *Stockham Valves* and *Northwestern States Portland Cement* cases, construed as they have been by the subsequent denial of certiorari in the Louisiana State taxholdings, have spread concern through the apparel industry. This statement seeks to set forth the special grounds for our concern and to offer a few suggestions toward relief. It is presented in behalf of 35 trade associations in this highly diversified field of garment manufacture—they are listed below—and reflects the interests of apparel producers throughout the country.

The special impact of these recent tax decisions upon apparel producers lies in the fact that although the apparel industry as a whole is large and represents an appreciable segment of our economy, it is made up of numerous small enterprises. The average company in the apparel and finished textile product field has less than 40 employees. Yet the typical apparel firm distributes its products throughout a large number of States. It is not uncommon for a company with no more than one or two million dollars of sales annually to sell its product to customers within all or nearly all of the 49 continental States, if not the 50th as well; and orders are solicited usually by means of traveling salesmen and sometimes by local agents.

To illustrate the facts more concretely, we arranged in the limited time available before this hearing for some of the trade associations joining in this statement to obtain data on approximately 10 firms in each of their respective industries, showing the total sales volume, the amount of business done annually outside of their home States, and the number of States in which they distribute

their merchandise. In this manner, figures were obtained on 122 firms doing a total annual volume outside of their home States of approximately $260 million, or an average of about $2 million each. In virtually all cases sales are made on the basis of orders solicited by traveling or resident salesmen. The number of States in which their goods are sold is set forth in the following table:

Grouping of 122 apparel firms by the number of States in which goods are sold

Number of States:	*Number of firms*
40 States or more	113
30 to 39 States	7
20 to 29 States	2
Less than 20 States	0
Total	122

NOTE.—The firms in this sample were picked at random, except that out of 124 firms whose data were received, 2 were excluded from this summary because their sales were exceptionally large for the apparel industry. One had sales of approximately $25,000,000, the other $20,000,000; and they solicit orders in 48 and 50 States, respectively. The firms covered in this cross section appear to be somewhat larger than average for the industry, the average sales of the group being about $2,500,000 yearly and sales outside of the home State being a little more than $2,000,000, as shown above. But their widespread distribution is typical.

The burden of filing tax returns in 36 States, to say nothing of others that are likely to follow, is obvious. But that burden is the more grievous in apparel when one considers that this highly competitive industry operates on a very thin margin of profit. The ratio of profit to sales in apparel manufacture is shown by the financial report issued by the Federal Trade Commission and the Securities and Exchange Commission to have ranged between 0.03 percent and 1.8 percent for the last four quarters reported. If the typical apparel producer with sales of approximately $2 million outside of his home State and with a profit computed on the basis of some such slight percentage were obliged to file tax returns in 30-odd States at a cost of, say, $300 per return—a figure selected here only because it has been previously mentioned as a likely one in the course of these hearings—the filing requirements alone would consume a substatnial portion if not all of the profits. The facts unequivocally answer the question whether such multiple-State taxation constitutes a burden on interstate commerce.

It seems to us that Congress would derive the power to regulate and bring some semblance of order into this area of State taxation from sheer necessity as spelled out by the facts, if from no other principle. Congressional power over commerce among the States has been judged broad enough to warrant enactments concerning kidnapers, polygamists' brides, the labeling of goods sold at retail and fleeing witnesses. Even boxing has been held subject to the Federal antitrust laws. It is untenable that any serious impediment should exist on the constitutional capacity of Congress to act for the relief under these circumstances of an industry like ours, which provides a livelihood to approximately 1¼ million men and women with an annual payroll of over $3½ billion annually, producing an essential commodity valued at the wholesale level at over $13 billion a year—as well as in aid of other industries similarly affected.

The major problem, as we see it, is not whether congressional power exists, but how it should be exercised and what form legislation should take. The difficulties arise from the fact that the area in which Congress must now make its initial entry has become covered with an overgrowth of State action and court sanctions during the 48 years since Wisconsin first undertook to impose such taxes. The aim then should be to provide the most effective relief consistent with the minimum violence to State revenue expectations, and, having once entered the field, to lead the States toward a more uniform and constructive solution of State revenue problems than has thus far proved possible through individual State action. Being aware of the difficulties involved, we suggest the following approach:

No Supreme Court decision exists directly maintaining that the mere solicitation of orders by an out-of-State corporation within the taxing State in the absence of any office, property, warehouse, or other facilities comes within the reach of the State's taxing power. No case presenting such facts has yet been passed upon by the Court. The assertion by State tax administrators of their right to collect a tax in such circumstances is based on inference. The denial of certiorari in the Louisiana cases may not be construed as direct authority

to that effect. Hence Federal legislation holding State taxation in such cases to be a burden on interstate commerce would not be contradictory of any holding by the highest Court of the land. We suggest immediate Federal legislation, therefore, preempting this narrow area from intrusion by State taxes.

As for the taxability of the out-of-State corporation which solicits orders and does no more than maintain an office for this purpose in the taxing State (the situation before the Supreme Court in the *Stockham* and *Northwestern States Portland Cement* cases), relief can be granted without contradicting those decisions by providing in such circumstances for tax exemption for out-of-State concerns whose sales within the taxing State amount to less than, say, $100,000 in the tax year or some other reasonable limit. The amount should be fixed at least at a level above which the tax yield would be somewhat higher than the likely cost of preparing a tax return. Such a de minimis rule not only has numerous parallels in the law of taxation, but in all likelihood would be administratively desirable for the States themselves. Otherwise, the attempt to obtain proper returns and effect collection of taxes in every instance of relatively small amounts would be not only a business burden but would probably be beyond the reasonable capacity of an efficient tax administration.

Besides, the establishment of a minimum sales limit would not deny theoretical State taxing power in the absence of further Federal restraints: it would be merely regulatory of the degree of burdensomeness deemed tolerable in interstate commerce. The minimum sales exemption would, of course, apply only where out-of-State corporations do no more than solicit or encourage business and maintain offices solely for this purpose. The complete exemption should apply to firms which have no offices in the taxing State and only solicit orders there that are accepted and shipped at a point outside.

There remains to be considered a third point: The development of a uniform profit allocation formula. This, too, may have to be undertaken, and we believe it to be within the Federal scope, particularly since uniform action on the part of the various States seems remote and most unlikely. But it involves difficulties that will require more time and study than would be possible if legislation is to be enacted in the present session. We therefore urge that the first two points be treated immediately to prevent the inequities and burdens that will result from the further spread of the State tax collection efforts into new areas in the wake of the recent Supreme Court decisions. Ultimately, if not immediately, some harmony between the diverse State taxing formulas may have to be undertaken by Congress for the avoidance of the existing conflicts between State tax laws. But even such an enactment by Congress, instead of being regarded as involving a redefinition and extension of Federal authority, should be recognized as central to the earliest conception of congressional power. It is worth recalling that the Constitutional Convention in 1787 twice passed resolutions based on Randolph's Virginia plan, which—

"*Resolved*, That the National Legislature ought to possess the legislative rights * * * to legislate in all cases * * * to which the States are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."

This brief is filed in behalf of the 35 trade associations listed below with the name of the chief executive in each case:

Affiliated Dress Manufacturers, Abraham Katz.
Allied Underwear Association, Jacob P. Rosenbaum.
American Knit Glove Association, Harry A. Moss.
Associated Corset and Brassiere Association, Jed Sylbert.
Associated Fur Manufacturers, J. George Greenberg.
Boys' Apparel & Accessories Manufacturers Association, Leon M. Singer.
Corset & Brassiere Association of America, John C. Conover.
Covered Button Association of New York City, Abraham Edelman.
Eastern Women's Headwear Association, Louis Levitas.
Fashion Originators Guild of America, Leonard W. Gendler.
House Dress Institute, Max Milstein.
Industrial Council of Cloak, Suit & Skirt Manufacturers, Bertram Reinitz.
Infants' & Children's Coat Association, Joseph L. Rubin.
International Association of Garment Manufacturers, Jules Goldstein.
Lingerie Manufacturers Association of New York, Jack Gross.
Manufacturers of Snowsuits, Novelty Wear and Infants' Coats, Inc., Joseph Rubin.

Merchants Ladies' Garment Association, Joseph L. Dubow.
National Association of Blouse Manufacturers, Leonard Hammer.
National Association of House & Daytime Dress Manufacturers, Erwin Feldman.
National Association of Shirt, Pajama & Sportswear Manufacturers, Max J. Lovell.
National Authority for the Ladies' Handbag Industry, Max Berkowitz.
National Coat & Suit Industry Recovery Board, Joseph L. Batchker.
National Dress Manufacturers Association, Isidore A. Agree.
National Knitted Outerwear Association, Sidney S. Korzenik.
National Outerwear & Sportswear Association, Jules Goldstein.
National Skirt & Sportswear Manufacturers Association, David Elchen.
National Women's Neckwear & Scarf Association, George Marlin.
Negligee Manufacturers Association, Jack Gross.
New York Clothing Manufacturers Exchange, Aaron D. Endler.
Popular Priced Dress Manufacturers Group, Louis Rubin.
Southern Garment Manufacturers Association, W. Gordon McKelvey.
Trouser Institute of America, Jules Goldstein.
Tubular Piping Association, Sam Scholnick.
Underwear Institute, Robert D. McCabe.
United Infants' & Children's Wear Association, Max H. Zuckerman.

DISTILLED SPIRITS INSTITUTE, INC.,
Washington, D.C., July 22, 1959.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Distilled Spirits Institute and the Kentucky Distillers Association we desire to submit additional information for consideration in connection with hearings on Senate Joint Resolution 113, S. 2213, and S. 2281.

Witnesses before the committee have forcefully pointed up the problems raised by recent Supreme Court decisions involving the power of the States to tax income derived exclusively from interstate commerce, and particularly the almost insurmountable problems thus raised for small business concerns.

In no other type of small business is the problem as great as in the case of small distilleries. Because of the necessity of storing their product, for the purpose of aging, for at least 4 years before marketing, and because of the necessity of advance financing of abnormally high Federal and State taxes on their product, small distilleries are hard put to stay in business. The added burden of complying with every State income tax law into which their product is shipped may well be the "straw that breaks the camel's back" for many of these small concerns.

In connection with the matter which the committee has under consideration, the alcoholic beverage industry is faced with a peculiar problem not faced by other industries. Although varying in minor detail, the bills before the committee would prohibit State taxation of income derived exclusively from interstate commerce solely by reason of solicitation of orders in the State, where no stock of goods, plant, office, warehouse, or other place of business is maintained in the State.

The enactment of any one of such bills would undoubtedly rectify the problems faced by other interstate businesses, but would not extend the necessary relief to interstate vendors of alcoholic beverages. By virtue of powers possessed under the 21st amendment, many States require out-of-State shippers to conform to certain requirements which would constitute "domestication" for income tax purposes under the bills as now drafted.

The States of Georgia and South Carolina, as a condition precedent to the shipment of distilled spirits into the State, require an out-of-State seller to register with the State as a "registered producer," to appoint a resident representative who must receive and process all orders and release the spirits when received into the State, as well as requiring the out-of-State seller to obtain a permit for each shipment coming into the State. He must also ship the goods to a State warehouse to his own order.

The State of Idaho requires persons selling liquor to the State monopoly system to appoint a resident State representative. The States of New York, New Jersey, and Colorado require out-of-State vendors to obtain a local wholesaler's

license in order to solicit orders within the State or do any promotional work of any kind.

Some of the monopoly States (States in which the sale of distilled spirits is carried on as a State function) in the past have required out-of-State vendors to conform to what is commonly called the bailment system; i.e., maintain a stock of goods in a warehouse within the State where sales or deliveries are made to the monopoly system. Other States such as Connecticut, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, Oklahoma, and Texas, require an out-of-State vendor to procure a permit or license in order to ship to a State licensed wholesaler and prohibit such wholesaler from purchasing or receiving liquor from a person not holding such permit or license.

While raising no objection to such requirements by a State to the extent that such requirements are necessary for liquor law enforcement, we do protest the collateral effect of State income tax liabilities flowing from such requirements. We believe the committee must agree that the alcoholic beverage industry is entitled to equal consideration with all other industries in the matter of income taxation.

We therefore earnestly request that the committee modify the bills under consideration so as to extend the exemption to instances where a stock of goods, plant, office, warehouse, or other place of business is maintained within a State solely for the purpose of complying with State law or regulations.

Respectfully submitted.

DISTILLED SPIRITS INSTITUTE, INC.,
ROBERT W. COYNE, *President.*
KENTUCKY DISTILLERS ASSOCIATION,
MILLARD COX, *Counsel.*

THE MEAD CORP.,
Dayton, Ohio, July 22, 1959.

Hon. HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: I understand that the Senate is currently concerned with three measures, Senate Joint Resolution 113, S. 2213, and S. 2281, which seek to regulate State taxation of interstate commerce and that the Senate Finance Committee is now conducting a hearing on these measures. Through our legal counsel, I attempted to secure an appointment for an officer of the Mead Corp. to testify at the hearing, but found that all time was reserved. Therefore, I am writing this letter to record the support of the Mead Corp. and its subsidiary corporations for the orderly limitation of taxation of individuals and companies doing business across State lines.

The Mead Corp. is a large paper company with plants and offices in many States. Its subsidiaries have sales solicitors and sales offices in many more States. We currently expend substantial sums, in addition to the various State taxes, to keep necessary tax records and prepare tax returns. We believe that unless there is restrictive legislation by the Congress these costs and, of course, the taxes themselves will rise sharply because of the recent U.S. Supreme Court cases and action by the various States relying on them. We also believe that the greatest proportionate burden will fall on the small individual or corporate business and on all individuals and businesses which conscientiously attempt to comply with the myriad of confusing State tax laws.

In addition to giving S. 2213 our complete support, we would like to recommend that the words "solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person, if" be deleted from lines six through eight of the bill; that the word "unless" be substituted therefor, and that the word "no" in line nine be changed to "a." This would carry the exclusionary intent of the bill to situations in which there is some minor contact with a State other than by solicitation of orders, such as when a company has no contact except to deliver its goods into a State by a public carrier which is technically its agent.

We also recommend that the words "or any other tax" be added after the words "net income tax" in line five to stress the fact that no tax shall be levied on net income in the situations covered by the bill.

Unless the term "person," as used in lines five and nine of the bill, is to be further defined by an applicable and related section of the United States Code, it would be best to insert a definition in this bill which would specify that the

word "person" includes individuals, corporations, partnerships, and other business forms.

We also suggest that the terms "stock of goods," "office" and "place of business" as used in lines 9 and 10 be further defined so it cannot be contended, as some States have done, that mere solicitation of sales by a resident agent who carries samples and has a desk in his home is within the scope of those terms.

We have read the statement which the American Paper and Pulp Association filed with the Senate Finance Committee in support of Senate Joint Resolution 113 and strongly urge favorable consideration of that statement along with Senate Joint Resolution 113 and S. 2281.

Very truly yours,

D. F. MORRIS, *President.*

NATIONAL CANDY WHOLESALERS ASSOCIATION, INC.,
Washington, D.C., July 22, 1959.

Re State taxation of income from interstate commerce.

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

DEAR MR. CHAIRMAN: We would like to add our voice to the widespread appeal that your committee take favorable action on legislation which will prevent the imposition of an unfair burden on small, interstate businesses through State taxation of income from interstate commerce.

We represent 850 wholesalers of candy, tobacco, and related products throughout the United States, many of whom sell and deliver their goods across State lines even though they have their place of business in only one State. We are also authorized to speak on behalf of a large number of supplier firms, such as candy manufacturers and brokerage firms who are our associate members.

We understand that it has been proposed that Congress enact legislation restricting State income tax jurisdiction to situations where the corporation has a fixed establishment in the form of a plant, warehouse, stock of goods, or office in the taxing State. We feel that firms who do no more than operate sales and delivery services across State lines should not be taxed in any State except where their plant or warehouse is located.

To do otherwise would place a very great hardship on the wholesalers located in markets bordering State boundaries. Many of them are already burdened with the problem of segregating and stamping cigarette stocks which are sold in more than one State. Most of them are small operators, averaging about five salesmen, and they do not have the facilities for computing income by States. Many of them are one-man operators without an accounting department.

Of course, if the levying of State taxes on interstate business resulted in a duplicate tax having to be paid, it would be disastrous to wholesaler and broker alike. The margin of operation on confectionery and tobacco is extremely low. In some cases, the margin on cigarettes amount to only the 2 percent cash discount.

Already some of our members are realizing the potential extent of such a tax burden by attempts of some municipalities to set up tax systems which would levy taxes on firms not located in their city but are selling and delivering there. Where this has been successful, the wholesalers have had to withdraw service to those cities.

The same thing might be necessary where States levied taxes on out-of-State firms; however, we believe that it would be impractical for wholesalers located near State lines to curtail their operations across State lines and still stay in business.

We believe that such a limitation of a wholesaler's activities from across State lines would result in many retail communities not receiving adequate service, if at all, because in many cases it would not be economical for a wholesaler located within the State to serve some of the outlying regions far from the central market in which he is located.

From the standpoint of the brokers, most of them have to serve more than one State in order to have sufficient territory in which to operate. Also, as one-man operations, it would be very difficult for them to maintain the records which would be necessary if they are to avoid paying duplicate taxes on all of their income.

We hope, therefore, that your committee will not only recommend proper legislation for action in this Congress, but that you will do everything you can to expedite the passage of such legislation in the Senate this session.

Sincerely yours,

C. M. McMILLAN, *Executive Secretary.*

STATEMENT OF CONGRESSMAN FRANK KOWALSKI (DEMOCRAT OF CONNECTICUT) ON STATE TAXATION OF INTERSTATE COMMERCE TO SENATE FINANCE COMMITTEE

Mr. Chairman and members of the committee, I cannot emphasize too strongly the need for early action on legislation to prevent individual States from taxing the incomes of out-of-State corporations which legally sell within the taxing States although their sole activities there are in the nature of interstate commerce.

You have before your committee several bills dealing with this subject.

In the House, I initiated legislation in this field, and other bills have also been filed.

There is a great danger that unless the Congress provides speedy action, many industries and businesses in my home State of Connecticut and in other States will be presented with a fait accompli which it will be hard to undo by legislation. The Manufacturers Association of Connecticut reports that three States—Tennessee, Idaho, and Utah—have already amended their tax laws to take advantage of the situation resulting from the Supreme Court decisions in the Minnesota, Georgia, and Louisiana cases.

It was never intended that the individual States should set tariff and trade barriers against one another. Yet we now face a situation wherein some States—and there will be more unless immediate action is taken—levy taxes against firms whose only activities in those States are performed by salesmen seeking orders.

In facing up to this problem realistically, we must acknowledge that the greater the number of States which pass or enforce tax legislation of this kind, the more difficult it will be to have the Congress enact laws to prevent it.

I am particularly concerned over the effects of this State taxation trend on small businesses. If it is allowed to continue, then thousands of firms in my State and other States will not only be forced to pay additional taxes, simply for the privilege of soliciting orders, but will face an impossible burden of coping with paperwork, regulations and redtape that vary from State to State.

The Founding Fathers intended this to be one united nation, not a confederation of States with their own tariff walls.

STATEMENT OF HON. RICHARD L. NEUBERGER, U.S. SENATOR FROM THE STATE OF OREGON

Recent decisions of the Supreme Court with respect to State taxation of business income derived from interstate commerce have focused new attention on the particular and peculiar problems faced by small commercial firms whose operations cross State lines.

One of the results has been the issuance of a special report on the subject by the Senate Select Committee on Small Business reviewing the central issues involved and recommending enactment of a temporary standard for "doing business" plus creation of a Commission on State Taxation of Interstate Commerce to study the facts and propose solutions. This legislative suggestion is embodied in Senate Joint Resolution 113 introduced on June 29, 1959, by Sentaor Sparkman and other members of the Senate Select Committee on Small Business.

I believe that passage of Senate Joint Resolution 113 would represent a significant forward step in attempting to solve the very major problems involved in State levies on foreign corporations. I hope that the resolution will be approved by Congress during the current session.

A number of Oregon businessmen have written to me within the past few days indicating their concern with the effect of the *Stockham Valves* and *Northwestern States Cement* decisions of the Supreme Court, and urging that Congress enact legislation designed to bring clarification and uniformity to State taxation of out-of-State businesses.

I request that the communications which I have received be printed in the hearing record, following this statement, for the information of the committee.

TEAGUE LUMBER CO.,
Eugene, Oreg., July 15, 1959.

Re Senate bill S. 2213.

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

DEAR SIR: We urgently request that you do everything in your power to prevent passage, by means of the above bill, of the recent Supreme Court decision to tax income derived from interstate commerce when the only activity within the State is sales solicitation and where no goods, office, warehouse, or other place of business is maintained within the State.

It is our understanding that such a decision can and will involve a person or business whose sole conduct of interstate commerce includes only the solicitation by means of mail, phone, or wire, and in event of sale where the new consignee becomes the new beneficiary owner immediately upon diversion or billing of such goods (i.e., carloads of lumber) such States solicited will have the power to impose income tax.

In our opinion such a ruling would not only involve a horrendous task of auditing, but would also limit the individual's right of free enterprise, and we therefore urgently request your support of the above Senate bill S. 2213.

Yours very truly,

TEAGUE LUMBER CO.,
CHARLES E. TEAGUE.

EATON-YOUNG LUMBER CO.,
Eugene, Oreg., July 13, 1959.

GENTLEMEN: We urge immediate action to prevent States from assessing a State income tax on businesses engaged solely in interstate commerce when these businesses have no office, warehouse, stocks, or places of business in the taxing State. Senate bill 2213 and similar bills have been introduced to accomplish this. We hope you will give them favorable consideration.

Very truly yours,

HENRY T. EATON, *President.*

TREEMOUNT FOREST PRODUCTS CO.,
Portland, Oreg., July 10, 1959.

Senator RICHARD L. NEUBERGER,
U.S. Senate,
Washington, D.C.

DEAR SIR: There is a matter of particular interest to the small businessmen which we feel we should bring to your attention and that is the matter of a recent Supreme Court ruling permitting State taxation of income derived exclusively from interstate commerce even when the only activity within the State is sales solicitation where no office, warehouse, inventories are maintained in the State.

As can readily be seen if such is permitted the small-business individual will be soon forced to close his doors. Therefore, for the benefit of all who are conducting their sales on an interstate basis we respectfully submit that you give your prompt consideration to some means of Federal legislation thereby saving the businessmen from paying income tax to the many States where their merchandise is shipped.

Yours very truly,

DONALD F. SEEBACH.

PACIFIC COAST GARMENT MANUFACTURERS,
July 10, 1959.

Hon. RICHARD NEUBERGER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NEUBERGER: I am writing you behalf of the members of the Pacific Coast Garment Manufacturers Association. The recent Supreme Court ruling upholding the right of States to levy an income tax on earnings derived

from interstate commerce is going to work an additional hardship on the already harassed small businessmen.

Since 90 percent of our members have less than 200 employees, the additional recordkeeping required by this type of a court decision, and subsequent action by all States to get in on the gravy, will mean more expense to each manufacturer. There must be some relief granted to these people. Rising costs and low-priced oversea competition have been squeezing apparel manufacturers for some time.

Inasmuch as Congress has the right to regulate interstate commerce I firmly believe that Congress should provide remedial legislation. Further, I would like to urge that Congress immediately ban any State from taxing income derived from interstate commerce if the only activity in the State is sales solicitation and if the seller does not maintain an office, warehouse, or other place of business in the State.

Our members pay taxes in Oregon and the other States in which they have an office, but obviously they have to have salesmen on the road to sell merchandise in other States as well.

I sincerely hope that you will do everything in your power to aid these small businessmen in preventing this kind of taxation on interstate commerce.

Sincerely yours,

RICHARD PRUTER, *Manager.*

INDEPENDENT DISTRIBUTORS,
Portland, Oreg., June 11, 1959.

Hon. RICHARD L. NEUBERGER,
Senate Office Building, Washington, D.C.

DEAR SENATOR NEUBERGER: Your attention is requested to recent court action which upheld the right of Georgia and Minnesota to levy income taxes on nonresident business for income from interstate commerce conducted within their borders.

More recently, Idaho, Tennessee, and Utah have passed laws providing for similar action by them. This will be an obvious temptation to other States despite the equally obvious ruinous effect upon small and large businesses, especially to businesses in States such as our own who recently decided to ignore the fact that, a dollar taxed by an agency other than its own, has been reduced accordingly.

The tax accounting records alone would defeat many small businesses, but the inequities resulting from the privilege of any and every State to collect income taxes on interstate commerce would be chaotic to all business and should be declared by Congress to be illegal.

Your interest and action in prohibiting this disease before it spreads is earnestly solicited.

Very truly yours,

INDEPENDENT DISTRIBUTORS,
EDWARD L. STOFFEL.

P.S.—Information regarding the above was learned from an editorial on page 20 of Farm and Power Equipment magazine, June 1959 issue.

E. L. S.

WILSON RIVER LUMBER CO.,
Portland, Oreg., July 16, 1959.

Hon. RICHARD L. NEUBERGER,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR NEUBERGER: We feel that it is our duty to call to your attention the following bills: S. 2213 and Senate Joint Resolution 113.

Senator, we urge you to immediately introduce legislation to accomplish the objectives of these bills, for the preservation of the economy of Oregon.

Very truly yours,

KEN FLEISCHMAN.

ZENITH LUMBER CO.,
Portland Oreg., July 16, 1959.

Hon. RICHARD L. NEUBERGER,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR NEUBERGER: We feel that it is our duty to call to your attention Senate bill S. 2213 and Senate Joint Resolution 113.

Senator Neuberger, we urge you to immediately introduce legislation to ac-

complish the objectives of these two bills which in essence will prevent business from paying income tax to many States where they ship goods but in which they do not maintain a place of business. It is our sincere belief that unless such legislation is instituted, not only will all of the employees of this company be affected, but every Oregon business which relies on interstate commerce for its revenue and thereby the whole economic structure of the State of Oregon.

Very truly yours,

JOHN JOHNSON.

WESTERN MILL AND LUMBER CO.,
Portland, Oreg., July 16, 1959.

Hon. RICHARD L. NEUBERGER,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR NEUBERGER: In order to maintain not only Oregon's economy but the economy of the United States as a whole, may we urge you to immediately take such steps as are necessary to introduce legislation to accomplish the objectives of S. 2213, and Senate Joint Resolution 113.

We thank you for your efforts.

Very truly yours,

JOHN MALLOY, President.

VAN WATERS & ROGERS, INC.,
Portland, Oreg., July 13, 1959.

Hon. RICHARD L. NEUBERGER, *Senator,*
U. S. Senate, Washington, D.C.

MY DEAR SENATOR NEUBERGER: On behalf of our company and all other small but expanding western businesses, we strongly urge you to support bill, H.R. 7757, introduced by Representative McCullock, of Ohio.

This bill we consider most necessary in order to modify the effects of two recent U.S. Supreme Court decisions in the *Northwestern States Cement* and the *Stockham Valves* cases. These decisions now make it possible for a State to levy an income tax against a company which does not have an office or warehouse in that State, and which makes only occasional sales solicitations. Under these circumstances, not only the expense of the tax, but the tremendous job of record-keeping, report filing, etc., would not at all be justified.

Thank you for your serious effort to protect the right of business to operate in interstate commerce without undue burden.

Yours very truly,

GORDON GABIE, *Assistant Manager.*

NORTH PACIFIC LUMBER CO.,
Portland, Oreg., July 15, 1959.

Hon. RICHARD L. NEUBERGER,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR NEUBERGER: From a personal standpoint as one of your constituents and from the standpoint of my position with the above firm which employs some 120 others who are likewise your constituents, we cannot help but call to your attention Senate bill S. 2218 and Senate Joint Resolution 113.

Senator Neuberger, we urge you to immediately introduce legislation to accomplish the objectives of these two bills which in essence will prevent business from paying income tax to many States where they ship goods but in which they do not maintain a place of business. It is our sincere belief that unless such legislation is instituted, not only will all of the employees of this company be affected, but every Oregon business which relies on interstate commerce for its revenue and thereby the whole economic structure of the State of Oregon.

Very truly yours,

DOUGLAS DAVID, *President*

POSEY LUMBER, INC.,
Portland, Oreg., July 17, 1959.

Hon. RICHARD L. NEUBERGER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: We urge you to support and seek immediate action to insure passage before adjournment of the following bills: S. 2213, Senate Joint Resolution 113, in order to prevent State taxation of income derived exclusively from interstate commerce when the only activity within the State is sales solicitation and where no office, warehouse, stock or goods, or other place of business is maintained within the State.

Yours very truly,

GEO. E. LONG, *Vice President.*

CHAPMAN LUMBER CO.,
Portland, Oreg., July 14, 1959.

Hon. RICHARD L. NEUBERGER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR NEUBERGER: For us to be taxed by all the States we ship lumber products to—and we ship to all of them—would be ruinous. The tax itself, as well as the added business expense caused, would be more than sufficient to drive us out of business. We feel sure that the businesses of all other medium and small concerns who ship anything to the various States would also be driven out of business.

We urge you strongly to please hasten to visit the Senate Finance Committee chairman, Senator Byrd, to use all his efforts to pass bills H.R. 7757, House Joint Resolution 8019, House Joint Resolution 450, and H.R. 7715.

Please fight hard on this matter and oblige.

Respectfully yours,

R. E. CHAPMAN, *President.*

CASCADE PACIFIC LUMBER CO.,
Portland, Oreg., July 14, 1959.

Hon. RICHARD L. NEUBERGER,
U.S. Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: As you are no doubt aware, there appears to be a tendency for individual States to endeavor to collect income tax from businesses shipping goods strictly in interstate commerce and not maintaining offices, warehouses, or inventory within those States. This situation is further complicated by recent Supreme Court decisions.

Federal legislation, therefore, is about the only means available to save businessmen from having to pay taxes in many States to where they would ordinarily in the course of business ship goods in interstate commerce.

We understand there are at present two bills introduced in the Senate to correct this situation. We refer to S. 2213 and Senate Joint Resolution 113. We are not at this moment in position to say which of these two bills we would prefer but inasmuch as both have essentially the same objective, we respectfully ask your support of these or any compromise bill that might develop having the same objective, namely, to prevent State taxation of income derived exclusively from interstate commerce when the only activity on the part of the shipper is sales solicitation and eventual shipment of goods into that State.

Business in interstate commerce today is hazardous enough, but it would become almost impossible if the shipper had to contend with various taxes that might possibly apply in the 48 States to which he might be called upon to ship.

Yours very truly,

JOHN H. HELM, *President.*

WHITE STAG MANUFACTURING CO.,
Portland, Oreg., July 22, 1959.

Senator RICHARD L. NEUBERGER,
Senate Office Building,
Washington, D.C.

DEAR DICK: A State income tax situation in the various States of the Union has arisen in recent months the potentialities of which open up some alarming possibilities that, if prudent action is not taken, a ridiculous financial burden could be placed on all firms in interstate commerce, regardless of where their home State is.

Our company, and every other company in interstate commerce, is legally subject to State income taxes in many different States, even though our sales representatives merely solicit orders there and even though we maintain no office or warehouse there.

That's the effect of recent decisions of the U.S. Supreme Court, upholding the power of the States to tax out-of-State corporations for the business activity they conduct in the taxing State, despite that such activity may be exclusively interstate commerce. If this situation is left unchanged, the consequences will be punitive for most firms in the country, large or small.

On February 24, 1959, the Supreme Court ruled in two cases that the power to regulate interstate commerce granted by the Constitution to the Federal Government does not preclude the States from taxing the net income which an out-of-State corporation derives from sales within the taxing State, even though such transactions are exclusively interstate commerce. One case involved taxes imposed by Georgia, and another was an appeal by a corporate taxpayer from a similar Minnesota tax law.

In both cases the firms' activities were devoted solely to the solicitation of orders which were sent by mail outside the State to their home office for acceptance. In both cases the taxes were levied on the portion of net income of the corporation presumed under a statutory formula to have been derived from activities in the taxing State.

In Georgia, the words of the statute are worth noting for their breadth of coverage: "Every such corporation shall be deemed to be doing business within this State if it engages within this State in any activities * * * for the purpose of financial profit * * * whether or not it maintains an office * * * within this State and whether or not such activity * * * is connected with interstate * * * commerce." (The cases are *T. W. Williams* v. *Stockham Valves & Fittings, Inc.* and *Northwestern States Portland Cement Company* v. *Minnesota.*)

When Louisiana, which has a similar statute, insisted on collecting taxes from Brown-Forman Distilling Co., which maintained no office in Louisiana and whose sales representatives in that State merely promoted and encouraged the purchase of the company's products without actually soliciting orders, the company appealed to the Supreme Court. In March, following the *Stockham* and *Northwestern State* cases, the Supreme Court refused to consider this Louisiana case, thus leaving the State court decision against the taxpayer undisturbed.

Refusal of the Supreme Court to review a lower court holding need not necessarily be construed as complete agreement in all respects with the decision of the court below. Nevertheless, the practical consequences of these denials as they now stand have been to strengthen immensurably the hand of the State tax collector and encourage an extension of his reach.

Tax proceedings have already been commenced against firms whose activities within the taxing State consist of no more than the solicitation of orders by a traveling salesman or local sales representative.

Under present circumstances, thousands of companies which have never considered themselves subject to such State taxes will now be under an indeterminable burden. Not only will they be expected to file returns and pay taxes in numerous States, but having failed to do so up to now, they also face the danger of being charged with tax arrears for previous years plus interest and penalties.

I understand that the U.S. Senate Committee on Small Business will hold hearings on the subject. What form relief should take is not altogether clear. Some legal doubt has been voiced as to whether Congress has the constitutional right to step into this field and limit the tax power of the States, particularly after the Supreme Court has declared these States constitutionally unrestricted in imposing such levies.

Several bills have been introduced which would have the effect of relieving firms from liability for such State taxes where their only activity within the

taxing State consists of sales solicitation and where the taxpayer maintains no office, or warehouse, and where no stock of goods is carried.

One such bill has been introduced by Senator Sparkman (S.J. Res. 113) in which he has been joined by Senators Humphrey, Saltonstall, Williams, and others. Other such measures have been introduced into the House by Congressmen McCullough of Ohio (H.R. 7757), and Miller of New York (H.J. Res. 431).

On behalf of our company, an Oregon corporation, we are asking that immediate action be taken against these multi-State taxes.

Sincerely yours,

HAROLD S. HIRSCH, *President.*

P.S.—The State of Oregon could possibly lose more income than it would gain because of our small consumption of outside goods. Let's not forget that if White Stag, for example, an Oregon corporation, pays income taxes to other States, this would clearly be an offset against the taxes it pays to its home State. We sell goods in every State in the Union, and some in greater volume than our sales in Oregon. With such huge deductions from our Oregon State income tax, Oregon would receive very little from us and other States in the Union more, and I doubt if Oregon's small consumption will enable it to tax out-of-State manufacturers for enough to make up for losses in tax income it now gets from Oregon manufacturers in interstate commerce.

SCIENTIFIC SUPPLIES CO.,
Portland, Oreg., July 21, 1959.

Hon. RICHARD L. NEUBERGER,
Senator, State of Oregon,
Senate Office Building, Washington, D.C.

DEAR SENATOR NEUBERGER: We would like to call your attention to House bill H.R. 7757 which has been introduced by Representative McCullough of the State of Ohio. This bill would prohibit State taxation of an out-of-State firm, when the only activity of said firm within such State is sales solicitation, and where no office, warehouse, stock of goods, or other place of business is maintained therein. We would appreciate your support of this bill because of our company's concern at the possibility of taxation by individual States of interstate commerce, of the type recently approved by the Supreme Court in its decision in the *Northwestern State Cement* and the *Stockham Valve* cases.

Your cooperation in this matter would be much appreciated.

Very truly yours,

S. P. KELLY, *Branch Manager.*

STATEMENT BY DANIEL S. RING, GENERAL COUNSEL, ON BEHALF OF THE NATIONAL PAINT, VARNISH, & LACQUER ASSOCIATION

This statement presents the unqualified approval and endorsement by the National Paint, Varnish & Lacquer Association of the joint resolution and bills aimed at restricting States from taxing the proceeds of interstate transactions accruing to out-of-State firms.

Our association represents 1,500 manufacturers who produce 94 percent of the total domestic output of paints, varnishes, and lacquers. The overwhelming percentage of our members are in the small business category who cannot afford business locations in States other than those in which their plants are located.

With well-informed observers predicting that ultimately 50 States and more than 100 cities will be taxing net income from interstate transactions accruing to companies wholly removed from the taxing State, the burden on business (and especially upon small business) which this trend would produce is obvious.

We endorse all legislation aimed at abolishing the same sort of burdens upon and obstacles to interstate commerce which threatened to disrupt the Union of the States between 1777 and 1783, under the Articles of Confederation. We believe that the bills under consideration will promote the U.S. Constitution's objective of a free flow of interstate commerce by eliminating a throttling taxation on it, which entails in addition to taxes to be paid, accounting and reporting expense of serious proportions on business, large and small.

UNITED STATES WHOLESALE GROCERS' ASSOCIATION, INC.,
Washington, D.C., July 16, 1959.

Re State taxation of income from interstate commerce.

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

DEAR SENATOR BYRD: Speaking in behalf of our independent wholesale grocers throughout the United States, we wish to register with you and your committee that the enactment of legislation now before your committee with respect to State taxation of income from interstate commerce is very necessary.

Food distribution throughout the United States is operated without regard to State boundaries. For example, a wholesale grocer warehouse at Shreveport, La., is much closer to certain market areas in Arkansas and Texas than many of the warehouses in those States. Therefore, operating on the low margins existing in the food industry today, it is much more economical to serve areas with a short haul from the warehouse regardless of whether or not those areas are across State lines.

With the limited resources of the independent merchant, the heavy competition between independent and corporate chains in food distribution, and the low profit margins existing today, large numbers of independent distributors would be forced out of business if it was necessary for them to pay heavy taxes in each of the several States traveled by their salesmen and served by their delivery trucks.

We have already had a number of serious problems arising from small towns and municipalities attempting to levy a tax on deliveries made to local merchants by wholesale grocers across the State line. To permit such a practice requiring a wholesaler from across a State line to pay a vendor's fee to each town served would quickly become a prohibitive burden. Furthermore, such practice would create a monopoly and most assuredly result in higher prices to the consumer.

Much the same situation would apply in the event States would place a heavy burden of tax on vendors from across the State line.

In the interest of maintaining a sound and economical flow of commerce and to protect merchants from unwarranted tax burdens, we respectfully urge early action be taken by your committee to provide legislation that will assure sound business practices and avoid destructive taxation of out-of-State firms.

Sincerely yours,

HAROLD O. SMITH, JR.,
Executive Vice President.

THE MANUFACTURERS ASSOCIATION
OF THE CITY OF BRIDGEPORT, CONN., INC.,
July 21, 1959.

Re S. 2213, Senate Joint Resolution 13, and S. 2281.

To the Chairman and Members of the Senate Finance Committee, Senate Office Building, Washington, D.C.

GENTLEMEN: The Committee on Taxation of the Manufacturers Association of the city of Bridgeport, Conn., Inc., of which Carroll F. Lewis is chairman, desires to convey its observations to you regarding the urgent need for immediate action along lines proposed in S. 2213, Senate Joint Resolution 13, and S. 2281 which you presently have under consideration.

The Manufacturers Association of Bridgeport is a voluntary association of some 100 manufacturers domiciled in the Bridgeport labor market area.

The Bridgeport labor market is a concentrated industrial area containing a preponderance of small industries. The major items produced include fabricated metals, machinery, machine tools, business machines, ordnance, electrical equipment, helicopters, aircraft components, and instruments and, because of our familiarity with these industries basic to our economy, this statement will deal with certain fundamental aspects of this new, perplexing, and pressing tax problem.

The recent decisions of the U.S. Supreme Court in the Northwestern States Portland Cement and Stockham Valves and Fittings, Inc., cases apparently have opened a Pandora's box from which State tax collectors will swarm over American industry—both large and small.

Although the nexus, as defined by the Supreme Court between manufacturers and any of the several States, may be infinitesimal, the sting of the State tax collectors' bite will affect vitally the smallest industry engaged in interstate commerce.

Manufacturers—whether large or small—by the very nature of their economic purpose and activity must engage to some degree in interstate commerce.

Some 29 States have had laws which levy a direct net income tax and 4 have already taken action to amend such laws to reap immediate tax benefits from the Supreme Court action. Six additional States have a franchise tax based on net income. It is conceivable that in the foreseeable future all 50 States may adopt new revenue laws to capitalize on the sale of goods in interstate commerce.

This is paradoxical. America has grown into a nation of great economic strength because of the unhampered movement of interstate commerce—free of any restriction of tariff barriers.

Just at the moment the world is hailing the emancipation of the European Common Market from its ancient tariff walls, the decision of the Supreme Court would sanction the erection of interstate tax barriers between our 50 United States.

Many manufacturers purposely establish sales offices, warehouses, or other business facilities in a number of other States in order to effect direct local distribution of their products. In many cases, such manufacturers register to do business and pay taxes in such States.

By contrast many other manufacturers concentrate their distribution activities in only one, two, or a few other States, with the result that only minimal sales activity would be the nexus which would subject the manufacturer to the burdens of State income taxation.

It is difficult to project the potential magnitude of this interstate tax burden upon all manufacturers—large or small.

State tax agents would investigate freight depots, express offices, truck terminals, airports, and possibly even the post offices to ascertain the minutest movement of goods in interstate commerce.

They would examine office buildings, telephone books, city directories, advertising media for any clue to an article shipped into the State by a foreign manufacturer who maintains no office, warehouse, or other place of business within the State in an all-out effort to establish an allegedly sufficient nexus.

A flood of tax collection letters and forms would be poured out by the several State tax departments upon such foreign manufacturers which, until their identification by the State tax departments, were unaware of any liability.

The cost to such manufacturers of compiling essential information for either defending their nontaxable positions or for completing required annual tax forms would be exorbitant and would work immeasurable hardship on concerns whether large or small.

A careful estimate of costs incurred by a medium-sized manufacturer incident to the preparation and filing of forms required by State tax departments in the collection of taxes on interstate commerce reveals some startling facts.

To prepare State forms for the payment of interstate taxes or to establish the nontaxable position of the manufacturer in all 48 States is much more costly than the actual payment of the taxes.

Statistical data must be compiled by the sales department, billing department, accounting department, and payroll department for use of the tax department to determine the apportionment of sales, payroll, and property to the several States.

This data must be assembled by the tax department, computed according to the particular State formula and the tax forms completed.

Estimated cost of compliance in each State is $800 for direct tax departmental cost (salaries, tax services, and supplies) plus overhead and cost of other departments of $2,400 making a total of $3,200.

If taxes were paid in all of the Nation's 48 States it would cost such medium-sized company $153,600.

To illustrate the preceding comments, let us take a manufacturer who has two manufacturing plants, one in State A and one in State B, sales offices in 10 other States, and only salesmen traveling in the remaining 36 States. This manufacturer is a medium-sized concern with gross sales of $10 million and taxable income of $1 million. Presently this manufacturer is paying annual franchise and income taxes amounting to slightly over $44,000 in 12 States.

If all States follow the edict of the Supreme Court and adopt corporate income tax laws, this manufacturer will pay an additional $14,000 in taxes to 36 States and its compliance costs will increase by $115,200.

It is evident that this manufacturer would pay compliance costs of $8.25 for every $1 paid in actual taxes.

Appendix A indicates the method used to compute the taxes of our illustration and the cost of compliance. Compliance by small manufacturers would be much more difficult. They could not afford the mechanical equipment utilized by the medium-sized and larger manufacturers and the services of staff tax experts.

Handwork in accounting, as in production, costs more than machine work and would add to the cost of compliance. Small manufacturers could not afford to employ outside accounting services and tax counsel to compile the essential data and prepare the multitude of State tax forms.

Small manufacturers particularly would find it difficult to raise prices sufficiently to pay these greatly increased overhead costs. Price increases might well mean pricing some products out of the market. Increasing foreign competition would also prevent price increases by many manufacturers.

As an alternative the small manufacturer might find it impractical to ship into some States and therefore necessary to limit sales activity to only those States providing sufficient sales volume to justify the cost of compliance with State tax department requirements.

Giving up certain lines of products might be another alternative. It might result in employees being laid off with a consequent increase of unemployment. This would have a stifling effect on small industry. In such a stifling situation, small manufacturers might find it necessary to merge with larger concerns, thus reducing normal competition.

The economy as a whole would be affected adversely as the result of these Supreme Court decisions.

Manufacturers costs of doing business would be inflated.

Should some manufacturers find it possible to raise selling prices, the result would be more inflation.

As these products starting with an inflated price passed through the normal channels of trade, the price would snowball as the distributor, wholesaler, and retailer added their percentage markups.

In view of the serious consequences to manufacturers, t' eir employees, the consumer, and the Nation's economy which may stem from these Supreme Court decisions, we respectfully urge your favorable consideration of and immediate action on S. 2213.

Respectfully submitted.

HARMON E. SNOKE,
Executive Vice President.

Assuming in the first instance that this hypothetical manufacturer has plants in 2 "home" States, regional sales offices in 10 other States, and salesmen traveling out of these offices in all of the remaining 36 States.

Examples of tax computations in four States are based upon the following assumptions:

Sales	$10,000,000
Less costs:	
Payroll	3,000,000
State franchise and income taxes	44,645
Materials and other overhead	5,955,355
Total	9,000,000
Remainder, assuming book and tax income are the same amount	1,000,000
Less Federal income taxes	520,000
Remainder available for dividends	480,000

The customary formula for allocating income to the various States contains apportionment factors of sales, payroll, and property and embraces the concept of using sales in home States on a "shipment" basis and using sales in foreign States on a "destination" basis, thereby using the same sales twice, once in the State of shipment and once in the State where received. On such bases, taxes would be paid on apportioned sale of $19,500,000 rather than the acutal sales of $10 million. This may be clearly seen in the following:

Allocation

[Dollars in thousands]

	Manufacturing plants located in—		Sales offices located in 10 foreign States	Salesmen only located in 36 foreign States	Total
	Home State A	Home State B			
Sales	[1] 6,000	[1] 4,000	[2] 2,210	[2] 7,290	19,500
Payroll	1,656	1,104	55	185	3,000
Property	2,527	1,685	66	222	4,500

[1] On a shipment basis.
[2] On a destination basis.

Assuming one salesman in each of 48 States earning $5,000 annually and have a car and samples valued at $6,000:

Home States

	Home State A		Home State B	
	Thousands of dollars		*Thousands of dollars*	
Sales	6,000	60	4,000	40
	10,000		10,000	
Payroll	1,656	55	1,104	37
	3,000		3,000	
Property	2,527	56	1,685	37
	4,500	171	4,500	114
Total		57		38
Average				
Taxable income	1,000		1,000	
Apportioned to State	570		380	
Tax in actual dollars:				
Tax rate $3.75	21,375		----------	
Tax rate $5.00	----------		19,000	

Foreign States

[In thousands]

	Sales offices						Salesmen only, 36 Foreign States	
	Foreign State A		Foreign State B		8 other foreign States			
Sales	120	1.2	90	0.9	2,000	20.0	7,290	72.9
	10,000		10,000		10,000		10,000	
Payroll	5	.2	5	.2	40	1.3	185	6.2
	3,000		3,000		3,000		3,000	
Property	6	.1	6	.1	48	1.1	222	4.9
	4,500	1.5	4,500	1.2	4,500	22 4	4,500	84.0
Total		.5		.4		7.5		28.0
Average								
Apportioned income		5		4		75		280
Tax in actual dollars:								
Tax at 4 percent	$200							
Tax at 8 percent	----------		$320					
Tax at 5 percent	----------		----------		$3,750		$14,000	

Total State income taxes:	
Manufacturing plants:	
Home State A	$21,875
Home State B	19,000
Sales offices:	
Foreign State A	200
Foreign State B	820
Foreign States, other 8	3,750
Subtotal	44,645
Traveling salesman only, 36 States	14,000
Total	58,645

CHARLES E. GREENMAN CO.
Hampton, N.H., July 20, 1959.

SENATE COMMITTEE ON FINANCE,
New Senate Office Building,
Washington, D.C.
(Attention Mrs. Elizabeth Springer, clerk).

GENTLEMEN: We are writing you to urge that immediate approval be given to Senate bill S. 2213 or Senate bill S. 2281, both of which seek to prevent State taxation of income derived exclusively from interstate commerce when no office or goods is maintained within the State.

We are a small independent manufacturing concern which markets its products in several States. We store no goods and have no offices outside Hampton, N.H. While it is our desire to remain in business, with the burden of Federal taxes already in force and the continually increasing local taxes, it may not be possible for us to do so. We can foresee an almost certain closing of our doors if, in the years when we make a profit, the tax collectors from a potential 48 additional States are not prevented by legislation from taking a portion of that profit.

Furthermore, the assessment of such taxes by the various States would involve many and complex problems with which it would be practically impossible for concerns such as ours to cope. These problems are well described by Justice Felix Frankfurter in his dissenting opinion to the Supreme Court decision which permits the imposition of such taxes. His opinion includes the following statement:

"It will not, I believe, be gainsaid that there are thousands of relatively small or moderate size corporations doing exclusive interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the diverse and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining 'net income' and different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a far-flung scheme for complying with the tax requirements of the different States may well exceed the burden of taxes themselves, especially in the case of small companies doing a small volume of business in several States."

Yours very truly,

CHARLES E. GREENMAN CO.,
D. MALCOLM HAMILTON.

STATEMENT OF THE NEW YORK EMPLOYING PRINTERS ASSOCIATION ON THE SUBJECT OF STATE TAXATION OF BUSINESSES ENGAGED IN INTERSTATE COMMERCE

The New York Employing Printers Association, Inc., a trade association representing the commercial printing industry of the New York metropolitan area, urges the approval by the Congress of legislation which would restrict State tax jurisdiction to situations in which a business firm maintains a substantial, permanent establishment in the taxing State.

This association further urges the Congress to establish a uniform allocation and apportionment formula, mandatory for all States, in order to prevent overlapping and over 100 percent taxation of firms engaged in interstate commerce.

The taxation by the several States of the income of firms which do not maintain any type of permanent physical establishment in the taxing States would impose a heavy burden upon the small printing firms which comprise this association. Even more burdensome than the taxes themselves would be the added bookkeeping, accounting, and clerical expense required to submit accurate tax returns to a great many different States with different tax laws, different reporting forms, and different filing dates.

The effect of such taxation would be to shut off a substantial percentage of the interstate commerce which presently exists within the printing industry. Such taxation would be tantamount in its effect to the imposition by the States of a tariff on goods moving in interstate commerce. It would constitute a backward, restrictive step in terms of its impact upon the growth and economic condition of the Nation's printing industry.

In the long run, unless remedial legislation is approved, retaliatory action by those States which do not now impose a tax upon interstate commerce, including New York and New Jersey, would largely restore the status quo among the States regarding tax revenues, but would leave business firms of all sizes with the burden of paying taxes to scores of different States.

On behalf of its member firms who collectively comprise the second-largest manufacturing industry in the New York area, the New York Employing Printers Association respectfully requests the Finance Committee of the U.S. Senate to recommend prompt and effective legislation as recommended above, in accordance with the constitutional power of Congress to regulate commerce among the several States.

Respectfully submitted.

DON H. TAYLOR, *President.*

MONTGOMERY, ALA., *July 20, 1959.*

Hon. ARMISTEAD I. SELDEN, *Jr.*,
House Office Building, Washington, D.C.:

In connection with hearings to be held July 21 before Committee on Finance of the U.S. Senate, this department would like to call your attention to the following resolution:

"Whereas various States are confronted with problems of taxation of net income of corporations engaged in interstate commerce: Now, therefore, be it

"*Resolved*, That the National Association of Tax Administrators urge the appropriate committee of the Congress of the United States to recommend deferral of congressional legislative attention in the matter of State taxation of net income of corporations engaged in interstate commerce until a study commission set up by the Congress and including appropriate State officials has had opportunity to examine the impact of the recent Supreme Court decisions with regard to State income taxation of interstate commerce. *Northwestern States Portland Cement Co.* v. *State of Minnesota; Williams* v. *Stockham Valves and Fittings, Inc.*, decided February 24, 1959.

HARRY H. HADEN,
Alabama State Department of Revenue.

STATEMENT OF ASSOCIATED INDUSTRIES OF MASSACHUSETTS IN RE STATE TAXATION OF INTERSTATE COMMERCE

The Associated Industries of Massachusetts is a voluntary association composed of manufacturing firms doing business in the Commonwealth of Massachusetts. Our office is at 2206 John Hancock Building, Boston, and we represent approximately 2,000 manufacturing concerns comprising a substantial majority of the industrial payroll of Massachusetts. The great majority of our members may be classified as "small business" since 87 percent employ less than 100 people.

We have noted with interest and concern the Supreme Court decision in the *Stockham Valves* case decided February 24, 1959. In effect, this case when viewed with the companion case, the *Northwestern States Portland Cement Company* case, and the Court's refusal to review a Louisana case, *Brown-Forman Distillers Corp.* v. *Collector*, upholds the right of the individual States to

levy taxes upon income by an out-of-State corporation upon any sales made in the State in interstate commerce, even though the seller does no business in the State such as is commonly understood by Federal and State court decisions to constitute doing business for the purpose of giving State courts jurisdiction over foreign corporations.

Justice Frankfurter in his dissenting opinion well summed up the effect of the majority decisions in these cases. He stated, "Today's decision will stimulate, if indeed it does not compel, every State of the Union which has not already done so to devise a formula of apportionment to tax the income of enterprises carrying on exclusively interstate commerce."

Justice Frankfurter went on to state that such laws would actively burden interstate commerce in that it would force corporations doing exclusively interstate commerce spread over several States not only to pay taxes in those States, but to "keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of 49 (sic) States, with their different times for filing returns, different tax structures, different modes for determining 'net income' and different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States."

Massachusetts corporations are thus faced with the grave problems of not only keeping records and filing returns in 50 States, for undoubtedly all States will now levy similar taxes, but in many cases due to different methods of allocation may well pay taxes on more than 100 percent of income. It is necessary, therefore, that we look to Congress for the solution. As Justice Frankfurter said, "The problem calls for solution by devising a congressional policy. Congress alone can provide for a full and thorough canvassing of the multitudinous and intricate factors which compose the problem of the taxing freedom of the States and the needed limits on such State taxing power."

Congress has this power, I believe, under the U.S. Constitution. Article 1, section 8, clause 3, gives Congress the power to regulate commerce among the several States. Article 1, section 10, clause 2 says that no State shall without the consent of Congress levy any imports or duties except what may be absolutely necessary for executing its inspection laws and that all such laws shall be subject to the revision and control of the Congress. It is clear, therefore, that Congress has the power to act.

We are very much in favor of the report of the Select Committee on Small Business of the U.S. Senate (Rep. No. 453) and are strongly in favor of the joint resolution contained therein (S.J. Res. 113). We believe the bill filed by Senator Leverett Saltonstall (S. 2281) or one of the similar bills pending before your committee should be passed immediately. Such legislation is necessary not only for all manufacturers but for the States themselves and for the purpose of guaranteeing that free flow of interstate commerce the people of the 13 Colonies had in mind when they adopted the original commerce clause of the U.S. Constitution.

NATIONAL WOODEN BOX ASSOCIATION,
Washington, D.C., July 20, 1959.

Senator H. F. BYRD,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: Since the decision of the Supreme Court was rendered in the cases of *T. V. Williams* v. *Stockham Valves and Fittings, Inc.*, and *Northwestern States Portland Cement Co.* v. *Minnesota*, members of this industry have expressed serious concern over the possible consequences. In view of the fact that your committee is hearing testimony on July 21, I would like to submit some facts regarding the possible effect on this industry in the event that State laws are changed to take greater advantage of this decision. I realize that great demands have been made on the committee's time for this hearing and, I have, therefore, not asked to make a personal appearance. I would appreciate the favor, however, if this letter can be included as part of the record of the hearing.

This association represents manufacturers of nailed wooden containers located throughout the United States. The industry is a vital factor in the health of

the Nation's lumber industry, in that it furnishes an outlet for the lower grades of lumber which are not suitable for other purposes, amounting to 6 to 8 percent of the Nation's lumber production. The wooden-box industry is now facing extreme competitive pressures from manufacturers of other types of containers. It will be seriously affected by any influence which tends to increase production costs or overhead.

In order to obtain information on which to base an estimate of the possible effect of the recent Supreme Court decision on this industry, we have made a survey of a few representative manufacturers. Twelve firms were surveyed, with total sales volume in 1958 varying from $100,000 to $5 million. These firms reported that an average of 51 percent of the total volume is shipped across State lines. Individual firms in this group are making deliveries in as many as 42 States. At present, State tax returns are being filed in those home States levying State income taxes and in other States in which production facilities are located.

On the basis of this survey, it is apparent that manufacturers in this field expect the effect of this decision to seriously interfere with their present interstate business and to hamper efforts to extend their markets to States into which they do not presently ship. Among the 12 firms furnishing information, only 2 expressed an intention to continue the active promotion of business in foreign States requiring the filing of tax reports by out-of-State corporations.

It is readily apparent that the effect of this test will be greatest on the small operator in any given field. In order to justify an expanded sales effort within a foreign State, he must balance the possibilities for profit against additional time and expense involved in maintaining records which will allow him to file the proper returns in that foreign State. This can become a very serious problem to many small businesses whose administrative personnel are already overloaded with what is essentially nonproductive work. When it is considered that some municipalities are also levying this type of tax and that more may follow, this workload can increase in geometrical proportion to the number of taxing markets in which the businessman enters. Estimates of the additional cost in administrative time alone ran from $3,000 to $8,000 per year. These figures do not include the cost of additional professional assistance which would be required in many cases.

The possible handicap to interstate business which can result from the decision in question can be minimized through the adoption of Federal legislation such as that now under consideration by your committee. The proposed legislation, including Senate Joint Resolution 113, S. 2213, and S. 2281, through the provisions for limitation of State income taxation to those situations where there is a clearly defined minimum activity, will give the businessman more clearcut ground rules within which he can operate. We strongly urge that prompt action be taken to adopt an effective measure with this type of limitation on State taxing powers.

One bill, S. 2281, would also apply this limitation retroactively. This provision would give some measure of relief to those businesses which have not been filing returns in States in which they have merely solicited orders in the past. We understand that this particular provision may be subject to attack on constitutional grounds. We urge that such a provision be adopted only if the proper separability clause can be included so that other provisions will not be affected in the event such an attack is successful.

In view of the fact that several State legislatures have already acted to take advantage of the apparent extension of State taxing powers resulting from the Supreme Court decision, and since other States now have this type of legislation under consideration, we urge immediate action by Congress to prevent this serious limitation on the development of interstate commerce.

Very truly yours,

H. R. HUDSON,
Executive Vice President.

STATEMENT OF HAROLD R. GIBLIN, A MEMBER OF THE STAFF OF THE NATIONAL SHOE MANUFACTURERS ASSOCIATION, NEW YORK

The membership of the National Shoe Manufacturers Association consists of some 330 shoe manufacturers located from Maine to California. These manufacturers produce 75 percent to 80 percent of the footwear (exclusive of rubber and canvas) made in the United States. The 25 largest companies accounted

for 37.4 percent of the production in 1957; the first 50 companies produced 45.5 percent. Inasmuch as there are approximately 1,000 shoe manufacturers in the country, it can readily be seen that the vast majority of the manufacturers are of small or medium size.

A summary of the 1956 Federal tax returns made by the Internal Revenue Service listed 630 shoe manufacturers with a profit, before Federal taxes, of 5.2 percent and a profit of 2.69 percent after taxes. The tax paid, $49,000,000, was on sales of $1,900,000,000. During this same year, 337 manufacturers had a loss of 4.18 percent on sales of $202,338,000. It follows, therefore, that shoe manufacturing is very competitive and that the financial returns are small. Years prior to 1956 show generally the same ratio as between profit firms and loss firms. The Internal Revenue Service has not as yet summarized the 1957 returns.

There are only a few points which I would like to emphasize to this committee. The problems facing shoe manufacturers are not, of course, unique to them. Similar problems are the serious concern of any corporation in any industry that moves its production in interstate commerce.

Confusion and uncertainty prevailed prior to the February Supreme Court decision. Perhaps the confusion has lifted to some extent since then. Uncertainty still exists, however, but it is more along the lines of "How much do I owe and to what States; how many retroactive years can or will these States go after and how much is it going to cost me in accounting and legal fees?"

Some companies have been paying, some companies have not been paying. Reasons given for not paying were:

1. "We have not been asked to pay."
2. "The tax is unconstitutional as the State has no jurisdiction over the corporation."
3. "The company is not doing business in the State under the terms of the statute."
4. "The company is waiting for a determination of the tax."
5. "Orders are mailed in, salesmen do not accept them."

Payments were made in some cases because:

1. Legal counsel considered the company liable.
2. The State had attached or threatened to attach accounts receivable.
3. The tax was so small it was paid to save accounting and legal expense.

Of the companies paying State taxes most firms paid to only one State, while others paid two, three, or four States.

Firms that have not been paying, whether because of legal advice or because they never were approached, are now faced with a real dilemma. This is the awkward position in which thousands of firms find themselves.

The State of California has been the most aggressive in its endeavors to enforce its laws and has been most successful in obtaining compliance. As other States either rewrite their laws (Idaho, Tennessee, and Utah have already done so) or step up their enforcement activities many marginal firms in this and other industries will either be forced out of business or withdraw from the jurisdiction of some taxing States.

Extracts from Mr. Justice Frankfurter's dissenting opinion have been widely quoted and need not be repeated by me. Mr. Frankfurter raised some danger signals. Here are a few actual examples showing how right he was.

As previously stated, California has been the most aggressive State in the enforcement of its law. It is referred to in some of these examples only because of this. When other States roll at the California level the predicament of many companies could be fatal.

The California tax return consists of six pages 8½ by 11 inches. There is nothing simple about it and many items listed therein request that supporting schedules be attached. The tax return forms of other States are probably as complicated.

I am submitting a State of California "Request for Supplementary Data." This was sent to a firm that has paid taxes since 1954. California now requests that returns be filed from 1937 to 1954. For those wondering about the retroactive feature of these laws, this is apparently the answer. "Reply requested within 30 days" appears at the top.

Also submitted is a "Request for Supplementary Data" that is three pages in length and requests information as to whether or not an examination had been made of the company's Federal tax returns. If so, the submission of the examiners report is requested. Also requested: complete details of sales methods and amount of sales, complete information on ownership of other corporations

whether in or out of California, and finally full details on description of assets and methods of depreciation. This part includes a statement that certain methods of calculating depreciation allowed by the Federal Government are not allowed in California.

The company to whom this particular request for supplementary data was sent replied in a five-page, single-spaced letter submitting the Federal examiner's report and giving full details on two retail stores it controlled (separate corporations). Each store was 2,000 miles from California, one in Milwaukee and one in Chicago. After recalculating depreciation in the approved method (and listing complete details) the taxpayer concluded that it owed 54 cents additional on its 1955 tax and $1.33 additional on its 1956 tax. To quote from taxpayer's letter, "After you give us credit for the additional expense allowed by the U.S. Government for the years 1955 and 1956 you will probably owe us a dollar or so. Is it not ridiculous? Of course it is and also very serious * * * Our problems with you will be multiplied 49 times since we ship small amounts into all 49 States. The cost will be a thousand times the amount of tax involved, and it is a definite threat to our being able to operate at a profit."

A few additional examples.

One company paid $749.50 to its auditors to calculate its California tax. The company showed a loss in its California operations and there was no tax.

A second company was assessed over $2,000 in taxes, penalties and interest. An order to withhold was issued on an account receivable; after months of legal negotiation, the tax was determined to be $144 and was paid. Legal fees alone exceeded $400.

A third company paid a State tax for a 3-year period averaging $75 a year. The auditors fee was $150 per return.

A fourth company, over a 6-year period, paid less than $20 a year. The auditor charged $150 for each return.

A fifth company filed 12 returns at one time with an average of $46 a return. The average cost per return was $100.

The auditors involved in these cases were the regularly retained auditors of the taxpayers. The work involved in collecting information and preparing the returns exceeded the fees charged.

As it now stands, the States have difficulty in administrating their laws and foreign corporations have difficulty in complying. The costs of administering will increase as the States seek out potential taxpayers and extend efforts to collect. The costs to the taxpayer of doing business will increase through added accounting, auditing, and legal expenses.

The taxpayer will be forced to increase his selling prices, which will reflect in an additional cost to the consumer, or, he will reduce his profit, which will mean a smaller tax payment to the Federal Government.

Multiple taxation will occur as some sales will be claimed by more than one State and there is no assurance that the State of domicile will allow credit for income taxes paid to a foreign State.

Both the majority and minority opinions of the Supreme Court in the *Stockham* and *Northwestern* cases clearly stated that Congress has the power to regulate taxation of interstate commerce, but had not done so.

Congress is urged to take immediate action with a view, at least, to clarifying the status so that management of foreign corporations will know where they stand and can plan policy accordingly.

It is further urged that some limitation be placed on this taxing power. It is specifically suggested that firms should be excluded from taxation where their only activity within the State is sales solicitation. Most salesmen for small companies operate from their own homes. Some States, no doubt, will claim that such 'agents' homes are "offices" for taxing purposes. It is urged that, where salesmen operate in this manner, whether on a salary or commission basis, the State be prohibited from claiming the home as an office of the foreign corporation.

It is also urged that States be limited in their retroactive taxing functions. If a foreign corporation has not been paying a State for any one of numerous legitimate reasons, he should not now be held liable for taxes back to 1937 (California). It is more than likely that firms faced with such a problem will be forced to withdraw from the State's jurisdiction and develop its business in other directions.

States hungry for additional revenue will move into this new field aggressively and with little regard to the increase in their own administrative expenses. They will be confident that the increased receipts will provide over and above

the increased costs. At a recent meeting in Buffalo, N.Y., the National Association of Tax Collectors, composed mostly of State tax collectors, adopted a resolution which proposes no action by Congress on this problem. Their objection speaks for itself.

Enclosed is a reprint of an article, "New Threat in State Business Taxation," written by Dr. Paul Studenski and Dr. Gerald J. Glasser and published in the November-December 1958 Harvard Business review.[1]

This article appeared prior to the Supreme Court decision in the *Stockham Valve & Fittings, Inc.* and the *Northwestern States Portland Cement Company* cases. It is an exhaustive objective study of the State tax problem and should be of assistance to the committee in its deliberation.

Respectfully submitted,

HAROLD R. GIBLIN.

STATE OF CALIFORNIA OFFICE OF FRANCHISE TAX BOARD,
Sacramento.

Date: September 26, 1958
Years ended: October 31, 1937 through October 31, 1954
Reply requested within 30 days

REQUEST FOR SUPPLEMENTARY DATA

You are requested to furnish the information indicated below to supplement that shown on your return(s) for the year(s) indicated above. The information is required to be submitted within the time shown above.

Failure to substantiate any deduction taken on the return may result in the disallowance thereof.

FRANCHISE TAX BOARD,
JOHN J. CAMPBELL,
Executive Officer.
By S. H. BRASH,
Supervisor.

Available information indicates that this corporation was actively conducting business operations in California since 1937.

To that extent, a return is required to be filed for each year commencing with income year ended October 31, 1937, to October 31, 1954.

The payment of arbitrary levies or tax does not terminate the corporation's liability from filing proper returns.

Two forms for each year are being mailed to you under separate cover.

STATE OF CALIFORNIA OFFICE OF FRANCHISE TAX BOARD,
Sacramento.

Date: May 27, 1959.
Years: October 31, 1955 and 1956.
Reply requested within 30 days.

REQUEST FOR SUPPLEMENTARY DATA

You are requested to furnish the information indicated below to supplement that shown on your return(s) for the year(s) indicated above. The information is required to be submitted within the time shown above.

Failure to substantiate any deduction taken on the return may result in the disallowance thereof.

FRANCHISE TAX BOARD,
JOHN J. CAMPBELL,
Executive Officer.
By S. H. BRASH,
Supervisor.

Please advise whether an examination has been made of your Federal return(s) for the year(s) indicated above.

If an examination has been made, please submit the examiner's report or copy thereof. If the original report was revised, submit both that report and

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[1] Made a part of committee files but not reprinted in record of hearings.

the revision. Any original documents submitted will be returned to you promptly after being examined.

If a change was made by the Federal Government and no report was received, please indicate in detail the basis of any additional assessment.

Please furnish the data requested on the enclosed form OD805U.

Allocation Formula, Schedule R–1.

Information regarding item 3, Sales Factor:

1. Please explain method of consummating sales both as a general practice and in California, i.e., whether the customer is contacted by your own employees, through brokers or independent contractors, by mail or other means.

2. If sales are ordinarily made by other than employee salesman, please state whether you have representatives who contact your customers, retailers or consumers on so-called missionary work and whether such representatives call on California customers.

3. Inform this office of the total amount of sales made to California customers, regardless of whether made from inventories located in California or elsewhere, the total sales resulting from employee activity while performing services in California, and an explanation as to how the remaining sales were made

Allocation of income-unitary business group.

Did this corporation have any transactions with any corporation(s) either within or without California:

1. Which it owned or controlled?
2. Which owned or controlled this corporation?
3. Which was owned or controlled by common parent corporation?
4. Which was owned or controlled by the same interests?

If so, file information to disclose:

1. Name and address of other corporation or corporations.
2. To what extent operations are unitary as evidenced by centralized purchasing, advertising, accounting or management.
3. Extent of unitary use of centralized executive force and general system of operations.
4. Total sales or business done and amount of sales or business done with affiliated corporations.
5. Federal net income of each corporation.
6. The nature of the business of each such corporation everywhere and the extent of activities in California, if any.

Direct or indirect ownership or control of more than 50 percent of the voting stock constitutes ownership or control for the purposes of this paragraph.

FRANCHISE TAX BOARD OPERATIONS DIVISION

DEDUCTION FOR DEPRECIATION

October 31, 1955 and 1956
Applicable to year(s)

Please submit the following information for the above-indicated year(s) to permit proper adjustment of depreciation claimed:

1. A description of the assets.
2. Method used in computing depreciation.
3. Depreciation under each method.
4. Depreciation allowable on the straight-line method.
5. Depreciation allowable on the 150 percent-declining-balance method if you wish to adopt that method for State purposes.

The sum-of-the-years-digits method and 200-percent-declining-balance method of computing depreciation are not allowable for State purposes. If you elected to use those methods in your return for this year, that will be considered an election to use the 150-percent-declining-balance method, if you wish to adopt that method for State purposes. However, if such an election is made, it does not carry the right or privilege of later changing to the straight-line method as is permitted under the Internal Revenue Code of 1954. Such a later change will require the specific approval of the Board. Permission for such change will be based on existing conditions rather than on the tax advantage which automatically accrues under such a change.

STATEMENT OF MARSHALL J. MANTLER ON BEHALF OF THE BUREAU OF SALESMEN'S NATIONAL ASSOCIATIONS

Mr. Chairman, members of the committee, my name is Marshall J. Mantler. I appear before you today on behalf of the Bureau of Salesmen's National Associations, a joint service organization maintained by three nationwide salesmens groups in as many industries—National Association of Men's Apparel Clubs, National Shoe Travelers' Association, and National Association of Women's and Children's Apparel Salesmen, Inc. I am executive director of the last named organization. The combined membership of all the groups exceeds 20,000 individuals.

Senate Joint Resolution 113, S. 2213 and S. 2281 all represent legislation which is sorely needed to restablish an economic equilibrium in our Federal system. The well-known and highly publicized Supreme Court decision, *Northwestern Portland Cement Co.* v. *Minnesota*,[1] irrespective of its correctness on the facts before the Court, did establish a basis upon which each State in the Union can tax interstate commerce. I would like to place before this committee a summary of what this decision will mean to merely one segment of one large and vital American industry—traveling salesmen in the clothing industry.

I am sure that other witnesses appearing before this committee will very clearly make known the facts as to possible double, triple, and quadruple taxation of the same income; the facts as to the tremendously increased bookkeeping and accounting burden that may fall upon any multistate industry; and the facts as to the great burden that American industry and eventually the American consuming public will have to bear if multistate taxation runs rampant as it surely can under the Supreme Court decision. I would also direct the committee's attention to the trade, business and law journals of this country for a detailed analysis of the basic economic upheaval which may result as a result of the *Northwest Portland Cement* opinion.

The traveling salesmen's group, while not having the economic publicity attendant upon heavy industries, such as steel and automobiles, is one of the backbones of the distribution system in this country. These men, traveling to the remotest corners of the United States, make it possible for the products and improvements of American industry, to gain an extensive market area. If the legislation pending before this committee today is not enacted into law the burdens imposed upon American manufacturers will make it necessary for them to find a source for the absorption of the extra costs resulting from higher local taxes. In those cases where the major sales method is accomplished through traveling salesmen—and this is the fact with most of the soft goods industries—these selfsame traveling salesmen will be made to shoulder the brunt of the increased taxes.

Most commercial travelers are independent contractors employed on a commission basis. It is a simple matter to reduce the rate of commissions by as little as 1 percentage point and effect a major change in the income of these travelers. These men do not have the protection of a strong union structure, nor does their job have the glamour of the management and advertising professions, to name just two, which are attracting most of America's talented young men. A further weakening in the income potential of the traveling salesmens' profession will make it that much more difficult to infuse new blood into the profession and thus will weaken the marketing system in this country. Where in the past it was the job of the traveling salesman to expand the American market in a geographical sense, it is now his job to expand the American market in a quality sense.

These are the men who initially bring to our consumers the advances in American production and manufacturing ingenuity.

Many able commentators have recognized that the *Northwest Portland Cement* case may mean that, even though no sales office is maintained in a State, the State can still tax income if salesmen operate within the State. Certainly the broad general language of the opinion can substantiate such an interpretation. The resolution and the bills now before this committee would severely restrict a State in taxing the income of a business if that business merely maintains salesmen in the State without the physical situs of a sales office. The Bureau of Salesmen's National Associations strongly commends this legislation to the approval of the committee.

The provisions of Senate Joint Resolution 113, establishing a Commission to study and make recommendations in the interstate commerce area, can only

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[1] ——— U.S. ———, decided Feb. 24, 1959.

have beneficial results. There are understandably many complexities in accurately defining interstate commerce, and in the promulgation of methods for the allocation among the several States of the jurisdiction to tax. My organization believes that this Commission would be a great stride forward in helping to solve the complexities.

In the interests of national economic stability, the Bureau of Salesmen's National Associations earnestly supports the legislation being considered.

Thank you for allowing me to appear before you today.

THE AMERICAN BANKERS ASSOCIATION,
Washington, D.C., July 20, 1959.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with your hearings on S. 2213, S. 2281, and Senate Joint Resolution 113, all relating to the authority of the States to impose income taxes on income derived from interstate commerce, I wish to bring a problem relative to bank operations to the attention of your committee.

A question has been raised in view of the recent Supreme Court decisions as to whether it is possible that a bank might be subject to State income taxation by reason of its acquiring loans or investments in a State in which it had no office or other place of business. We recommend, therefore, that any legislation on this subject should specifically eliminate such a possibility. This may be done by making relatively minor changes in the language of the bills you are considering.

I am enclosing suggested redrafts of both S. 2213 and S. 2281 with the omissions and additions indicated in the usual manner which would specifically provide that a business would not be subject to State income taxation solely by reason of making or acquiring of loans or investments in the State.

I hope these suggestions will be favorably considered by your committee.

Sincerely yours,

J. OLNEY BROTT,
General Counsel.

A BILL

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, after the date of the enactment of this Act, no State, or political subdivision thereof, shall have the power to impose a [net income] tax on *or measured by* income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders, *or the making or acquiring from an office outside the State of loans (whether secured or unsecured) or other investments,* in the State by such person, or by an agent or employee of such person, if such person maintains no stock of goods, plant, office, warehouse, or other place of business within the State."

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) no State or political subdivision thereof shall impose [an income] *a* tax on *or measured by* income derived from a trade or business by a person engaged in interstate commerce unless such person is carrying on such trade or business in such State.

(b) For purposes of subsection (a), a person is not carrying on a trade or business in a State solely by reason of one or more sales of tangible personal property in the State (whether title to such property passes in or outside of the State), *or the making or acquiring of loans (whether secured or unsecured) or investment in such State from an office outside such State,* if such person does not have or maintain an office, warehouse, or other place of business in the State, and does not have an officer, agent, or representative in the State who has an office or other place of business in the State. For purposes of the preceding sentence, the terms "agent" and "representative" do not include an independent broker or contractor who is engaged independently in soliciting orders in the State for more than one seller, and who holds himself out as such.

SEC. 2. No State or political subdivision thereof shall, on or after the date of the enactment of this Act, assess or collect any income tax, or make any levy with respect thereto, which was imposed by such State or political sub-

division thereof on the income of any person before the date of the enactment of this Act, if the imposition of such tax, on or after the date of the enactment of this Act, is prohibited by the first section of this Act.

SEC. 3. For purposes of this Act, the term "income tax" means any tax imposed on, or measured by, net income.

NEW YORK, N.Y., *July 20, 1959.*

MRS. ELIZABETH SPRINGER,
Clerk, Senate Committee on Finance,
New Senate Office Building, Washington, D.C.:

On behalf of the rubber manufacturing industry we urge favorable consideration by Senate Finance Committee of Senate bill 2213. We believe enactment of this bill would prevent State taxation of income derived exclusively from interstate commerce when the only activity of an out-of-State firm within a State is sales solicitation and it maintains no office, warehouse, merchandise, stock, or other place of business within a State. We respectfully suggest such legislation would be eminently fair and would prevent an undue burden on interstate commerce. We ask that this telegram be made a part of the hearings record.

ROSS R. ORMSBY, *President.*

HIGH POINT, N.C., *July 17, 1959.*

HON. HARRY F. BYRD,
Senate Finance Committee, Washington, D.C.

DEAR SENATOR BYRD: This statement is submitted on behalf of the Southern Furniture Manufacturers' Association, a voluntary trade association representing 278 manufacturers of furniture, located in 14 Southeastern and Southwestern States. Members of the association represent approximately 85 percent of total furniture production in these States, and approximately 25 percent of nationwide furniture production. Attached to this statement is a complete list of our members by States (app. I).

The southern furniture industry is seriously concerned about the potential impact of the *Stockham Valves & Fittings, Inc.*, and the *Northwestern Portland Cement Co.* cases on its present business operations, and recommends to the committee that legislation be enacted clarifying and limiting the potential scope of these decisions.

The southern furniture industry—as well as the furniture industry as a whole—is composed in large part of many small companies. This is clearly shown by appendixes II and III compiled from the 1954 census of manufacturers, the latest year for which complete figures are available.

Appendix II gives the distribution of 5,275 furniture manufacturing establishments by States, from which it will be noted that furniture is manufactured in practically all of the States.

Appendix III shows that in 1954 the average shipments of the 5,275 establishments were $410,280 with average employment of 40 workers per establishment. Nearly two-thirds (64.3 percent) of the establishments employed less than 20 workers.

According to the 1953 census report, the latest year for which a complete breakdown by size, based on gross sales, is available, 48.9 percent, or nearly one-half of the companies had sales of less than $200,000. Only 18.2 percent, or slightly more than one-sixth had sales of $1 million and over.

Many of the smaller companies sell their products in interstate commerce. Often, traveling salesmen are employed to cover geographical areas including several States or portions of several States. For example, one salesman may cover the Metropolitan New York area and parts of New Jersey; another will cover upstate New York State and Vermont; another may cover a half dozen or so Midwestern or Western States. Since permanent offices normally are not maintained in each State, these companies, before the *Stockham* and *Northwestern Cement* cases, were never considered subject to taxation in the State of the customer, and sales records often were kept on the basis of salesmen's territories.

If these decisions are applied by the States to the maximum possible extent, as a number of States have indicated they intend to do, the additional bookkeeping and record requirements may become so burdensome as to force some

smaller firms to discontinue selling in some States. In order to be able to file tax returns in the various States in which they sell goods, many companies would find it necessary to revise completely their method of keeping records. Records formerly kept on the basis of a salesman's territory would have to be broken down and combined so as to be placed on a State-by-State basis. Each company would also be required to keep abreast of changes in the tax laws of the various States, to keep books for each State on a basis satisfactory to the revenue authorities of that State, and to employ local accountants and counsel to prepare and file appropriate returns and, where necessary, to contest the claimed additional tax liabilities imposed by each State. Further, the books would have to be made available to the revenue authorities of each State, or the authorities would have to be permitted to travel to the main office of the company (presumably at the expense of the company) to audit the books. In many instances the additional expense of making sales in a State and thus becoming subject to its tax laws would far exceed the income to be derived from the sales.

We believe that there are substantial advantages in having the largest possible number of firms actively selling and competing in a single area. The effect of the *Stockham* and *Northwestern Cement* cases can only be to discourage a number of firms, particularly smaller firms, from selling widely in a large number of States.

A second serious effect of these decisions clearly appears from the *Northwestern Cement* case, where Minnesota collected back taxes for all the years Minnesota had its present income tax law. If these taxes are applied retroactively to the smaller members of the furniture industry, their very survival may be in doubt. Of course, none of these smaller firms created reserves to pay these State income taxes for past years, and judgments for past taxes plus interest would of itself be a serious financial blow. In addition, in order to defend adequately suits for collection of these back taxes, many firms would have to go back a number of years and reclassify each sale on a State-by-State basis—obviously a formidable and expensive job. For these reasons we respectfully suggest that the committee recommend adoption of the retroactivity provisions contained in S. 2281.

While we approve of the general approach embodied in the bills before your committee, certain modifications of language would appear to be desirable to make certain that the adoption of practices incident to the conduct of an interstate business will not subject companies to taxation in the various States. The trade practices of the furniture industry have been to a large extent shaped by competitive forces to provide the best and fastest possible service to its customers. In recent years a number of manufacturers have begun shipping products directly to customers by trucks owned and operated by the furniture manufacturer. Arguably under the *Stockham* and *Northwestern Cement* cases, the mere fact of shipping merchandise in a truck owned by the manufacturer may subject the manufacturer to the State's taxing authority. We believe that a manufacturer should not be subject to State income taxes on sales to persons within the State merely because the goods are shipped into the State by private carrier. That is, the method of transportation into a State should not of itself determine the liability of a manufacturer to taxes on sales of the goods. So also the mere maintenance of a stock of goods in rented warehouse space to enable a manufacturer to make fast deliveries in the case of interstate sales should not permit the State where the goods are warehoused to impose an income tax on the manufacturer.

Similarly, the number of manufacturers and styles in the furniture industry are so great that virtually all members of the industry of any size participate in several centrally located trade shows. Space at the show is leased to individual manufacturers to exhibit new products to interested buyers. If participating in such a trade show is deemed to make the manufacturer subject to local taxation, the smaller manufacturers probably would limit the number of shows in which they participate, or might eliminate their participation in out-of-State shows. The effect of this, of course, would be to limit the range of choice presently available to buyers and lessen competition.

We strongly endorse the general principles of the bills presently being considered by your committee. We believe, however, that the language should be broadened to permit the above trade practices, which clearly are beneficial to the consumer, to continue without adverse tax consequences.

Very truly yours,

SOUTHERN FURNITURE MANUFACTURERS' ASSOCIATION,
By J. T. RYAN, *Executive Vice President.*

APPENDIX I

MEMBERSHIP LIST SOUTHERN FURNITURE MANUFACTURERS' ASSOCIATION, HIGH POINT, N.C., JULY 1959

Alabama:
- Standard Furniture Manufacturing Co., May Minette.
- Napier Furniture Co., Dothan.
- Frisco Manufacturing Co., Frisco City.
- Cleveland Table Co., Selma.

Arkansas:
- Owosso Manufacturing Co., Benton.
- Camden Furniture Co., Camden.
- Ballman-Cummings Furniture Co., Fort Smith.
- Eads Furniture Manufacturing Co., Fort Smith.
- Fort Smith Chair Co., Fort Smith.
- Fort [illegible] Couch & Bedding Co., Fort Smith.
- Fort Smith Table Co., Fort Smith.
- Garrison Furniture Co., Fort Smith.
- Rush Manufacturing Co., Fort Smith.
- Ward Furniture Manufacturing Co., Fort Smith.
- Little Rock Furniture Manufacturing Co., Little Rock.

Florida:
- Florida Furniture Industries, Palatka.

Georgia:
- Bolling Hall, Atlanta.
- Del-Mar Cabinet Co., Atlanta.
- Fulton Metal Bed Manufacturing Co., Atlanta.
- Gate City Table Co., Atlanta.
- Austell Cabinet Co., Austell.
- W. L. Frew Corp., Cedartown.
- Duane Chair Co., Dalton.
- Wayniine, Inc., Jesup.
- Southern Furniture Manufacturing Co., Mableton.
- Art Furniture Manufacturing Co., Macon.
- Rex Furniture Co., Inc., Rex.
- Fox Manufacturing Co., Rome.
- Diamond Bros. Co. of Georgia, Swainsboro.
- Quality Furniture Co., Tallapoosa.
- Trogdon Furniture Co., Toccoa.
- Woodland Furniture Manufacturing Co., Woodland.

Indiana: Tell City Chair Co., Tell City.

Kentucky:
- Redington Corp., Carrollton.
- Jackson Chair Co., Danville.
- The Delker Bros. Manufacturing Co., Henderson.
- Green River Chair Co., Livermore.
- Livermore Chair Co., Livermore.
- Columbia Manufacturing Co., Louisville.
- The Jefferson Woodworking Co., Inc., Louisville.
- Kroehler Manufacturing Co. of Kentucky, Louisville.
- H. J. Scheirich Manufacturing Co., Louisville.
- Consider H. Willett, Inc., Louisville.
- Warsaw Furniture Manufacturing Co., Warsaw.

Louisiana:
- Selig Manufacturing Co., Monroe.
- Bienville Furniture & Manufacturing Co., New Iberia.
- Imperial, Inc., New Orleans.
- Muller Furniture Manufacturing Co., New Orleans.

Mississippi:
New Orleans Furniture Manufacturing Co., Columbia.
Johnston Furniture Manufacturing Co., Inc., Columbus.
Futorian-Stratford Furniture Co., New Albany.
North Carolina:
Greer Furniture Co., Aberdeen.
P. & P. Chair Co., Asheboro.
Crest, Inc., Asheville.
R. & E. Gordon Furniture Co., Inc., Asheville.
Montgomery Furniture Corp., Biscoe.
Morgan Manufacturing Co., Inc., Black Mountain.
Carolina Wood Turning Co., Bryson City.
Kroehler Manufacturing Co. of North Carolina, Inc., Charlotte.
Mecklenburg Craftsmen, Inc., Charlotte.
Shaw Manufacturing Co., Charlotte.
Conover Chair Co., Conover.
Conover Furniture Co., Inc., Conover.
Southern Furniture Co. of Conover, Inc., Conover.
Drexel Furniture Co., Drexel.
Whitehall Furniture, Inc., Durham.
Elkin Furniture Co., Elkin.
Novelty Furniture Co., Fayetteville.
Kemp Specialty Furniture Co., Goldsboro.
Webster Furniture Manufacturing Co., Graham.
Southland Wood Products Co., Greensboro.
Unagusta Manufacturing Corp., Hazelwood.
Century Furniture Co., Hickory.
Cox Manufacturing Co., Hickory.
Hickory Chair Co., Hickory.
Hickory-Fry Furniture Co., Hickory.
Hickory Manufacturing Co., Hickory.
Hy-Lan Furniture Co., Hickory.
Maxwell Royal Chair Co., Hickory.
North Hickory Furniture Co., Hickory.
Sherrill Upholstering Co., Hickory.
Suggs & Hardin Upholstering Co., Inc., Hickory.
Western Carolina Furniture Co., Hickory.
B & W Upholstering, Inc., High Point.
Burton Upholstery Co., High Point.
Carolina Seating Co., High Point.
Carolina Upholstery Co., High Point.
Carson's Inc., High Point.
Thayer Coggin, High Point.
Colony Tables, Inc., High Point.
Continental Furniture Co., High Point.
Dallas, Inc., High Point.
Davis Upholstery Co., High Point.
Globe Furniture Co., High Point.
Heritage Furniture Co., High Point.
James Manufacturing Co., High Point.
Kirkman Furniture Co., High Point.
Marsh Furniture Co., High Point.
Myrtle Desk Co., High Point.
National Upholstery Co., High Point.
North Carolina Schoonbeck Co., High Point.
Clyde Pearson, Inc., High Point.
Quality Chair Co., High Point.
Security Upholstery Co., High Point.
Silver-Craft Furniture Co., High Point.
Swaim Manufacturing Co., High Point.
Tomlinson of High Point, High Point.
Traditional Furniture Shops, High Point.

North Carolina—Continued
Walker Furniture Co., High Point.
Young's, Inc., High Point.
Kincaid Furniture Co., Inc., Hudson.
CaliLounger, Inc., Kernersville.
Bernhardt Furniture Co., Lenoir.
Blowing Rock Chair Co., Lenoir.
Blowing Rock Furniture Co., Lenoir.
Broyhill Furniture Factories, Lenoir.
Caldwell Furniture Co., Lenoir.
Fairfield Chair Co., Lenoir.
Hammary Manufacturing Co., Lenoir.
Harper Furniture Co., Lenoir.
Hibriten Chair Co., Lenoir.
Hibriten Furniture Co., Lenoir.
Kent-Coffey Manufacturing Co., Lenoir.
Lenoir Chair Co., Lenoir.
Lenoir Furniture Corp., Lenoir.
Lenoir Mirror Co., Lenoir.
Spainhour Furniture Co., Lenoir.
Dixie Furniture Co., Lexington.
Hoover Chair Co., Lexington.
Lexington Chair Co., Lexington.
Link-Taylor, Lexington.
Peerless Mattress Co., Lexington.
Philpott Furniture Corp., Lexington.
Franklin Shockey Co., Lexington.
United Furniture Corp., Lexington.
Gregson Manufacturing Co., Liberty.
Liberty Chair Co., Liberty.
Stout Chair Co., Liberty.
Burris Manufacturing Co., Lincolnton.
Cochrane Furniture Co., Lincolnton.
Superior Chairs, Inc., Maiden.
Otis L. Broyhill Furniture Co., Marion.
Drexel Furniture Co., Marion.
Craftique, Inc., Mebane
White Furniture Co., Mebane.
Hanes Chair & Furniture Co., Inc., Mocksville.
Heritage Furniture, Inc., Mocksville.
Drexel Furniture Co., Morgantown.
Henredon Furniture Industries, Inc., Morganton.
Morganton Furniture Co., Morganton.
Mount Airy Chair Co., Mount Airy.
Mount Airy Furniture Co., Mount Airy.
Mount Airy Mantel & Table Co., Mount Airy.
National Furniture Co., Mount Airy.
Newton Manufacturing Co., Newton.
American Furniture Co., North Wilkesboro.
Carolina Mirror Co., North Wilkesboro.
Forest Furniture Co., North Wilkesboro.
Key City Furniture Co., North Wilkesboro.
Young Manufacturing Co., Norwood.
Founders Furniture Co., Pleasant Garden.
Ramseur Furniture Co., Ramseur.
Caro-Craft, Rocky Mount.
Home Chair Co., Ronda.
Brady Furniture Co., Inc., Rural Hall.
Brothers, Inc., Salisbury.
Carter Bros. Furniture Co., Salisbury.
Sanford Furniture Corp., Sanford.
Boling Chair Co., Siler City.
Builtright Chair Co., Statesville.
Bylo Furniture Co., Statesville.

North Carolina—Continued
Gilliam Furniture, Statesville.
Home Made Chair Co., Statesville.
North Carolina Furniture, Inc., Statesville.
Ross Furniture Co., Inc., Statesville.
Sherrill Furniture Co., Statesville.
Statesville Chair Co., Statesville.
Technical Furniture, Inc., Statesville.
Stoneville Furniture Co., Stoneville.
Colonial Manufacturing Co., Thomasville.
Commercial Carving Co., Thomasville.
Erwin-Lambeth, Thomasville.
Finch Furniture Co., Thomasville.
Stroupe Mirror Co., Thomasville.
Thomasville Cabinet Works, Thomasville.
Thomasville Chair Co., Thomasville.
Troutman Chair Co., Troutman.
Alliene Furniture Co., Troy.
Edinburg Industries, Washington.
Wenco Furniture, Inc., Wendell.
Sandhill Furniture Corp., West End.
Phenix Chair Co., West Jefferson.
Cottonsmith Furniture Manufacturing Co., Winston-Salem.
Fogle Furniture Co., Winston-Salem.
B. F. Huntley Furniture Co., Winston-Salem.
E. S. Nash Furniture Co., Winston-Salem.
Unique Furniture Makers, Winston-Salem.
Oklahoma: Oklahoma Furniture Manufacturing Co., Guthrie.
South Carolina:
Fibercraft Furniture Corp., Columbia.
Palmer Furniture Co., Denmark.
Furniture Industries, Inc., Florence.
Schumpert Furniture Co., Greenville.
Loris Wood Products Co., Loris.
Schoolfield Industries, Mullins.
Poinsett Lumber & Manufacturing Co., Pickens.
Nu-Idea Furniture Co., Sumter.
Sumter Cabinet Co., Sumter.
Williams Furniture Corp., Sumter.
Tennessee:
Athens Bed Co., Athens.
Athens Table Co., Athens.
Cavalier Corp., Chattanooga.
Jackson Manufacturing Co. of Tennessee, Chattanooga.
Wade-Brown Corp., Chattanooga.
Cleveland Chair Co., Cleveland.
Oakes Furniture Manufacturing Co., Columbia.
Tennessee Chair Co., Inc., Elizabethton.
Sam Moore Chairs, Inc., Greeneville.
Empire Furniture Corp., Johnson City.
Gordon's, Inc., Johnson City.
C. B. Atkin Co., Knoxville.
Don P. Smith Chair Co., Loudon.
The Davis Co., Memphis.
S. R. Hungerford Co., Inc., Memphis.
Memphis Furniture Manufacturing Co., Memphis.
The Berkline Corp., Morristown.
Forest Products Corp., Morristown.
Gluck Bros., Inc., Morristown.
Modern Upholstered Chair Co., Morristown.
Tennessee Furniture Industries, Morristown.
Walnut Wood Carving Co., Morristown.

Tennessee—Continued
Davis Cabinet Co., Nashville.
Southern Colonial Furniture Manufacturing Co., Nashville.
Heywood-Wakefield Co. of Tennessee, Newport.
Wolfe Brothers & Co., Piney Flats.
Texas:
Woodward Manufacturing Co., Austin.
Holman Manufacturing Co., Pittsburg.
Virginia:
The Lane Co., Inc., Altavista.
Bassett Chair Co., Bassett.
Bassett Furniture Co., Bassett.
Bassett Furniture Industries, Bassett.
J. D. Bassett Manufacturing Co., Bassett.
Bassett Superior Lines, Bassett.
Bassett Table Co., Bassett.
Moore of Bedford, Inc., Bedford.
Frank Chervan, Inc., Bedford.
Cloro & Hawkins, Brightwood.
Universal Moulded Products Corp., Bristol.
Sam Moore Chairs, Inc., Christiansburg.
Galax Chair Co., Inc., Galax.
Galax Furniture Co., Galax.
Vaughan-Bassett Furniture Co., Galax.
Vaughan Furniture Co., Inc., Galax.
Webb Furniture Co., Galax.
Flowers Equipment Co., Lawrenceville.
The Brunswick-Balke-Collender Co., Marion.
American Furniture Co., Martinsville.
W. M. Bassett Furniture Corp., Martinsville.
Gravely Furniture Co., Inc., Martinsville.
Hooker Furniture Corp., Martinsville.
Martinsville Novelty Corp., Martinsville.
Morris Novelty Furniture Corp., Martinsville.
American Novelty Furniture Co., Petersburg.
Moore Manufacturing Co., Petersburg.
Coleman Furniture Corp., Pulaski.
Pulaski Veneer & Furniture Corp., Pulaski.
Biggs, Richmond.
David M. Lea & Co., Richmond.
Gravely Furniture Co., Ridgeway Division, Ridgeway.
Johnson-Carper Furniture Co., Roanoke.
The Lane Co., Inc., Rocky Mount.
Rowe Furniture Corp., Salem.
Stanley Furniture Co., Stanleytown.
The Basic-Witz Furniture Industries, Inc., Staunton.
The Basic-Witz Furniture Industries, Inc., Waynesboro.
Henkel-Harris Co., Inc., Winchester.
Wytheville Chair Co., Wytheville.
West Virginia:
Georgetown Galleries, Inc., Huntington.
Interstate Upholstery Co., Huntington.

APPENDIX II

Distribution of household furniture manufacturing plants, by States, 1954

State	Wood furniture, not upholstered	Upholstered furniture	Metal furniture	Furniture, n.e.c.[1]	Total
Alabama	33	12			45
Arizona	12				12
Arkansas	28	12			40
California	300	263	70	19	751
Colorado		14			14
Connecticut	35	32			67
Delaware					
District of Columbia					
Florida	102	34	22	10	168
Georgia	64	31			95
Idaho					
Illinois	150	80	71		313
Indiana	123	42	23		188
Iowa		13			13
Kansas					
Kentucky	41	15	7		63
Louisiana	22	8			30
Maine	9	4	4		17
Maryland	18	24			42
Massachusetts	114	116			230
Michigan	121	72	23		216
Minnesota		21			21
Mississippi	14	5			19
Missouri	38	28	12		78
Montana					
Nebraska	5				5
Nevada					
New Hampshire	26	9			35
New Jersey	111	38	21		170
New Mexico					
New York	425	324	156		905
North Carolina	153	160			313
North Dakota					
Ohio	56	75	29		160
Oklahoma	15	5	4		24
Oregon	20	12			32
Pennsylvania	168	109	60		337
Rhode Island	5				5
South Carolina	19	7			26
South Dakota					
Tennessee	70	43	6		119
Texas	69	50			119
Utah	7	10			17
Vermont	18				18
Virginia	79	19	4		102
Washington	48	22			70
West Virginia	6	9			15
Wisconsin	58	26	5		89
Wyoming					
Others[2]	98	30	124	40	292
Total	2,785	1,780	641	69	5,275

[1] Not elsewhere classified.
[2] Not specifically listed by States.

Source: U.S. Bureau of the Census, "U.S. Census of Manufactures, 1954."

APPENDIX III

1954 census, household furniture

NUMBER OF PLANTS, NUMBER OF EMPLOYEES, AND VALUE OF SHIPMENTS

Kinds of furniture	Number of plants	Number of employees	Value of shipments (thousands)	Average per plant	
				Number of employees	Value of shipment
Wood furniture, not upholstered	2,785	124,898	$1,113,264	45	$399,736
Upholstered household furniture	1,780	56,022	632,813	31	355,513
Metal household furniture	641	29,629	402,575	46	628,042
Household furniture, not elsewhere classified	69	1,285	15,576	23	225,739
Total	5,275	211,834	2,164,228	40	410,280

NUMBER OF ESTABLISHMENTS WITH 20 OR MORE EMPLOYEES AND LESS THAN 20 EMPLOYEES

	20 or more	Less than 20	Total
Wood furniture, not upholstered	958	1,827	2,785
Upholstered household furniture	645	1,135	1,780
Metal household furniture	261	380	641
Household furniture, not elsewhere classified	19	50	69
Total	1,883	3,392	5,275
Percent	35.7	64.3	100.0

Source: U.S. Bureau of the Census, "U.S. Census of Manufactures, 1954."

STATEMENT OF JOHN MARSHALL, EXECUTIVE VICE PRESIDENT OF THE BEVERAGE MACHINERY MANUFACTURERS ASSOCIATION, REGARDING STATE TAXATION OF INTERSTATE BUSINESS

This statement is made on behalf of the Beverage Machinery Manufacturers Association, of 1012 14th Street, NW.. Washington 5, D.C., whose 16 members manufacture more than 90 percent of the machinery and equipment used in plants processing, packaging, handling, and conveying all types of alcoholic and nonalcoholic beverages. Beverage processing plants are located in all of the States of the Union and one or more plants processing carbonated beverages are found in the cities, towns, and other centers of the consuming population.

Most of the beverage equipment companies maintain their general offices, including sales departments, at the manufacturing plant location. In a few cases manufacturers maintain branch sales offices in other States.

Sales of beverage equipment are primarily made through salesmen employed by the manufacturing company; however, in a few cases sales are made through jobbers.

A majority of the companies engaged in manufacturing beverage equipment are moderate sized companies.

By far the greatest percentage of beverage machinery sales are made by the sales personnel of the manufacturer in territory in which the manufacturing company is not qualified to do business as a foreign corporation. As in the *Stockham Valve* case, the majority of transactions result from orders received by mail at the home office from salesmen of the manufacturing company. In some instances the order is received directly from the beverage company-customer at the home office.

Member companies of the Beverage Machinery Manufacturers Association have been experiencing a steady and unfavorable shift in the ratio of employees engaged in production in the direction toward those engaged in paperwork.

A further trend in this regard, if a growing number of States begin taxing income from interstate sales, is frightening.

We share the apprehension which Mr. Justice Frankfurter expressed in regard to the burden to small and moderate-sized companies being subjected to separate income tax in each of the States with the attendant keeping of books, making returns, storing records, and engaging legal counsel to meet the diverse

and variegated tax laws of the 49 States. Unquestionably, the States would have different times for filing returns, different tax structures, different modes for determining net income, and different and often conflicting formulas of apportionment.

Only the Congress can effectively meet and solve the situation. The Beverage Machinery Manufacturers Association urgently request this committee to initiate the relief which is so sorely needed by American business in view of the Court decisions.

We would favor early enactment of legislation which would prevent State taxation of income derived exclusively from interstate commerce when no office nor goods is maintained within the taxing State.

ACUSHNET PROCESS CO.,
New Bedford, Mass., July 17, 1959.

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

DEAR SENATOR BYRD: Recent Supreme Court decisions on the *Northwestern States Portland Cement Co.* and *Stockham Valves & Fittings, Inc.*, cases make it clear that the States have the power to tax income derived from interstate commerce. Under these decisions the State might tax the income of the corporation even though the only activities of that corporation were limited to having a salesman within the State.

For ourselves or any other corporation which distributes its products nationally, the prospect of such taxation is frightening. The burden of preparing tax returns for all of the States is substantial even though the taxes paid might be small. Furthermore, several of the States which have income tax laws already enacted do not have statutes of limitations which limit the application of such taxes. It is, therefore, possible to go back 10 or 20 years with a substantial unforeseen liability resulting.

It is our hope that your committee will report legislation which will confine the corporation's income tax liability to States in which it maintains an office or a warehouse or other place of business. Either bill S. 2213 or S. 2281 would accomplish this purpose. Certainly such legislation would remove what is almost an intolerable burden from interstate commerce. It seems important to us that corporations be permitted to send their salesmen throughout the United States without incurring income tax liability as a result of the mere presence of such a salesman in a State.

Very truly yours,

R. B. YOUNG, *President.*

NATIONAL ASSOCIATION OF TAX ADMINISTRATORS.
Chicago, Ill., July 15, 1959.

Hon. HARRY FLOOD BYRD,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: I enclose herewith a resolution which was unanimously adopted at the annual meeting of the National Association of Tax Administrators held in Buffalo, N.Y., July 8–11, 1959. The resolution reflects the views of the tax and revenue officials of the several States with respect to the several proposals presently pending before the Committee on Finance which would have the effect of immediately imposing some restriction on the taxation of income derived from business operations in interstate commerce.

The policy strongly recommended by the State tax and revenue officials is that the study proposed by the Select Committee on Small Business precede rather than follow any legislative action.

Sincerely,

CHARLES F. CONLON, *Executive Secretary.*

RESOLUTION UNANIMOUSLY ADOPTED AT THE ANNUAL MEETING OF THE NATIONAL ASSOCIATION OF TAX ADMINISTRATORS, BUFFALO, N.Y., JULY 8–11, 1959

Whereas various States are confronted with problems of taxation of net income of corporations engaged in interstate commerce: Now, therefore, be it

Resolved, That the National Association of Tax Administrators urges the appropriate committee of the Congress of the United States to recommend deferral of congressional legislative attention in the matter of State taxation of net income of corporations engaged in interstate commerce until a study commission set up by the Congress and including appropriate State officials has had opportunity to examine the impact of the recent Supreme Court decisions[1] with regard to State income taxation of interstate commerce.

STATEMENT OF MR. GEORGE A. KELLY II, PRESIDENT FARM EQUIPMENT INSTITUTE, CHICAGO, ILL., IN REGARD TO STATE TAXATION OF INTERSTATE COMMERCE

My name is George A. Kelly II. I am president of G. A. Kelly Plow Co., of Longview, Tex., which is the oldest established manufacturer west of the Mississippi River.

I wish to submit this statement, however, in my capacity as president of the Farm Equipment Institute, the great association representing manufacturers of every kind of farm production machinery and of structures and materials handling equipment used on farms. The Farm Equipment Institute has 337 members producing approximately 90 percent of all of the farm machines sold in the United States and Canada.

Our nationwide organization is deeply concerned with the problem of State taxation of interstate commerce for the following reasons.

1. Most of the institute member companies are relatively small businesses that manufacture specialized types of farm machines that are used in many or all of the States. The companies do not maintain sales offices or warehouses or any other kind of business office in many of the States where their products are sold. If the business of furnishing machines and parts in the 50 States of the Union is taxable in each separate State, I am sure the members of this committee can visualize the burden of accounting and recordkeeping that will be forced upon the manufacturers for sales in States where no office is maintained.

This burden would, in time, be carried to the farmer who is our friend and customer. It would constitute an added and excessive drag upon our whole agricultural economy.

As Justice Frankfurter said in his dissenting opinion in the *T. V. Williams* v. *Stockham Valves and Fittings, Inc.* decision:

"I am assuming, of course, that today's decision will stimulate, if indeed it does not compel, every State of the Union, which has not already done so, to devise a formula of apportionment to tax the income of enterprises carrying on exclusively interstate commerce. As a result, interstate commerce will be burdened not hypothetically but practically, and we have been admonished again and again that taxation is a practical matter."

* * * * * * *

"First. It will not, I believe, be gainsaid that there are thousands of relatively small or moderate size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining net income, and, different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States."

2. The Farm Equipment Institute is proud of the fact that its members have always supported the principle of the free movement of goods and services. We are proud of the traditions of our great Union of States which has permitted

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[1] *Northern States Portland Cement Co.* v. *State of Minnesota, Williams* v. *Stockham Valves and Fittings, Inc.*, decided Feb. 24, 1959.

this free movement of goods from one part of the United States to another, enabling all of our citizens to enjoy the benefits of industrial and agricultural progress. We look upon the imposition of State taxes on income produced from the sale of goods in interstate commerce as a serious roadblock of this traditional free movement of goods and services throughout our Nation.

3. We recognize the problem faced by the States in obtaining sufficient income to pay for the many services now provided by the States and formerly provided by the citizens themselves. However, we feel confident that if the citizens of the States had to choose between taxing themselves or imposing the tax on business in a way that might deprive them of the products and services they need, the choice surely would be to encourage business rather than to drive business away.

We understand that several measures to alleviate this problem of the State taxation of incomes on interstate business have been proposed for consideration by the Senate and also that several proposals have been introduced in the House of Representatives.

We believe that your committee, the Senate Committee on Finance, is well qualified to appraise the problem and to find its solution.

We suggest two areas for consideration.

1. An immediate declaration by Congress in the nature of the bill H.R. 7757 introduced by Congressman McCulloch of Ohio modified as follows:

TEXT OF THE BILL

To implement the Constitution by amending title 4 of the United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That chapter 4 of title 4, is amended by inserting following section 106a new section:

SEC. 106a TAXATION OF INCOME DERIVED EXCLUSIVELY IN INTERSTATE COMMERCE. After July 1, 1959, a person, as defined in section 1 of title 1, shall not be liable to taxation by a State or political subdivision thereof on income derived exclusively from interstate commerce *which is premised solely upon sales solicitations within said State or political subdivision thereof.*

It should be made amply clear that maintenance of an office, warehouse, stock of goods, or other property within such State cannot be construed as a basis for taxation beyond the scope of its own operations.

The reason for this provision is that many companies may own, lease, or operate such physical facilities within a particular State having no relation whatsoever to the interstate commerce being transacted within that State or within another geographical area of the State. Orders solicited by salesmen within a State may be, and in many cases are, transactions completely unrelated to the ownership or operation of such physical facilities within the State.

We urge caution in adopting legislation which might set new precedents resulting in discrimination between businesses which own or operate facilities and those which do not.

2. An effort to resolve the long-term problem of different tax treatment and varying rates throughout the 50 States imposed on business conducted from offices within the several States by out-of-State corporations. We suggest that the various States be encouraged to formulate cooperative agreements whereby there might be developed uniform rates and treatment of all such business so that the accounting and the recordkeeping may be simplified to reduce costs and so that there may continue to be the traditional free movement of products and services of all of America's manufacturers throughout the length and breadth of our great country.

The Farm Equipment Institute has received copies of letters from many of our members to Congressmen and Senators expressing the concern of the members regarding the consequences of the Supreme Court decision in the *Stockham Valves and Fittings* case. We do not wish to burden the committee with copies of these letters, but we do wish to inform the committee that many Members of the House of Representatives and of the Senate are cognizant of the problem faced by businesses since the Supreme Court decision opened the door for the State taxation of interstate commerce.

In behalf of the farm equipment industry I wish to offer the support of this vital industry to your committee in its efforts to resolve the problem of the taxation of income derived from interstate commerce. We commend the committee for its evident desire to study the problem and find a solution.

July 17, 1959.

STATEMENT OF TYRE TAYLOR, GENERAL COUNSEL, SOUTHERN STATES INDUSTRIAL COUNCIL IN SUPPORT OF CONGRESSIONAL REGULATION OF STATE TAXATION OF INTERSTATE COMMERCE

My name is Tyre Taylor. I appear here on behalf of the Southern States Industrial Council, the headquarters of which are in the Stahlman Building in Nashville, Tenn. The council is a regional organization representing industry in 16 Southern States from Maryland to Texas, inclusive.

We appear here in support of the principle of the pending bills and the joint resolution which would prevent the States from taxing income derived exclusively from interstate commerce when no office, warehouse, or stock of goods is maintained within the State. I should like to take just a few minutes to outline the principal reasons for our position.

The first one was very well stated by Mr. Justice Frankfurter in his dissent from the majority decision in the *Northwestern States Portland Cement Company* v. *Minnesota* and *Williams* v. *Stockham Valves* cases (79 S. Ct. 357). The Justice said:

"It will not, I believe, be gainsaid that there are thousands of relatively small or moderate size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining net income, and, different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States."

The great majority of the council's members fall into the small business category and are engaged in interstate commerce and hence are affected by the Court's decision. And when it is considered that some 40 States and localities have laws providing for the taxation of business income, including earnings derived from interstate commerce, and that all of these laws are different in important respects, some idea of the sheer magnitude and complexity of the task of compliance may be gained. As the Senate Small Business Committee suggests, it would be necessary for a company engaged in interstate commerce to retain the services of a lawyer and an accountant in each State where it does business.

We are, of course, aware of the financial difficulties in which some of the States find themselves and their need—and in some instances it is a dire need—for more revenues. Moreover, the council is a States rights organization. But these bills and the joint resolution introduced by Senator Sparkman are in the nature of a compromise. They would not deny the States the right to tax business income when the business maintained an office, a warehouse, or a stock of goods within the State. Senator Sparkman's resolution also recognizes the extreme complexity of the situation here involved and provides for a commission to study it and report.

Does Congress have the power to regulate State taxation of interstate commerce? We submit that on this question the law is so clear as to require no argument. As Mr. Justice Clark stated for the majority in the *Northwestern States Portland Cement* and *Stockham Valves* cases:

"* * * It has long been established doctrine that the commerce clause gives exclusive power to the Congress to regulate interstate commerce * * *" (Citing *Gibbons* v. *Ogden*, 1824, 9 Wheat. 1, 6 L ed. 23).

And Mr. Justice Whittaker stated in his dissent in the same case that:

"The commerce clause denies State power to regulate interstate commerce. It vests that power exclusively in Congress * * * "

The foundation for this is, of course, the commerce clause of the Constitution itself. It says that "the Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." U.S. Constitution, article 1, sec. 8, cl. 3.

However, there is no need to belabor that point further.

The fact is, Mr. Chairman and gentlemen of the committee, that business—and especially small business—is confronted with a costly and all but impossible problem of compliance unless this Congress at this session enacts remedial legislation.

Thank you.

STATEMENT OF THE NATIONAL COUNCIL OF SALESMEN'S ORGANIZATIONS, INC., ON S. 2213, S. 2281, AND SENATE JOINT RESOLUTION 113

My name is Myron B. Wolf and I am the president of the National Council of Salesmen's Organizations, Inc. National Council is a nonprofit parent body of 25 groups of wholesale salesmen who sell to retailers and distributors the products of our Nation's factories such as paint, furniture, shoes, candy, apparel, etc. A list of our affiliated organizations is herewith attached for the record.

This committee will receive, during the course of these hearings, the viewpoints of business men who were adversely affected and deeply disturbed by the recent Supreme Court decisions upholding the right of States to tax foreign corporations on a nondiscriminatory basis. We believe that the thoughts and position of salesmen who are the employees of small business should be received in rounding out the picture. The problem, as we see it, resolves itself in its simplest form to this conclusion: Small business will have to find a way to minimize the burden which has been imposed upon it, or it will have to risk insolvency in an attempt to comply with the demands of the great many States which are reaching out beyond their borders in a hungry search for survival. In turn, the wholesale salesmen of our country face their most critical moment in an era of recurring crises. The average American business firm, whether it be an individual proprietorship, partnership, or corporation, is desirous of meeting its just tax obligations. There is, however, at the present time, a mass of confusion as to what these obligations, as contained in many State laws, actually consist of. Undoubtedly, many firms are currently violating State income tax laws without being at all aware of the same. As a result, they are potentially liable for assessments going back over a period of years which could, in many instances, either seriously impair their financial means to continue in business, or actually bankrupt them.

At its best, because of the varying requirements of the tax statutes of the various States, together with the very definite possibility that many new States will join the parade, the employment of skilled accountants and legal advisors will become a necessity for companies engaged in interstate commerce. This will create a financial burden which will, of necessity, increase the cost of goods sold. Indeed, inflation, our No. 1 economic enemy, will receive aid and comfort from the tax chaos which will result from the recent Supreme Court decisions unless some realistic limitation is imposed by Congress on the powers of the several States to tax income derived from interstate commerce. We believe that the minimum standard of activity embodied in S. 2213, S. 2281, and Senate Joint Resolution 113 does offer the practical limitation which is so desperately needed in the situation.

There are over a million persons directly engaged in the wholesale selling profession. To illustrate what may happen to them, we should like to quote from the record of April 8, 1959, hearing of the Senate Committee on Small Business. On page 45 thereof, a representative of a manufacturer's association states as follows: "We are asking the Department of Justice if it is all right for us to get together and agree not to send any salesmen in any States * * * in order to save ourselves." Again this manufacturer spokesman warned, "So if that they (the States) want us to cut out the traveling salesman which has been part of the American life in the manufacturing and small business operations, fine. We will try to do it * * *." This is more than an idle threat because if it becomes uneconomical for a manufacturer to send a representative into a particular State or group of States, he naturally will stop doing so. Let us now see just who and what are salesmen: He is the man who gets to another State by buying a plane or train ticket, or who drives his car for miles and miles, bringing revenue to the gasoline stations and to subsidiary business along the way. He adds to the revenues of every place he visits. He buys gasoline, tires, and automobiles. He stops at hotels and motels. He travels by air, rail, automobile, and boat. Furthermore, it is the salesmen who bring their experience and knowledge to the merchants of the communities which they service. His advice and counsel make it possible for these merchants to do a more effective job of meeting the needs of the American consumer.

It will be remembered, that during the recent recession, high Government officials, including the President, maintained that salesmanship was the key to prosperity. It remains the function of the salesman to stimulate demand and to facilitate the flow of goods from factory to consumer. A nation without salesmen would be an impoverished one. We need only look at those countries where

planned economy and allocations of goods through Government stores replaces competitive salesmanship to realize the great debt a free Nation, such as ours, owes to its salesmen and to the system of government which nurtures their growth and development.

To sum up the position of my organization in this matter, we honestly and sincerely feel that, unless immediate congressional action is taken to set up such limitation as is proposed by the instant bills, there is a real and present danger that both small business and the American salesman will suffer a blow from which it will be most difficult, if not impossible, to recover. Small and medium-size business concerns will inevitably look to eliminate the salesmen and sales representatives as a means of reducing the hazards of complying with the tax statutes of the 49, and soon to be 50, States of the Union. As the voice of the wholesale salesmen of America, our organization is critically concerned with this possibility. We must be frank in stating to you that we look to this committee to report out favorably a bill which will provide necessary remedy. Congress does have the legal authority, under the commerce clause, to enact legislation along the lines of the proposed bills.

The Supreme Court decision on Northwestern Cement and Stockham Valves indicated clearly that there must be a sufficient amount of activity on the part of the out-of-State business operations within the taxing State before an income tax can be assessed on income derived from that State. Congressional enactment of legislation which would enunciate what does constitute the required minimum activity will eliminate much of the uncertainty and confusion which presently exists and will also obviate extensive litigation which must ensue unless a uniform standard such as has been suggested is set up for all the States to follow. Most important of all, the vast majority of small and medium-size business operations which receive their orders entirely from the sales solicitation of their representatives, would obtain needed immediate relief.

In conclusion, may I take this opportunity of thanking the Senate Finance Committee for the prompt action which it has taken with reference to the vexing and critical problem. We are hopeful that the needed legislation will be enacted at this session of Congress.

MEMBER ORGANIZATIONS OF NATIONAL COUNCIL OF SALESMEN'S ORGANIZATIONS, INC.

Boot & Shoe Travelers' Association of New York, Inc.
Connecticut Paint Salesmen's Club, Inc.
Costume Jeweler Salesmen's Association, Inc.
Empire State Furniture Manufacturers' Representatives, Inc.
Fabric Salesmen's Association of Boston, Inc.
Far Western Travelers Association, Inc.
Furniture Manufacturers' Representatives of New Jersey, Inc.
Furniture Manufacturers' Representatives of New York, Inc.
Handbag Supply Salesmen's Association, Inc.
Infants' & Childran's Wear Salesmen's Guild, Inc.
Infants' Furniture Representatives Association of Greater New York.
Luggage & Leather Goods Salesmen's Association of America, Inc.
Maryland Wholesale Furniture Salesmen's Association.
Men's Apparel Guild of Wholesale Salesmen, Inc.
Middle Atlantic Shoe Travelers' Association, Inc.
National Handbag and Accessories Salesmen's Association, Inc.
New Jersey Paint Travelers' Association, Inc.
New York Candy Club, Inc.
New York Corset Club, Inc.
New York Paint Travelers, Inc.
Philadelphia Manufacturers Representative Association.
Piece Goods Salesmen's Association, Inc.
Sales Representatives Association, Inc.
Toy Knights of America.
Underwear-Negligee Associates, Inc.

AMERICAN LADDER INSTITUTE,
Chicago, Ill., July 16, 1959.

STATEMENT BY THE AMERICAN LADDER INSTITUTE FILED WITH THE SENATE FINANCE COMMITTEE

The American Ladder Institute is a trade association of approximately 35 small manufacturers of ladders which are located in the East, the Middle West, the South and the Far West. They do a limited amount of business—perhaps all told, $15 million annually.

This industry cannot be concentrated because ladders are light and bulky and freight rates are high. Therefore, each manufacturer covers a limited area, working in perhaps four or five States on the average.

The proposals now up before the Senate committee clarifying the recent Supreme Court action in the *Stockham Valves* and *Northern States* cases meet with our full approval because, if we are handicapped by being required to pay additional taxes in the various States where we operate, many of us cannot afford to continue our present operations, but will have to realign ourselves and accept less sales and increased costs.

We wish to go on record with your committee as favoring the legislation which is now contemplated and which is before you for consideration.

Respectfully submitted.

O. N. MOFFETT, *President.*

UNDERWEAR INSTITUTE,
New York, N.Y., July 16, 1959.

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

DEAR SENATOR BYRD: In connection with the public hearings scheduled by the Senate Finance Committee starting July 21, I am taking this opportunity of presenting to you and the committee material for insertion in the record which I trust will be interesting and helpful with reference to the matter of taxation of income derived from interstate commerce.

The Underwear Institute is a national trade association which was founded in 1866 and represents manufacturers of underwear and allied products such as sleepwear, polo shirts, T-shirts, sweatshirts, and so forth. Our members operate 156 mills in 24 States and the total manufacturers' value of net shipments of their products in 1958 was $395,704,000.

The commerce clause which has been called second in importance to no other provision of our Constitution supposedly put an end for all time to the taxes, duties and other burdens which the States had previously imposed on one another's trade and activities.

However, the recent decisions by the U.S. Supreme Court upholding as constitutional taxation by the several States of income derived from interstate commerce pose serious problems not only of actual tax liability but of reporting as well in view of the large number of States in which our members sell their goods. In fact it could well be that in many instances the cost of reporting would be greater than the tax to be paid.

The information which I am presenting is based on a survey as yet incomplete but to which 32 of our members have thus far contributed. These 32 reported total sales of $154,927,864 with 5 of the 32 accounting for $115,094,898 of the total. It should be noted that while the average annual sales for the entire group totals $4,841,495 if the 5 members mentioned above are excluded, the average bceomes $1,475,295.

Returns from our survey also indicate that the 32 members replying sell $140,349,515 or 90.5 percent of their goods outside their home State. The number of States in which they sell their goods range from 10 to 50 with the average being 42. As a matter of fact, 19 of the 32 reported sales in every State of the Union.

Set forth below are the actual answers received in response to my inquiry:

	Total dollar volume of sales	Number of States in which goods sold	Amount of sales outside home States
1	$1,500,000	48	$1,400,000
2	850,000	48	680,000-765,000
3	800,000	33	600,000
4	1,400,000	42	1,150,000
5	1,500,000	50	1,450,000
6	1,400,000	35	1,300,000
7	21,947,000	50	20,106,000
8	420,436	48	379,286
9	25,437,000	50	24,180,000
10	513,675	35	503,402
11	5,000,000	50	4,900,000
12	350,000	40	300,000
13	3,500,000	50	3,325,000
14	31,210,598	50	29,394,311
15	21,500,000	50	20,700,000
16	1,500,000	48	1,300,000
17	3,000,000	48	2,850,000
18	850,000	36	800,000
19	1,602,059	50	1,176,038
20	223,000	40	220,000
21	526,870	10	299,563
22	360,000	48	310,000
23	1,367,867	48	1,250,045
24	541,000	43	536,000
25	1,800,000	33	800,000
26	1,713,267	40	1,284,948
27	2,000,000	14	963,344
28	2,400,000	49	2,100,000
29	800,000	50	750,000
30	3,750,000	50	3,562,500
31	15,000,000	49	11,250,000
32	464,892	30	444,078
Total	154,927,864		140,349,515

To the best of my knowledge in neither the *Northwestern States Portland Cement* case nor in the *Stockham Valve* case did the companies sell their goods in more than half a dozen States and the burden both of reporting and tax paying would be correspondingly light in comparison with the problems facing our industry.

In addition, as evidence of our inability to absorb additional tax burdens I should like to call your attention to the following comparative rates of profits on sales, after taxes, for manufacturing industries generally and for the textile mill products industry in which we are included:

[In percent]

	1958	1957	1956	1955	1954
All manufacturing	4.12	4.8	5.3	5.4	4.5
Textile mill products	1.55	1.9	2.6	2.6	1.0

As you know our people generally already pay higher taxes than do our foreign competitors who, in addition to wage rates one-tenth of ours plus longer workdays and workweeks, are able to make their goods out of American cotton purchased at a lower rate than our people must pay. With these advantages, manufacturers in Japan, Hong Kong, and elsewhere have made sizable inroads into the U.S. market while foreign markets, where they exist at all, are generally made inaccessible to us by restrictions of one kind or another.

In view of the above and because of the already heavy tax burden with which our members are saddled we should appreciate your committee's favorable consideration of legislation to correct the situation in which we now find ourselves with reference to State taxation of income derived from interstate commerce.

Very truly yours,

ROBERT D. MCCABE,
Managing Director.

STATEMENT BY THE NATIONAL WHOLESALE FURNITURE SALESMEN'S ASSOCIATION

This National Wholesale Furniture Salesmen's Association, composed of nearly 6,000 wholesale furniture salesmen, representatives who travel in every county in the Nation, represent from one to four, sometimes more, home furnishings manufacturers.

The last available figures from the Department of Commerce (1953) show 3,015 household furniture manufacturers, of which number 50 percent of them do less than $200,000 a year. Only 17 percent of all these manufacturers do $1 million or over a year. This situation accounts for the necessity of our salesmen to represent two or more manufacturers in order to make a living. Some manufacturers cover a few States nearby to their factories, and others do cover the some 35 major selling areas of the country.

The decisions of the Supreme Court in the *Northwestern States* and the *Stockham Valves* cases opens wide the gates for throwing many of our salesmen out of business because many small manufacturers cannot pay the taxes that can be further imposed by other States and must give up territories now solicited by their salesmen.

It is a recognized fact that only Congress can enact legislation that will counteract, if not nullify, the ruling of the Supreme Court, and the Senate and House are to be congratulated upon recognizing the imperative necessity of correcting the confusion resulting from the recent Supreme Court action through the introduction of several measures in the Senate and House bearing down upon the almost presumptive and preemptory action by the Supreme Court of the land.

We may logically consider, and perhaps conclude, that an outraged public opinion is now protesting, as we do, against repeated attempts to interfere with the processes of our democratic Government now resulting, as on previous occasions in recent years, in the manifestation of the fact that the presently constituted Supreme Court is going through the "period of confusion in the law," just as we passed through the period of "factional strife," (1789–1816); witnessed "the class struggle," (1820–60); the era of "popular rights," (1870–1900); and more recently, the pronouncements against "corporate and capitalistic controls," (1902–34). In all of these political and economic struggles, there has been an underlying urge to maintain judicial supremacy.

The Supreme Court's approach to the current situations at a time when the Court itself is going through a period of confusion in the law, may now call for a new legislative approach to true values to preserve and to further strengthen the gains which the judiciary have accomplished during the past 150 years, deliberating and defining our immediate and future outlooks with implemented, thoughtful legislation.

It is most encouraging to know that we have the power to curb the misuse or misknowledge concerning our national welfare and progress vested in the Congress to enact measures that will modify the unwarranted recent tax dilemma on interstate business.

The several proposals now before the Congress curbing the power of the States to impose a net income tax on income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person, if such person maintains no stock or goods, plant, office, warehouse, other place of business within the State, has our complete appraisal and full support.

We respectfully wish to go on record with the Senate Committee on Finance as favoring the proposed legislation and, for that reason, are requesting permission to file this statement for inclusion in the record.

DON E. MOWRY, *Executive Secretary.*

NATIONAL ASSOCIATION OF WASTE MATERIAL DEALERS, INC.,
New York, N.Y., July 13, 1959.

HON. HARRY F. BYRD,
Chairman, Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: The National Association of Waste Material Dealers, Inc., comprised of the leading firms which are dealers in and processors of nonferrous scrap metals, paper stock, textile byproducts, and scrap rubber and plastics, are vitally interested in the proposed legislation currently pending be-

fore the Senate Finance Committee dealing with the subject of State taxation of interstate commerce.

We earlier presented the views of this association to the Senate Small Business Committee when it was conducting hearings on this matter. We would like to hereby further emphasize this association's views now that specific legislation has been introduced dealing with this matter.

Requiring small business concerns to face taxation by each of the States on sales made within those States would be a most serious blow to the firms in our industry. Secondary materials in finding their markets know no State boundaries. These commodities are bought and sold by concerns in every part of our country and subsequently can be shipped to two or three different concerns prior to their ultimate consumer destination. A great amount of business is transacted via telephone and the mails with no physical office being located in the State wherein the sale is consummated. Furthermore, the industry, since it is engaged in shipping raw materials, is a volume industry in that it depends on a vast collection system necessary to accumulate the quantities of raw materials demanded by American consuming mills and factories.

We emphasize the above since the bookkeeping and legal requirements that would be imposed on firms in maintaining records of their State-to-State transactions would be multiplied in the case of our own industry where raw materials are being purchased, prepared, and finally shipped to consumers on a national and interstate basis.

We are in sympathy with the problems of the States in collecting the necessary funds with which to run their governments; however, this method of taxation would place a most serious strain on small business. It is very possible that in many cases the expense of the burden of accounting and legal work on the individual firm would exceed the tax itself.

The operations of our particular industry could be cited in detail in order to emphasize the great hardship that such State taxation would cause. Therefore, this association is in favor of legislation which would limit State taxation on interstate commerce and trust that the Finance Committee will favor that legislation which is best designed to perform this function.

Respectfully yours,

M. J. Michiboll, *Administrator*.

The Stanley Works,
New Britain, Conn., July 14, 1959.

Senator Harry F. Byrd,
Chairman, Senate Finance Committee,
Senate Office Building,
Washington, D.C.

Dear Senator: I have been informed that the Senate Finance Committee will hold hearings beginning July 21 on a bill of Senator Prescott Bush, S. 2213, to limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce.

It is our opinion that this is an excellent bill and that its adoption during the present session of the Congress is urgently required to prevent the imposition of an unfair burden of taxation and administrative expense upon industry.

This problem has become serious since the U.S. Supreme Court, on February 24, 1959, handed down two decisions involving the corporation income tax laws of Minnesota and Georgia. In effect, the Supreme Court in these cases decided that a State's corporation income tax can be validly levied upon the portion of an out-of-State corporation's income fairly attributable to the taxing State, even though the sole activities of the corporation in the taxing State are part of interstate commerce.

Although these two decisions both involve cases where the corporation had maintained a sales office in the taxing State, thus leaving it theoretically possible that the high court might conceivably reach the opposite conclusion if no sales office were maintained in the taxing State, this hope was dashed a week later when the Court dismissed the appeal of the taxpayer in a case involving the Louisiana corporation income tax. In the Louisiana case, no office was maintained in Louisiana by the corporation which merely sent salesmen into that State to take orders from local wholesale dealers.

In determining net income taxable under the Connecticut corporation business tax, gross receipts from merchandise shipped from Connecticut are allocable to Connecticut, whether shipped in or out of the State. At present the Stanley

Works is also required, under the tax laws of seven other States, to allocate to those States the sales of merchandise delivered into those States in interstate commerce from Connecticut. This means that we are subject to double State taxation on such sales. We carry stocks of goods in each of those States and have branch offices in all but one of them.

We are greatly concerned that, in view of the U.S. Supreme Court decisions referred to above, other States will enact laws which will require us to pay taxes based on interstate shipments, even though we transact no business in the State other than the solicitation of orders by salesmen. We understand that three States have already amended their tax laws to take advantage of the situation.

We are concerned not only with the cost of this double taxation but also with the tremendous administrative burden placed on industry. The extent of this burden is well described by Supreme Court Justice Frankfurter in his dissenting opinion in the cases previously referred to, as follows:

"It will not, I believe, be gainsaid that there are thousands of relatively small or moderate size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of 40 States, with their different times for filing returns, different tax structures, different modes for determining 'net income' and different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a far-flung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States."

In view of the unfair double taxation and severe administrative burden which may be placed on industry as a result of the Supreme Court decisions, it is strongly urged that the Senate Finance Committee, as soon as possible, make a favorable report on bill S. 2213 so that it may be voted on during the present session of the Congress.

Very truly yours,

E. H. BURR, *Treasurer.*

THE AMERICAN BRASS CO.,
Waterbury, Conn., July 14, 1959.

Hon. HARRY FLOOD BYRD,
Chairman, Finance Committee
U.S. Senate, Washington, D.C.

DEAR MR. BYRD: Senator Prescott Bush has advised me that hearings by the Finance Committee on limitation of the power of the States to impose income taxes on income derived exclusively from interstate commerce, have been scheduled to commence July 21, 1959.

I would strongly urge that favorable consideration be given to this type of legislation and that an opportunity be given to Congress to vote on this question this year.

The cost of administering multistate taxes as they presently exist is prohibitive from the standpoint of industry while resulting in insignificant revenue to the State. As an example, a recent study made in our company indicated an average cost of $200 per individual State income tax return. The average tax where no plant or warehouse existed, was less than $100. These average costs are probably paralleled or exceeded by most large industries. They would be much greater in a smaller business where electronic equipment for exhaustive analysis of sales and other factors affecting tax allocations is lacking. These added costs to small or medium size business could represent the difference between a marginal operation and an outright loss.

I feel that the bill proposed by Senator Bush (S. 2213) is an initial step in a return to freedom from taxation in interstate commerce, that it would be strengthened by not limiting the type of tax to "net" income. In addition to taxes on net income several States have, or have proposed, taxes on gross income or variants thereof. Therefore we feel that all forms of income taxes on interstate commerce should be barred.

A further improvement which could be made to S. 2213 is by the insertion of the word "general" following the word "no" in line 9, causing the limiting factors of the bill to read: "if such person maintains no general stock of goods,

plant, office, warehouse, or other place of business within the State". This safeguard is necessary since a customary form of credit extension in interstate commerce consists of the consignment of goods to a customer until such time as he is in a position to purchase them for resale or other usage.

Due to the serious import of the recent Supreme Court rulings affecting taxation of interstate commerce, I again urge your favorable attention to legislation promoting a return to the original constitutional concept of a tariff free movement of goods within the several States.

Yours very truly,

E. M. BLESER, *Treasurer.*

WALTER T. JOHNSON LUMBER CO.,
Omaha, Nebr., July 13, 1959.

Re Senate bill S. 2213 and Senate Joint Resolution 113.

Senator HARRY FLOOD BYRD,
Senate Office Building,
Washington, D.C.

HONORED SIR: We respectfully take this means of urging your favorable action on either of the above bills which are before your committee and should be acted on during this session of Congress. Each of the above bills, we believe, covers the subject quite well, and certainly one of them should be enacted into law for the good of our economy as a whole. If this is not done, business will be seriously handicapped by being subject to income taxes on all interstate business which are levied by the various States in which the company does business. Not only does this cause heavy additional recordkeeping, but, of course, much greater tax charges generally. To us it seems an impossible situation, and we certainly hope that action can be taken during this Congress to secure the necessary relief from the effects of the recent Supreme Court decisions.

Thank you in advance for anything which you can do toward correcting the above situation promptly, certainly will be very greatly appreciated.

Respectfully yours,

WALTER T. JOHNSON LUMBER CO.,
WALTER T. JOHNSON.

THE KERITE CO.,
Seymour, Conn., July 14, 1959.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

MY DEAR MR. BYRD: We have been in touch with our Congressmen and Senators of the State of Connecticut relative to the Supreme Court decisions in the *Stockham Valves* and *Northwest Portland Cement* cases. The impact of these decisions on most of our small- or medium-size corporations in our area could be disastrous. As you must realize, all of us are doing interstate business, spread over many if not all of these States. These corporations and businesses will be subject to many new requirements as follows:

1. File a separate income tax return in each income tax State.
2. Keep additional books and storage of records.
3. Engage legal counsel to cope with the various tax laws of 48 States.
4. Comply with different deadlines for filing different tax structures, different modes for determining "net income," and the use of different (often conflicting) formulas of apportionment.
5. Increase bookkeeping and accounting staffs, plus legal paraphernalia, to meet these new demands.
6. Budget the cost of all these things well in excess of the burden of the taxes themselves.

The decisions will stimulate, if indeed they do not compel, every State of the Union which has not already done so to enact an effective income tax law and devise a formula for apportionment to tax income of enterprises carrying on exclusively interstate commerce. It may even be possible to pay tax on more than 100 percent of net income because of variations in formulas. These added burdens to a small- or moderate-size company could easily make the difference between survival in Connecticut or reducing their business because the cost of keeping records and filing returns would not be justified in a low-volume area.

We are impressed with bill S. 2213, submitted by our Senator Prescott Bush, to limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce. We sincerely hope that you and the members of your committee wil give this bill favorable consideration and that it will be reported out as soon as possible in order that action by the Senate and the House may be taken in this current session of Congress.

Sincerely yours,

FRANKLIN S. HARRIS,
Secretary of the Industrial Association of the Lower Naugatuck Valley.

DIXIE LUMBER CO., INC.,
Hagerstown, Md., July 13, 1959.

HON. HARRY FLOOD BYRD,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: As a wholesaler of lumber and lumber products, we are very much distressed by the recent Supreme Court decision which would allow State taxation of income derived exclusively from interstate commerce when the only activity within the State in question is sales solicitation and where no office, warehouse, stock or goods, or other place of business is maintained within that State.

We would be vulnerable to any State imposition of taxes as herein outlined and very heartily support and endorse the bills which have been already introduced in the Senate to prevent the levying of such State taxes; namely, S. 2213 and Senate Joint Resolution 113. Your active support of these measures is earnestly solicited, and we urge that prompt action be taken to insure passage of these bills, which we understand have been referred to the Senate Finance Committee, before your impending adjournment.

We thank you for your consideration of our remarks.

Yours very truly,

DIXIE LUMBER CO., INC.,
By W. T. HASSETT, JR.,
Vice President.

New York, N.Y., July 15, 1959.

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

On behalf of approximately 500 members of Association of Food Distributors, Inc., of New York, we urge you to support S. 2213, introduced by Senators Bush of Connecticut, Keating of New York, and Butler of Maryland, in an effort to counteract effects of recent U.S. Supreme Court decision that permits states to levy taxes on interstate commerce of our members and, in fact, on every business in the country, large and small, that sells merchandise beyond the lines of the State in which it is located.

ASSOCIATION OF FOOD DISTRIBUTORS, INC.,
T. R. SCHOONMAKER, *Executive Secretary.*

BAINBRIDGE, KIMPTON & HAUPT, INC.,
New York, N.Y., July 14, 1959.

Senator HARRY FLOOD BYRD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BYRD: Respectfully, but just as earnestly, we appeal to you for as early action as is possible, through the Congress, to protect the interests of a large number of business enterprises, many of them—though not all—classed as small interests now seriously threatened.

Before the Supreme Court decisions of February 24, 1959, it was understood that business concerns doing business in more than one State were not subject to State taxation on sales and profits unless they owned factories, warehouses, or inventories in the State involved.

Since February 24 the danger is, as you well understand, that any State may tax income from business done by sales representatives regardless of whether

local factories, warehouses, or inventories are owned by the companies to be taxed.

Speaking primarily for our own company, now in its 115th year of business, but speaking also for the wholesaling industry in general with its thousands of companies, the danger mentioned will be devasting for any company doing interstate business and probably totally destructive of many companies unable to bear the added burdens involved.

The burdens of state taxation on business heretofore considered interstate commerce, protected by the commerce clause of the Federal Constitution, would be at least twofold:

1. The increase in taxes on companies whose business is necessarily conducted on a narrow profit margin basis would, in itself, be formidable and, in many cases, completely devastating.

2. The task of recording and properly reporting sales and profits for the many States involved will inevitably lead to such an increase in clerical and other costs as will pose a problem beyond solution.

On the several bills aimed at removing the present threat of disaster, we do not in this letter comment specifically.

It is the objective of these various bills that is of such enormous concern to us.

To you, who we believe are fully aware of the current business threat, we ask you for early action and for much needed aid.

Very sincerely yours,

BAINBRIDGE, KIMPTON & HAUPT, INC.,
MORTIMER H. CHUTE, *President.*

THE OHIO BRASS CO.,
Mansfield, Ohio, July 14, 1959.

Hon. HARRY FLOOD BYRD,
Senate Office Building, Washington, D.C.

DEAR SENATOR BYRD: Small business is extremely happy to learn that the Senate Finance Committee will hold hearings beginning Tuesday, July 21, on S. 2213 to limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce. We in industry compliment Senator Bush for the foresight in introducing S. 2213 and we equally compliment the farsightedness of the Congressmen who have introduced similar legislation under this subject.

State taxation of interstate commerce has been a problem prior to the decision of the U.S. Supreme Court, and we who are doing business between the States are very much disturbed over the far-reaching effects of the Supreme Court's decision. As a matter of fact, if the States can tax interstate commerce it is quite likely that cities can also tax interstate sales. In other words, the commerce clause of the Constitution has year by year suffered erosion and now is practically meaningless.

Is it possible that we could go as far as having import duties between States thereby destroying another clause of our Constitution?

In the legislation that has been introduced we find that the presence of an office in a State constitutes doing instrastate business. Many of us feel that this assumption is incorrect. In support I am attaching a letter which we submitted to the department of revenue, Commonwealth of Pennsylvania, who declared our operation completely interstate. The Supreme Court's decision obviously reverses this. We are confident that our position is not unique but rather that it is common to many businesses, and we strongly urge you to further define the meaning of an office and the presence of the office being intrastate or interstate.

We salute the astuteness of the committees of the Senate and the House in submitting this legislation on a bipartisan basis to the Congress, and we assure you that we will be ready and willing to be of any assistance in bringing this important legislation to a successful conclusion during this session of the Congress.

Sincerely,

EPHRIAM H. BROWN.

SEPTEMBER 23, 1957.

Subject: Corporation income tax settlements, years 1954, 1955, 1956; your file JUD: SEG: L 2218-16.

Mr. STEPHEN E. GOMBAR,
Commonwealth of Pennsylvania, Department of Revenue, Harrisburg, Pa.

DEAR SIR: In compliance with your request of September 4, with reference to the above subject and file, we wish to make the following detailed description of activities and property ownership within Pennsylvania for the 8 years under consideration.

1. We neither sell nor deliver tangible personal property within the State of Pennsylvania and carry no stock of merchandise within the State.

2. We do not render services for which we receive remuneration from persons within the State.

3. We do no accounting and we have no bank accounts within the State.

4. Our district managers in Pittsburgh and Philadelphia are not authorized to execute or perform contracts. The Pittsburgh and Philadelphia offices are maintained as a convenience for our district managers in those districts as a place for records of engineering data and for telephone and stenographic services. The duties of these employees consist of supplying engineering and technical data for which no charge is made.

5. Shipments are made from without the State and title to such merchandise passes outside of the State.

6. All orders are priced and subject to acceptance at the home office of the company in Mansfield, Ohio.

7. All prices are subject to change without notice, such pricing being determined at the home office in Mansfield, Ohio.

8. Terms of sale are subject to the complete control of the home office in Mansfield, Ohio.

9. Credit to be extended is wholly within the province of the home office in Mansfield, Ohio.

10. All billings and collections are made from the home office in Mansfield, Ohio.

11. We have no assets other than office furniture in the branch offices. We own four automobiles which are domiciled in Pennsylvania, but in each case these cars spend a considerable amount of time outside of the State of Pennsylvania and in the course of solicitation and providing engineering data to the utilities and mines.

The foregoing description of our activities in Pennsylvania has been in effect for a great many years, no changes have been made during the years under review and, as a matter of fact, the same set of circumstances exist in the years following those under discussion. We have never and do not now conduct intrastate business.

If you have any questions or wish any further comments for clarification, please let us know. If there are no comments or questions, we will look forward to a reply to the statement which we have submitted.

Very truly yours,

EPHRAIM H. BROWN.

THE TREATY CO.,
Greenville, Ohio, July 20, 1959.

Hon. HARRY F. BYRD,
U.S. Senate,
Washington, D.C.

SIR: American small business is presently faced with the most dangerous threat in many years. This threat stems from the recent Supreme Court decision in the *Stockham Valves* and *Northwestern Cement* cases. Here the Court affirmed the right to the States to tax the income of out-of-State companies doing solely interstate business in those States.

Many States have laws imposing such taxes, and three States have already amended their tax laws to take advantage of these decisions. Faced with the prospect of steadily mounting budgets, other States will be tempted to follow suit.

The burden of complying with the tax laws of all the States where a company merely sends in a salesman will be oppressive to business generally.

Particularly for some companies it could mean failure or seriously curtailed activity.

No one denies the obligation of business to pay its fair share of the State taxload. But obviously a more reasonable approach must be found if interstate business is to continue to grow and prosper.

I understand that there have been several bills introduced in both the Senate and House of Representatives to correct this situation. As chairman of the Senate Finance Committee, I vigorously request your immediate support toward bringing action before the Senate during the present session of Congress.

Thanks for your consideration.

Yours very truly,

R. E. BREADEN, *President.*

DETROIT, MICH., *July 20, 1959.*

Hon. HARRY FLOOD BYRD,
Senate Office Building, Washington, D.C.

DEAR SENATOR BYRD: As general counsel for the Ex-Cell-O Corp., which is shipping into nearly every State of the Union, I wish to respectfully urge you to support legislation that will prohibit State taxation of interstate commerce. It is my understanding that you will have this matter under consideration by the Senate Finance Committee starting Tuesday, July 21.

The constantly increasing cost of supplying information, the filing of forms and questionnaires for Government inquiries is adding substantially to the cost of American products. This, together with the spiral of wage inflation, will eventually result in a depression, in my opinion, that will make the thirties seem like a picnic. We have already priced ourselves out of the foreign markets. In a desperate effort to salvage some of their world trade, many American companies have been compelled to establish manufacturing facilities in foreign countries. Every one of these foreign plants means fewer jobs for American workers.

It seems to me that we have reached the point where we must review any further efforts to harass and impede the progress of American industry and certainly the attempt of various States to further burden industry with more costs, by State taxation of interstate commerce, should be prohibited by the Congress.

I do hope that you will support the proposed legislation now before your committee to accomplish this purpose.

Sincerely yours,

MILES H. KNOWLES.

THE HOME GUANO CO.,
Dothan, Ala., July 20, 1959.

Senator HARRY F. BYRD,
Senate Office Building, Washington, D.C.

DEAR MR. BYRD: We are addressing you in the interest of several bills which have been introduced in Congress and the Senate on which hearings will start soon concerning the Supreme Court ruling that the several States can tax interstate commerce even though the concerns doing business in more than one State do not have an office nor do they have a warehouse, but only solicit orders in the second State or others, and ship or have shipped into the second State any business which they may receive.

We think Senate bills S. 2213 by Senator Bush, S. 2281 by Senator Saltonstall, all provide remedy for this unfair possible taxation we may have.

We are in the southeast corner of Alabama within 20 miles of the Georgia line and 18 miles from the Florida line. Naturally we do some business in both Georgia and Florida as well as Alabama since we are right in the southeast corner of Alabama. Since we have no warehouses and no offices located in the States of Georgia and Florida but simply solicit orders in the ordinary way we think it is very unfair that Florida and Georgia should expect to tax us for the interstate business that we do in their States. This, of course, has never been done before and will continue to overload businesses, especially smaller ones like ourselves, with taxes which are already high and numerous and in our opinion will cause tremendous confusion and higher costs for the consumer in all lines of business to have to pay an additional tax. We are already suffering

from inflation and such taxes as the above will just add impetus to the inflation problem. Inflation must be stopped and soon. It is a deadly threat.

We certainly hope that you and your committee as Senators will facilitate all possible the above bills in the Senate and vote for them when they come on the floor so as to correct the recent ruling by the Supreme Court on this matter of interstate taxation by the States.

Thanking you for your consideration,

Sincerely,

M. L. HANAHAN, Jr.

EASTWOOD-NEALLEY CORP.,
Belleville, N.J., July 20, 1959.

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

MY DEAR SENATOR BYRD: We are informed that the Senate Finance Committee will begin hearing testimony on July 21 on various proposals introduced by the Senate to modify the U.S. Supreme Court ruling in the *Northwestern* and *Stockham* cases on State taxation on interstate commerce.

Our company employs slightly less than 400 people and, being closely held, we do not publicize our financial reports. Small as we are, however, we do sell our product in about 32 States of the Union but we have no warehouse, office, or place of business of any kind in any other State than New Jersey, where our only office and plant are located.

We have received a communication from another State requesting us to file a tax return with that State for every year in which we have sold our products in that State. We are informed by our accountants and counsel that there are quite a few other States having similar laws which may also take such action with respect to our sales within their boundaries. If we are liable for such taxes, the financial burden alone will be a crushing one for our company. However, gathering the necessary information, preparing and filing the returns would also constitute tasks of such magnitude that our present organization would have to be substantially supplemented in order to accomplish such a task.

We do not seek to avoid paying our fair share of taxes anywhere and have always endeavored to file whatever governmental reports are required and to pay our fair share at all times. However, the present disorder, apparently created by the above mentioned Supreme Court decision, can create a rather chaotic situation and may also result in unfair, unequal, and burdensome taxes. Under the circumstances we hope very much that appropriate legislation can be adopted in time to prevent serious harm, particularly to medium-size and small concerns who do not have multiple places of business and who do not have staffs equipped to deal with multiple State tax reporting and paying. At the very least, we fervently hope that Congress will act at once to preserve the status quo while this situation is studied by the Congress so that long-range legislation may be provided.

We shall be greatly interested in whatever assistance your committee and the Congress will provide in this situation. Thank you.

Sincerely yours,

JOHN G. MACKECHNIE, *President.*

SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND, INC.,
Boston, Mass., July 15, 1959.

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

DEAR SENATOR BYRD: This association of small-business enterprisers wishes to go on record before the Senate Finance Committee as being in favor of the legislative steps proposed to correct the interstate tax problem. This legislation, we understand, is now before that committee for hearing. Specifically, we refer to Senate Joint Resolution 113, S. 2213, and S. 2281.

Without such legislation, the possible effect of the February Supreme Court decisions on all business—but particularly small- and medium-sized business—is

very serious. The arguments for such legislation have been well developed, notably before the Senate Select Committee on Small Business under Senator Sparkman, and we need not repeat them here. We have testified at hearings before that committee both in Washington and in Boston, asking for correction of the situation. The proposed legislation appears to us to approach the problem wisely, and we urge its eventual passage.

The Commission proposed in Senate Joint Resolution 113 will serve a good purpose, but we do feel if immediate steps are not taken, as proposed in the two Senate bills, much damage will have been done before a Commission report can be made and action taken on it.

We have been pleased to see the speed with which both Houses of Congress have reacted to the potentially dangerous situation raised by the decisions. To us, this indicates a real awareness on the part of Congress of the problem inherent in this situation. The need for correction seems apparent.

To this end, we urge early and favorable action by the committee so that the matter may come to a Senate vote as soon as possible.

Respectfully yours,

PHILIP J. POTTER, *President.*

HEINZMAN SONS,
Grand Island, Nebr., July 11, 1959.

Subject: Interstate taxation of ordinary business income.

Hon. HARRY FLOOD BYRD,
Senate Office Building,
Washington, D.C.

DEAR SIR: As we understand it, any company that sells its stock of merchandise in States (or, in some instances, cities) other than the one in which its business is located, is in very grave danger of being assessed income taxes by those States (or cities) where they have no place of business but merely ship or deliver goods.

We feel it is our duty to speak up—this is our fight—against the interstate taxation of ordinary business income, and we feel that such tax legislation would be a great hindrance in general to all business. A number of bills have come up in the Senate, such as the one by Senator Bush (Connecticut) who was the first to get a bill (S. 2213) into the Senate, and this was followed closely by Senator Sparkman (Alabama) with Senate Joint Resolution 113, namely, to "prevent State taxation of income derived exclusively from interstate commerce when the only activity within the State is sales solicitation and where no office, warehouse, stock of goods, or other place of business is maintained within the State."

It is now clear that quick action by both the House and Senate is the only means of saving businessmen from having to pay income taxes to many States and other political subdivisions.

We request that you seek quick hearings before the House Judiciary Committee and the Senate Finance Committee, which have the bills already introduced before them for action.

We ask your support against interstate taxation of ordinary business income.

Yours very truly,

FRANCIS W. YILK,
Promotional Manager.

G. L. BROWNELL, INC.,
Worcester, Mass., July 15, 1959.

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

DEAR SENATOR BYRD: I have been informed that your Senate Finance Committee will hold hearings beginning Tuesday, July 21, on the bill filed by Senators Saltonstall (S. 2281) and similar bills filed by others which will limit the power of the States to impose income taxes on out-of-State corporations on income derived exclusively from the conduct of interstate commerce within those States.

We are definitely a small business but at the same time we do sell our products in several of the southeastern States and it would be a terrific hardship on us if we had to keep records and make returns to the taxing authorities of the several States in which we do business.

Our Massachusetts Senator Saltonstall arranged a hearing of the Senate Small Business Committee in Boston on May 1, at which testimony was offered regarding the problems confronting Massachusetts manufacturers not only of paying 50 separate State taxes but of keeping books, making returns, storing records, and engaging legal counsel, all to meet the diverse tax laws of the different States with their times for filing returns, different tax structures, different modes for determining "net income."

The Senate Small Business Committee was urged to recommend to Congress that it pass legislation stating that State taxation upon income received by a foreign corporation engaged exclusively in interstate commerce is a burden upon interstate commerce and illegal.

The bill filed by Senator Saltonstall (S. 2281) is such legislation and as the head of a very small business I trust that this bill or one very similar and accomplishing the same results will be reported out by your Senate Finance Committee.

Very truly yours,

CARL R. BROWNELL,
President.

STANDARD KNITTING MILLS, INC.,
Knoxville, Tenn., July 16, 1959.

Re State Taxation of Interstate Commerce.

Senator HARRY FLOOD BYRD,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: Our company is deeply interested in this subject of State taxation of interstate commerce account of recent decisions by the U.S. Supreme Court.

We ship goods into practically every State of the Union. Naturally we have salesmen who go into these States and solicit business. We have sales offices only in New York and in Chicago. But, under these Supreme Court decisions, every State into which we ship goods now has the right to require of us intimate details concerning our operations and can tax on such profit as we realize on goods shipped into the particular State.

As a practical businessman, you, of course, realize that this would just absolutely cover us with paperwork and no doubt would lead to our shouldering a greater tax load than we now carry, and goodness knows our present burden is discouragingly heavy.

I understand that your Senate Finance Committee will hold hearings on this taxation problem beginning Tuesday, July 21, and that various bills and a Senate joint resolution have been referred to your committee for consideration.

We have studied several of these bills which have been offered, have also studied the Senate joint resolution, and it would seem that a very simple bill or joint resolution would take care of this problem, so we are asking with all the earnestness at our command that your committee approve the needed legislation and strongly recommend favorable action thereon by the Senate at this session of Congress.

We can see ourselves hopelessly swamped if this situation is not corrected by the Congress before it adjourns. Your assurance of sympathetic consideration of our request and of your determination to bring about prompt action on the subject will be most encouraging to us. If there are any members of your Finance Committee to whom you would like us to write, please give us their names and we shall be happy to write immediately.

I cannot close this letter without stating that we are tremendously encouraged by the action of the President in vetoing legislation set up by the free spenders. Am sure that the President's action is most gratifying to you whom we consider the leader in Congress in support of Federal economy and the principle of living within our means.

Sincerely,

E. J. MCMILLAN, *Chairman.*

THE TERRY STEAM TURBINE CO.,
Hartford, Conn., July 16, 1959.

Subject: State Taxation of Interstate Commerce S. 2213.

Hon. HARRY FLOOD BYRD,
Senate Office Building,
Washington, D.C.

DEAR SIR: We understand that the Finance Committee will hold hearings beginning Tuesday, July 21, on the subject bill. We feel that this bill is of great importance to small business throughout the country.

We are horrified at the blow which will be dealt small business by the recent decision of the Supreme Court in the *Stockham Valve* and *Northwestern States Portland Cement* cases. This serious situation can only be remedied by immediate and decisive action by Congress clearly defining that interstate commerce shall not be subject to State taxation.

The Court has developed a new concept of law in which the distinctions between interstate and intrastate commerce are no longer of consequence. This we strongly feel to be in error. Congress has exclusive power, under the commerce clause, to regulate interstate commerce. Until the *Stockham Valve* decision, the Supreme Court has held that direct taxation of exclusively interstate commerce is a substantial regulation of it. Therefore, in the absence of congressional consent, the States have not been permitted in the past and, we respectfully submit, should not now be permitted to directly tax such business.

While the double taxation which will result from this decision will be unfair and discouraging to all business, it will be particularly hard on the little company. I understand that 35 States now have laws which can be enforced on interstate commerce under this decision. Undoubtedly the remaining States and many cities will follow with new tax laws, and already three states (Idaho, Utah, and Tennessee) have amended their laws to take advantage of this decision. A small company simply cannot afford to keep all the required records, keep track of the laws and changes in laws, and file returns in each of the 50 States and perhaps 250 cities. I think you can appreciate that to keep track of 300 different sets of laws and the filing of 300 different sets of forms could very easily require the establishment of a tax department with a full-time lawyer, a full time CPA, and several clerks. Such an added expense would be very onerous for a company our size (200 employees). It could be ruinous for a company of 25 employees. I am sure there are thousands and thousands of these tiny companies who make sales in most of the 50 States and who can only live by freely doing so.

We are a small company competing actively in one product with two of the largest manufacturing companies in the country, each of whom has hundreds of products. We do all our manufacturing in Hartford and all orders are accepted here and shipped f.o.b. Hartford. Our large competitors have plants, warehouses, and offices all over the country so they are already familiar with the laws and problems applying to intrastate business in each State. Furthermore, they are able to spread the costs of filing returns, etc., over hundreds of products. We will find it difficult and perhaps impossible to compete if we are not allowed to ship freely in interstate commerce as we have in the past.

We strongly urge you to show your interest in the economic strength of our country and particularly your concern for the small business by giving your support to this urgent and important legislation.

Very truly yours,

A. LINDSAY THOMSON, *President.*

THE HENRY G. THOMPSON & SON, CO.,
New Haven, Conn., July 17, 1959.

Subject: State taxation of interstate commerce.

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

DEAR SENATOR BYRD: We were very pleased to hear that the Senate Finance Committee will hold hearings beginning Tuesday, July 21, on bill S. 2213 intro-

duced by our Connecticut Senator Prescott Bush to limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce. We hope your committee will give this bill favorable consideration because it is of great importance to us and to all manufacturers, but especially the small- and medium-size manufacturers doing an interstate business.

We have previously written to Senator Bush and our other Connecticut Senator Thomas J. Dodd explaining our situation and soliciting their assistance in obtaining relief.

For your information we are a small manufacturer of metal-cutting blades which are used everywhere but not in large quantities generally. For that reason our $4 million in sales annually are spread all over the world. We sell in every State in the Union including Alaska and to indicate the volume in each State and the magnitude of a reporting job may we advise that 13.08 percent of our sales are in Connecticut, 10.75 percent in New York State, and lesser percentages in all the other States down to New Hampshire 0.02 percent and New Mexico 0.01 percent. In other words, we sell a little in every State. This must be true of many other manufacturers. What a terrific job we would have if all or most of these States required us to file an income tax return and pay taxes on these interstate sales.

At the present time we maintain a warehouse in California and a warehouse in Illinois and because of that activity we do report to these two States and pay State taxes, in addition to our own State of Connecticut. Otherwise, we do not report to any of the other States.

Action by Congress, which we are told clearly has authority under the commerce clause, would seem to be the only hope for relief from this situation brought about by the recent Supreme Court ruling. We urge you, therefore, to give prompt and careful consideration to this matter in committee and endeavor to have legislation adopted before the adjournment of this Congress. Your kind consideration will be very much appreciated.

Yours very truly,

J. T. BARRETT, *Treasurer.*

H. H. SCOTT, INC.,
Maynard, Mass., June 20, 1959.

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

DEAR SENATOR BYRD: As a small businessman with fewer than 300 employees, I wish to request most urgently that the Senate Finance Committee approve our Senator Saltonstall's bill, S. 2281, or similar bills which will limit the power of the States to impose income taxes on out-of-State corporations.

The Supreme Court decision regarding the *Stockham Valves* case is is so ludicrous and absurd that I think it would be laughable if it were not so deadly serious a matter, and particularly to small business. As small businessmen and entrepreneurs, we are risking our lifetime savings and efforts for the opportunity to compete with large companies, for the opportunity to grow in spite of the sometimes overwhelming handicaps imposed on us by Government taxation and demands for accounting in almost every imaginable field.

The effects of States imposing income taxes on out-of-State corporations would be serious enough for large corporations, but it is extremely serious to small companies such as ourselves, and there are far more small ones than there are large ones. There is such a thing as "the straw that broke the camel's back," and this ridiculous Supreme Court decision is a mighty big straw.

Such uninformed and mistaken judicial decisions are constantly eroding away the spirit of free enterprise which made this country great. I sincerely hope that Congress will legislate corrective action.

Sincerely yours,

V. H. POMPER, *Vice President.*

P.S.—The Supreme Court's decision is so uninformed that I cannot but feel it is to a considerable extent the fault of business and industry that the Justices could be so uninformed. I should like to present for your consideration a reprint of a short article in Industry magazine which gives my ideas on the true goals and philosophy of business in our society. I do not believe that profits are the goals of business, although they do form a necessary part of achieving the goals, of serving the human beings associated with business.

[Reprinted from June 1959 issue of Industry, official publication of Associated Industries of Massachusetts]

UNIQUE COMPANY PHILOSOPHY KEY TO SUCCESS OF ELECTRONICS FIRM

Progressive approach to the role of the company in society wins recognition for H. H. Scott, Inc., of Maryland, whose growing business stresses nonmaterial as well as material rewards, and casts new light on the manager's function

(By V. H. Pomper,[1] vice president, H. H. Scott, Inc.)

A company's basic goal is to grow and prosper through leadership in all activities.

This goal can be achieved only by management of high competence and integrity which best balances:

(*a*) Leadership in creating and satisfying customers.

(*b*) Leadership in releasing each employee's full potential with maximum individual recognition and reward.

(*c*) Leadership in safeguarding and improving the stockholders' investment.

(*d*) Leadership in fulfilling obligations to the external community including general public and suppliers.

The best single measure of success on reaching this goal is to earn profit levels at least sufficient to insure company survival, both by covering inevitable business risks and losses, and by providing the means which make continued company growth possible.

THE COMPANY

The company is an organization. Organizations are formed to serve the people associated with them, to help these people live and grow, not vice versa. The purpose of a company, then, is the fullest development of all its people in all ways, physical, mental, spiritual, and material. Organization of a company makes possible division of work, or specialization, so people may concentrate on what they can do the best and enjoy the most.

Organization permits accumulation of resources so that machines may be obtained for more routine and heavy labor, freeing people for more skilled and rewarding effort. People's higher capacities include imagination and creativity, exercising judgment and decision, fulfilling responsibilities, simplifying by introducing system and order, and improvement by self-development. These are unique activities using human abilities at their highest level, and with greatest satisfaction and material reward to the users.

By banding together in group activities people cooperate to overcome increasingly complex environments and to achieve personal goals. Such goals include gaining a sense of purpose through achieving company goals, gaining opportunity to develop and advance, earning recognition and praise through achievement, winning security through status of position and pay, securing a sense of belonging or identity in the group through group activities, and having a voice in making the policy to be carried out. By working together, people supplement their weaknesses by the strengths of others, and they develop their strengths by applying them to challenging problems. In viewing the company and its people, all people must be considered, including customers, employees, stockholders, suppliers, and the general public.

GROWTH

Continuous growth and change are essential if the company is to continue fulfilling its goals and purposes, if its people are to be guided toward their fullest achievement and development, if they are to gain reward and recognition and satisfaction of their spiritual, physical, intellectual, and material needs. Only by itself growing and changing can the company keep pace with the rapid, drastic growth and change in technology, science, and society. Scientific or technical change is always followed by social change and to survive the organization must remain flexible enough to adapt rapidly to such change.

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[1] The author was the recipient of the junior chamber of commerce award as one of the 10 Greater Boston outstanding young men of 1958. The awards are conferred for achievements, leadership, service in business or profession, and contribution to the community. Nominees must be between the ages of 21 and 35. The material used in this article is an official part of the company policy of H. H. Scott Co.

Few companies retaining traditional products and methods have prospered. A company must keep abreast in the race of innovation and competition or it will perish.

A static, rather than dynamic condition, has a deadening effect on both the company and its people. In terms of human qualities, static security results in atrophy of the human spirit. Only in change, which is the opposite of security, is there opportunity for spiritual, intellectual, and material growth, and only people are inherently capable of creating change and growth. It keeps them growing, it tempers and strengthens them.

To keep a company thoroughly alive it must be kept in a state of perpetual ferment. As Napoleon said: "The art of government is not to let men grow stale." People must themselves participate in creating any change. People are guided by established habits and unless they themselves have a say in what they are to change, their security of habit may seem imperiled and they may adjust negatively instead of positively. Instead of direct attack on solving the problem they may attempt to evade it or oppose the change.

Every individual has an inherent need for personal growth, for developing his craftsmanship, for working at his peak capacity and so gaining recognition, respect, acceptance, and liking, all basic human needs. Personal development of a high order can be achieved only by establishing tough and realistic standards of performance which are constantly moved slightly ahead of what has already been achieved.

PROSPERITY

A company must earn a profit to prosper. Profit is vital to business because it provides the means which make continued growth possible. Earning reasonable profit levels is essential to maintaining good credit and financial standings with banks and suppliers. Profit acts as a cushion against inevitable business risks and losses. It serves a a meaure of the effectivenes with which company goals are being met.

Profit is not the goal of business but rather it is a means of insuring that business goals can be met. No company is making its maximum contribution to progress or discharging its full moral obligations to the society which supports it unless its operations generate surplus capital to start new enterprises or to expand and improve present ones.

One of the functions of profit is to provide "leadtime" to experiment with new products, services and markets from which no immediate return can be realized. Profits not only are essential to technological and cultural advance, but they add stability to a company and sustain it during off seasons, recessions and all kinds of emergencies which may interrupt operation of the business or make it unprofitable for a time.

Profit is not just a materialistic goal, rather it is both the key to achieving basic human goals of the company and a measure of company success in approaching these goals. Company leadership in serving its people, including customers, employees, stockholders, suppliers, and the public, is possible only by earning an adequate profit. And an adequate profit can be earned only by the best balance in serving the needs of these people.

LEADERSHIP

Leadership in all activities is the driving force behind both growth and prosperity. A company with clear-cut leadership goals, (1) has a clear concept of where it is and where it is going, and (2) it has a "habitual vision of greatness"—that is "a concept of excellence." Establishing such a climate of high standards and peak performance within a company is a major task of its leaders. Nothing better prepares the ground for overall leadership than a spirit of management which expresses itself in strict principles of conduct and responsibility, high standards of performance, and respect for the individual and his work. Nothing challenges men as effectively to improve their performance as a job which makes high demands on them, nothing gives more pride of workmanship than accomplishment.

People have a fundamental desire to gain recognition, to be accepted, to be liked. They want to become members of the team and perform according to its standards. High standards of excellence lift men's visions to higher sights, raise their performance to higher standards, and aid the growth of their personalities beyond normal limitations. Any compromise with high standards lays the foun-

dation for deterioration of character, it lowers the individual's economic potential and reduces job satisfaction, pride, and self-respect.

To develop peak performance from the individual, the work must be such as to utilize individual abilities at their highest level. To do this, the job must challenge the individual to exert and develop these abilities. The individual is the key. Most great advances are started by individuals, although teamwork is needed to follow through to a successful conclusion.

The concept of maximum delegation of authority to the lowest possible level in the company is an expression of these principles. If a man knows what results he must accomplish and if he controls the elements making for success and failure, if he has an opportunity to do the job in his own way, his full creative potential is more readily released, he suffers from fewer frustrations than the individual who is not sure of the scope of his job or of his control over it.

There should be left to each individual worker the maximum area for decision making, responsibility, and accountability for planning, executing, evaluating results, and resetting goals. The individual can only utilize himself, he can only drive himself, he can only develop himself. All development is self-development. The best way to foster this development is to focus the individual's vision on a high goal, to set demanding standards which "stretch" the individual beyond his normal capacity, and to see that these standards are met.

For the individual to rise to demanding tasks he needs guidance and support, inspiration and encouragement, leadership and discipline, recognition and reward. These can come only from management, the key and vital factor balancing the needs of the people connected with a company.

MANAGEMENT

Management, including its organization approach and attitude of mind, is the most important single element of success in business. In a competitive economy the quality and performance of its managers is the only effective advantage an enterprise can have. In fact, the quality and performance of the manager determine not only the success of the company but even its survival.

The manager's job is:

(*a*) To get results.
(*b*) Effectively, on time.
(*c*) Through people.
(*d*) By system and ideas.
(*e*) With money, materials, and machines.

The effective manager uses five major tools:

1. Planning.
2. Organization.
3. Coordination.
4. Motivation.
5. Control.

In achieving results the manager's basic resources is people. People are the most important part of a business enterprise and the greater part of a manager's effort is in selecting, guiding, and inspiring people. The manager's basic skill in dealing with people is personal power—the impact of his personality and leadership upon the thoughts and actions of other individuals and groups. This skill expresses itself through his abilities to write, speak, listen, inspire, teach, guide, and set an example.

To set an example the manager must operate efficiently himself. He must organize his own daily effort, he must discipline himself as well as others. He must have a clear mental picture of what is desired plus the ability to transfer this to the minds of others. "All the world stands aside for the man who knows where he is going."

The manager must establish climates of sympathetic understanding and of habitual excellence in achievement. If he is to teach and lead others he needs greater knowledge, skill, and competence than those he teaches. So if the manager is to progress to positions of higher leadership he must unceasingly study, practice, and build habits of increasing effectiveness. In these times of rapid change and growth the manager must be a scholar, a person who constantly learns and inquires, because only so can be hope to keep pace, much less guide others.

Vital to effective management is achieving and maintaining the best overall balance between the myriad conflicting factors in complex industrial environ-

ments. The manager must balance the needs of the various people associated with the enterprise. He must balance system and creativity, he must balance long-range and short-range results. Balancing these factors and so many others comes only through the manager's exercise of judgment of a high order, that is ability to solve problems analytically, ability to study, learn, and profit by mistakes.

The manager must wage a systematic and continuing effort to reduce costs. He must personally and frequently inspect those key operations and control points which affect efficiency. Few things are more difficult or more important than reducing cost and increasing efficiency. The manager must consistently improve productivity of company operations—that balance of all factors of production which gives the greatest output with the least effort. Substituting machinery for muscle effort and, better yet, substituting planning, brains, and knowledge for both muscle and machinery, are the ways to gain that efficiency necessary to adequate profit levels.

In the final analysis the manager must always maintain high personal standards of integrity, knowledge, character, dedication, and self-improvement if he is to expect such standards from others. The example a man sets, his philosophy, his actions and thoughts, his way of looking at the world and the men and women around him, his standards and basic character, determine his success as a manager of people and things more than any single factor.

The achievement of genuine success, happiness, and contentment comes through not making ourselves, but others with whom we are associated, happy, contented, and successful. So far as both individual and groups are concerned, non-self-directed goals and activities are those most effective in creating, first the results desired and, as byproducts, achievement of the more direct and personal returns. Most of a man's waking life is spent at work and work is a way of life. The time-tested rules for success and failure apply here as in all human relations.

A short rule for success is: "I get up when I fall down," and for failure: "Try to please everybody."

THE AMERICAN THERMOS PRODUCTS CO.,
Norwich, Conn., July 21, 1959.

Hon. HARRY F. BYRD,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR BYRD: In connection with the hearings that your committee is holding on various bills to limit the power of States to tax interstate commerce of companies who have no offices within a State, but merely solicit business in that State, I thought you might be interested in a statement I had our treasurer prepare for me as a guide to the problems we may face if something is not done.

I am sending copies of this report to our Senators from Connecticut also, in the hope that something will be done to correct this situation.

Sincerely yours,

TREVOR K. CRAMER.

THE AMERICAN THERMOS PRODUCTS CO.

MEMORANDUM RE STATE INCOME TAXES

As a result of recent decisions by the Supreme Court of the United States, State corporate income taxes may now be imposed by States based on the mere solicitation of business by so-called foreign corporations within their borders. In general, this will effect fairly substantial burdens on all corporations operating in the field of interstate commerce. Such burdens will consist not only in additional taxes being paid but also in additional legal, administrative, and accounting work being incurred.

The American Thermos Products Co. is operating in interstate commerce and accordingly solicits orders in practically all of the 49 States. It maintains branch offices or plants in only two States excluding the State in which its principal place of doing business is located, namely, Connecticut.

A brief study has been made of the State corporate income tax laws of those States which impose a franchise tax based upon net income or which

impose a direct income tax likewise measured by net income on out-of-State corporations operating within their borders. It has been assumed that the solicitation of orders by the American Thermos Products Co. will bring it under the corporate tax laws of these States. There are approximately 35 States which would then have the power to subject the company to a tax. Thermos is already paying in four of these States so that it is possible that additional taxes may eventually be assessed against Thermos by another 31 States.

Such possible additional taxes payable would amount to approximately $14,500, which is an average of $470 per State. The total estimated cost of preparing the returns would be $3,600 per year or something a little less than $120 per return. These costs could be regarded as direct or prime costs. In addition to these figures, it is possible that it might become necessary to expend moneys for legal fees in connection with possible litigation with the States involved. Extensive records, principally for allocation purposes, must also be maintained in connection with filing the returns. Furthermore, it is highly probable that in future years constantly increasing demands of the States for revenues will cause corresponding increases in the amounts of corporate income taxes.

A few further comments on the administrative and legal burdens incident to the preparation of State income tax returns would seem to be in order at this time. While most of the States use allocation formulas, there is no uniformity in their use. For example, 10 States use the factors of property, payroll, and sales and give equal weight to each of these factors. Eight States, however, use only the property and sales as factors, and a separate eight States use only the factor of sales. Differences in formulas are even greater than is suggested since sales have also been variously defined; for example, sales under one definition are all receipts from merchandise delivered within the State, while in another definition, they are defined as receipts resulting from only merchandise billed to within that State. In addition, the definition of net income will vary from State to State, each State having its own State regulations with respect to including or excluding from taxable income, such items as the following: (1) accrual of State franchise or income tax, (2) interest paid, (3) dividends received, (4) interest on Government bonds, etc.

From the above, it can easily be seen that the cost of compliance can be both difficult and costly and in many instances will call for the hiring of outside help such as trained tax accountants or tax lawyers. If litigation with the State should arise, there is a possibility of additional legal fees incurred to defend against additional taxes levied or to aid in the filing of tax refund claims. Finally, it should be noted that additional taxation burdens will inevitably result in either higher prices or hamper the free flow of merchandise in interstate commerce.

W. B. CASTENHOLZ, Jr.

JULY 20, 1959.

WASSELL ORGANIZATION, INC.,
Westport, Conn., July 16, 1959.

Subject: Taxation of income on interstate business

Hon. HARRY FLOOD BYRD,
U. S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR BYRD: There are bills in both the Senate and the House, the substance of which could be framed into a good uniform bill for immediate passage by both Houses.

Attached is a résumé of the chaos that could come about if something is not done immediately in this session. I hope this may clarify the thinking of all concerned.

This is not a partisan matter, since it affects the future of every small businessman in the country who desires to grow in your section as well as all others.

Sincerely yours,

F. LLOYD WASSELL,
Chairman of the Board.

IMMEDIATE ACTION NECESSARY

TAXATION OF INCOME ON INTERSTATE BUSINESS

June 22, 1959, relief bill, Senator Bush (S. 2213); June 22, 1959, relief bill, Senator Saltonstall, (S. 2281); June 12, 1959, relief bill, Congressman Frank Kowalski (H.R. 7715); June 16, 1959, relief bill, Congressman William McCulloch (H.R. 7757); June 16, 1959, Miller resolution (H.J. Res. 431)

Immediate action is necessary to head off the chaotic condition that will arise in small business countrywide if 50 States are allowed to take advantage of the terrific openings made possible to State taxing authorities by this Supreme Court decision—and they have already started.

First, it is necessary to remember that there are 4 million businesses in the United States of which 21,000 exceed $1 million capitalization leaving 3,979,000 small businesses.

Even many of these 21,000 would be badly hurt by the implication of taxing power of 50 States.

It may be said by those without knowledge that not many would be hurt—but from the angle of the very small business let us look at the facts.

Looking at a map of the United States with State and river outlines, many of the State borders are rivers. Our history and growth of cities shows that towns have sprung up along these rivers, and at the juncture of several rivers. Around these towns have sprung smaller towns and marketing areas spreading over two, three, or four States. Add to these the coastline harbors that supply access to many of these marketing areas.

The big businesses of today were the small businesses of yesterday. They sprang up in these small towns and spread over the local marketing area and then over the nearest other marketing areas until finally they became national in scope and established branch warehouses and branch factories.

This Supreme Court ruling immediately cramps the growth of every small business, since it would load him with another law he would have to watch in the fear that any move to enlarge his marketing area would actually cost him more in accounting and profits than he would gain by doing business in an adjacent State.

Every time a small businessman without this decision wishes to enlarge his area, he must hire a man and gamble that it will pay off. How many men will not get a job because small businessmen will not gamble on his salary and expenses, plus the complications of this decision? How many men will lose their present jobs for the same reason?

Look at the small businesses that will be affected in the following cities located in several State marketing areas:

Providence, R.I.; Bridgeport, Conn.; Newark, N.J.; Camden, N.J.; Philadelphia, Pa.; Baltimore, Md.; Savannah, Ga.; Jacksonville, Fla.; Chattanooga, Tenn.; New Orleans, La.; Tri-cities—Davenport, Moline, and Rock Island; St. Louis and East St. Louis; Memphis—Tennessee, Mississippi, Arkansas; Kansas City, Kans.; Kansas City, Mo.; Toledo—South Bend, Fort Wayne.

This is only local business, but their areas are over State borders of several States and, therefore, they would have to make an accounting to and payment to each State—or else not do business in that State.

The more States the more accountings and the more payments.

Next, you have the special types of business that are limited in potential and could not exist except by reason of having 50 States in which to operate—but, with the entire country their potential is still a small one. They would still have to account for each State.

Now there is still another type of business—one with a number of different lines of products—and a different profit on each product.

We will take California as an example: the company has seven products with various percentages of profit. The company's sales in California are practically all of two products and both low profit items. Is California entitled to a tax on the profits according to its U.S. income tax report which naturally bulks the profits on all seven items to arrive at a net income or only on a share of the profits made on the items sold in California?

If California is only entitled to a share of the profits on the items sold in California, and the same is true of every other State in which that company

does business, it would mean keeping books for 50 States on seven products or 350 sets of accounts—also apportioning the advertising, home office travel, and sales promotion going into those States.

According to the request already received from California, we would have to go back and do this accounting for all the years they could prove applied under the Supreme Court decision.

The next step would be that if a man living in Kansas City, Kans., saw an ad in the Kansas City, Mo., Star and went over and purchased that item in Kansas City, Mo., the State of Kansas could make the advertiser in the Kansas City Star make him present him with his annual statement and pay a tax on the profit of a can of beans.

We might call your attention to the fact that in 1776 there was a war fought on the basis of taxation without representation. Personally, we do not see where we could afford to receive representation in 50 States if it was offered.

F. LLOYD WASSELL,
Chairman of the Board.

THE SAVOGRAN CO.,
Norwood, Mass., July 21, 1959.

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

DEAR SIR: Senator Saltonstall personally filed a bill which would prohibit a State or political subdivision thereof from imposing any income tax on an out-of-State business firm unless such firm maintained an office, warehouse, or other place of business in the taxing State. The bill also would bar any State from assessing or collecting any tax prohibited by the bill once the bill was enacted. This would take care of taxes which have been assessed in the past but have not been collected.

We are in favor of Saltonstall bill, S. 2281 and similar bills filed by others which will limit the power of the States to impose income taxes on out-of-State corporations on income derived exclusively from the conduct of interstate commerce within those States.

Please help stymie the problem confronting manufacturers of not only paying 50 separate State taxes, but of keeping books, making returns, storing records, and engaging legal counsel, all to meet the diverse and variegated tax laws of 50 States with their different times for filing returns, different tax structures, different modes for determining net income and different, often conflicting formulas of apportionment. This would involve large increases in accounting and legal costs. The cost of such a scheme for complying with the taxing requirements of the different States might well exceed the burden of the taxes themselves, especially our small business doing a small volume in several States.

We wish to recommend to Congress that it pass legislation stating that State taxation upon income received by a foreign corporation engaged exclusively in interstate commerce is a burden upon interstate commerce and illegal. If, however, Congress feels that it is reasonable for a State to impose a tax upon a foreign corporation based upon sales in that State in interstate commerce, we suggest that a clear-cut line be drawn defining who is taxed and who is not, such as, having a local office in a State might give sufficient basis for a tax, but orders solicited through advertising, direct mail, or a salesman would not be sufficient to justify a tax upon the income so derived. Such a system as now exists will divide our country into 50 autonomous governments, thereby slowing up the freedom of economic action.

Sincerely,

ROBERT E. LENK, *Treasurer.*

THE SHELBY SALESBOOK CO.,
Shelby, Ohio, July 20, 1959.

Re S. 2213, H.R. 7757, House Joint Resolution 431, H.R. 7715.

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

DEAR SENATOR BYRD: We respectfully ask you and your committee to favorably support the above bills which would amend title 4 of the United States Code.

With all do respect to the highest Court in our land, we do feel their decision in the *Stockham Valves and Fittings, Inc.* and the *Northwestern States Portland Cement Company* cases was a mistake of the highest magnitude.

We are a manufacturer of business forms, employing approximately 475 people in our plant at Shelby, Ohio. Our products are marketed in approximately 37 States by some 200 commission salesmen.

The Supreme Court decision not only opens the door to the current taxation of interstate commerce, but worst of all it is retroactive insofar as the Supreme Court is concerned.

We were incorporated in 1904. Some of the States in which we solicit orders have indicated their intention to collect an income tax on such interstate commerce from the beginning of their intrastate law, which dates before our incorporation.

It is not difficult to understand what can happen to a company of our size if each State applies a retroactive assessment against us.

As to current taxation, it will be difficult for us to pay the several States the yearly tax that will be required, and continue to meet the very competitive prices of the local firms in those States. This tax must come out of profit if we are to stay competitive in our field of endeavor.

It is imperative, and our prayer, that the Congress of the United States will amend title 4 of the United States Code at this session.

Respectfully yours,

R. E. DUDENHAVER,
Vice President and Treasurer.

LIMPERT BROS, INC.,
Vineland, N.J., July 10, 1959.

Senator HARRY F. BYRD,
Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: Enclosed is a photostatic copy of a letter from Robert North, executive secretary of the International Association of Ice Cream Manufacturers and a copy of my letter to him.

The recent decisions of the Supreme Court referred to in our letters have given rise to very grave problems which affect not only all the interstate business in the country, but in truth may alter the economic well-being of the United States.

What makes us think the issue is the definition of "doing business." This seems to me to be pettifogging and far from the real point. The real point is whether the Founding Fathers and the Constitution as presently amended had the intent to create an economically sound commonwealth of United States under a Federal head and thus to avoid some of the onerous tax situations and trade barriers that existed in Europe. The Court in making this decision does not appear to have even remotely considered the intent of the Constitution and the prodigious economy developed by our people under this intent which up to now gave us a mass market to operate in. That net income from business done in each of 50 States is open to taxation by each State is ludicrous, Senator Byrd. Sir, our entire economic well-being rests on business' access to a free market (mass market) and its effective use of this mass market to lower the price per unit of a product to the consumer.

At stake here is the economic well-being of the United States. A definition of doing business is not the issue or the pivot upon which the case is to be judged; (whether a State may tax net income of business done in the State by out-of-State corporations). The issue here is to reaffirm to the people that the United States within its boundaries exists as a free trade area, as a mass market to which its citizens have ready access. The people have a right to protection from odious taxation flung without reason at them from 50 States. The people have a right to succor from those who would destroy their economic health, and subvert the Constitution's intent.

As our representative on the Senate Finance Committee, I call upon you for comment and action.

Very sincerely yours,

HAROLD JOHN LIMPERT III, *President.*

INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS,
Washington, D.C., June 18, 1959.

Re increased tax liability.

Mr. HAROLD JOHN LIMPERT III,
Limpert Brothers, Inc.,
Northwest Boulevard and Plum Street, Vineland, N.J.

DEAR MR. LIMPERT: As an associate member you may not have regarded the international as your Washington representative.

Aside from general legislation and Government regulations which affect the industry and are of importance to you, there are special problems that may have serious impact on your business.

One of the new issues raised by three Supreme Court decisions may subject your company to income tax liability on its interstate business in States other than your State of domicile.

The Supreme Court, in the *Northwestern Portland Cement Co.* and the *Stockham Valve and Fitting, Inc.*, cases held: "We conclude that net income from the interstate operations of a foreign corporation may be subject to State taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same."

There are 35 States, and some cities, which have these laws on the statute books, and 3 more States have similar bills before their legislatures.

The international is joining with a group of trade associations to initiate efforts to get legislation to overcome these decisions and to finally bring uniformity among the States in handling these problems.

Our first effort is going to be legislation which will define "doing business." This will be predicated on the premise that taxes on interstate activities are a burden on interstate commerce and in violation of the commerce clause of the Federal Constitution.

In the *Northwestern Portland Cement* case as little activity as sales shipments to customers, an office in the State, and salesmen soliciting within the State sustained an income tax. The minimum standards for the imposition of a tax have not yet been decided by the Court. We would try to exempt such activities as sales shipments to customers and salesmen soliciting within the States as "doing business" within the State for income tax purposes.

We shall keep you advised of our progress, but it is a serious problem for all suppliers and equippers, as they may be subject to retroactive taxes, with penalties, in the future.

Cordially,

ROBERT H. NORTH, *Executive Secretary.*

P.S.—If you would like more details of the court cases we shall be happy to give you a complete report and digest of them.

LIMPERT BROS., INC.,
Vineland, N.J., June 25, 1959.

INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS,
1105 Barr Building, Washington, D.C.

(Attention: Robert H. North, Executive Secretary.)

DEAR BOB: Thank you for your letter of June 18. The recent Supreme Court decision, concerning the right of States to tax out-of-State corporations, presents not only a problem for us, but a critical problem for other corporations.

This problem will rapidly grow into one of business' gravest problems as other States begin to use these Supreme Court decisions as steppingstones or, in fact, launching pads for greatly amplified tax liabilities.

Not only will the increased taxes impose a burden, but there are other graver implications as well. Really burdensome bookkeeping, added cost to the consumer is a direct corollary of these decisions. This tax in the end will strike straight at the consumer.

Please do not consider me presumptuous in making a suggestion, Bob, concerning this problem. A short review of the economic history of Europe and the United States would instantly reveal that the country-by-country tax and tariff barriers in Europe have held this continent back and made economic and business intercourse between countries an extremely difficult problem. The idea of a true mass consumer market for any European manufacturer still does not exist today. Free-trade areas have begun between countries to attacks just this problem.

Our Founding Fathers' concept of a United States had, as one of its intellectual cornerposts, just this in mind—free trade within the States of a United States, not trade tax and tariff barriers between 50 State tax countries and the attendant problems contained in this European philosophy.

To a layman it would seem that the present decision of the Supreme Court is not merely a bad decision which, due to its vagueness, has rendered to each State a mandate to conceive in State greed for revenue, tax legislation, which is ignorant and shrived of all thought for the economic welfare and general good of all business and all people of these United States. Its implications are more sinister and far reaching.

Pending further clarification, these Supreme Court decisions put in the hands of 50 local State tax offices the right to each define what shall be considered "doing business." More ominous still, each local State office has the right to impose taxes based not on the general good for even the residents of the State, but based on their need for State revenue.

Discriminatory and retaliatory taxes are immediate considerations as one State views in anger what another has done.

Taxes rendered by one State against goods entering a State are tariff and trade barriers as surely as a border customs office.

Political courage is a dim light in a sea of political expediency and cowardice. How far easier to derive State revenue from out-of-State corporations for the politician desiring a return to office, rather than face realities at home and tax soberly for important budget needs! With this decision the Court has made taxation truly political. What a pork barrel this will be for experienced and neophyte politicians to romp in!

The Supreme Court has surrendered the people of the United States into the hands of State tax bureaus, which are ignorant of the dangerous power they possess to destroy the economic fundamentals which built this country's prodigious economy.

In fact, the Court has rendered here not merely a tax decision, but has invaded and attacked the concepts of the Founding Fathers and the intent of the Constitution of the United States in establishing an economically healthy Republic. "The power to tax is the power to destroy." Where are the Boston men who dumped English tea in the New England sea?

The prime issue here does not seem to be legislation which defines doing business. The issues here are more fundamental. They are the answers to these questions:

Does the Constitution of the United States sanction the economic nullification of the unity of these States under a Federal head and their reduction into 50 State tax countries each with a tax tariff and trade barriers? "The power to tax is the power to destroy."

Does the Constitution of the United States surrender this power and the economic welfare of all the people into the hands of 50 State tax bureaus each ignorant of the harm they do to the economic weal or whole?

Does the Constitution or Congress of the United States surrender the economic welfare of the country into the hands of 50 State tax offices?

These, it would seem, are the issues that need defining.

In a country that has led the world into economic light and well-being; in a country whose world banks, Marshall plans, and NATO contributions have kept alive its smaller global brothers; in a country which has made the largest economic contributions to helping nearly one-fifth of the globe from falling into the black void of communism and whose armies and navies sustained the world against tyranny, have we reached this pathetic estate that we must define what doing business means for 50 State tax bureaus?

It was business and all our people, who invested the money so heavily but well spent all over the world. It was business that led, armed, moved, and gave up its citizen workers to win the war. It was business whose taxes sustain this Government. Every citizen is in business every day. To what low estate have we fallen that we are now put to define ourselves and indulge in miserable half evasions to justify the work every citizen does of being a productive member and purchasing member of this United States regardless of where his State lies? The issue is not to define what doing business is. The issue is: This is the case of all the people of the United States against the Supreme Court which has surrendered their economic well-being into the hands of 50 State tax offices who may demand tax passports tomorrow from the people.

Very truly yours,

HAROLD JOHN LIMPERT III,
President.

43695—59——12

ASSOCIATED INDUSTRIES OF RHODE ISLAND, INC.,
Providence, R.I., July 20, 1959.

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

DEAR SENATOR BYRD: Associated Industries of Rhode Island, Inc., is in favor of the passage of legislation by the Congress prohibiting a State, or political subdivision thereof, from imposing a tax on net income of a corporation derived from the conduct of interstate commerce when the only activity within the State is sales solicitation and where no office, warehouse, stock of goods, or other place of business is maintained in the State. The decisions of the Supreme Court in the *Northwestern States Portland Cement* and *Stockham Valves and Fittings* cases have created a serious handicap, especially for small corporations which attempt to do an interstate business by sending salesmen and shipping goods into a State without maintaining an office or warehouse there.

If the States are empowered to tax a corporation on its receipts from such interstate commerce, a tremendous burden will be imposed upon such corporation. Even though the tax levied may not be large, the work of complying with the tax laws of many States will be very costly, since the corporation must engage local counsel, prepare, and file reports, keep separate records of sales in particular States, etc. The allocation formulas of the several States differ widely and it is possible that a corporation might be taxed on more than 100 percent of its income. This will probably result in some businesses refraining from doing business in certain States, which will be a severe burden on interstate commerce to the detriment of the persons living in those States.

The Select Committee on Small Business of the U.S. Senate has given very careful consideration to the problem and in its report dated June 29, 1959, has stated that the solution is the passage of legislation such as that to which reference is made above. Among the bills which would accomplish this purpose are S. 2213 introduced by Senators Bush, Butler, and Keating, S. 2281 introduced by Senator Saltonstall and Senate Joint Resolution 113 introduced by Senator Sparkman and others.

We urge this committee most strongly to give favorable consideration to the passage of such legislation.

Very truly yours,

EDWIN T. SCALLON,
Secretary and General Manager.

LAW OFFICES OF WINTHROP, STIMSON, PUTMAN & ROBERTS,
New York, N.Y., July 24, 1959.

Re State power to tax net income derived from interstate commerce

The CHAIRMAN,
Senate Finance Committee,
U.S. Senate,
Washington, D.C.

DEAR SIR: I attended the July 21 and 22 committee hearings considering possible legislation along the lines suggested by proposed bills Senate Joint Resolution 113, S. 2213, and S. 2281 and was greatly impressed by the understanding shown by Members of the Senate of the need for legislation in this session of Congress to prevent the immediate imposition by many State legislatures of taxes on net income deemed by such legislatures to have been derived from sources within the imposing States without regard to the locations of the manufacturing activities, offices, or employees of the businesses concerned. In view of your concern about specific wording of possible legislation, I would like to make the following suggestions:

First, I believe that the underlying theory of S. 2281 is better than that of sections 101 and 102 of Senate Joint Resolution 113 since S. 2281 is phrased in terms which require the conduct of a trade or business in the State in order to support the imposition of tax rather than in terms which merely exclude solicitation alone as being sufficient to support the imposition of a tax.

Second, I am concerned by the failure of any of the three bills to include language designed to restore as the basis for taxation the concept generally understood to have been the basis for taxation prior to the *Northwestern States*

Portland Cement Company and *Stockham Valves & Fitting Company* cases. For many years business entities engaged in interstate commerce have relied upon Supreme Court cases such as *Cheney Brothers Company* v. *Massachusetts*, 246 U.S. 147 (1918) and *Alpha Portland Cement Company* v. *Massachusetts*, 268 U.S. 189 (1925) as establishing the law to be that where the business entity maintain in the taxing State only a local sales office but did not accept orders in such State, and did not fill orders from a stock of goods kept in such State, the activities constituted interstate commerce and were insufficient to support the imposition of a net income tax by the States in which such offices were located. Even the case most favorable to the position of the States prior to the *Northwestern States* and *Stockham* decisions, that of *West Publishing Company* v. *McColgan*, 328 U.S. 823 (1946), involved a sales activity in a State where the salesmen were authorized to receive payments, collect delinquent accounts, and make adjustments.

I therefore respectfully recommend that the proposed legislation should be specifically exempt activities such as those specified in the *Cheney* and *Alpha Portland Cement Company* cases from the burden of taxation by States in which such offices are located and submit for your consideration a draft of a revised subparagraph (b) to S. 2281 designed to accomplish this purpose. The draft is marked to show changes in existing wording.

Although I attended the hearings at the request of a client of this firm and although this firm represents several clients who will be affected by any action in this field, this letter is not submitted at the request of or on behalf of any client but is only submitted in the interests of good legislation.

Respectfully yours,

WARREN I. TITUS, Jr.

DRAFT OF REVISED SUBPARAGRAPH (B) TO S. 2281

(b) For purposes of subsection (a), a person is not carrying on a trade or business in a State solely by reason of *making* [one or more] sales of tangible personal property in the State (whether title to such property passes in or outside of the State), if (*i*) such person does not have or maintain *a* [an office, warehouse or other] place of business in the State, and (*ii*) does not have an officer, agent, or representative in the State who has *a* [an office or other] place of business in the State. For purposes of the preceding sentence, the terms "agent" and "representative" do not include an independent broker or contractor who is engaged independently in soliciting orders in the State [for more than one seller], and who holds himself out as such; *and the term "place of business" does not include an office maintained solely for use of sales, promotional or clerical employees and their supervisors provided that (1) orders are neither accepted nor payments received at such office and (2) a stock of goods for filling such orders is not maintained in the State.*

HEMMETER CORP.,
Mountain View, Calif., July 22, 1959.

MRS. ELIZABETH SPRINGER,
Clerk, Senate Committee on Finance,
New Senate Office Building, Washington, D.C.

DEAR MRS. SPRINGER: This corporation requests permission to file the following statement for inclusion in the record of hearings of the Finance Committee.

We are a small business engaged in the manufacture of wheel balancers. I have spent years in the invention and development of the balancer and in organizing the business on a nationwide basis. We are in competition against older and much larger firms, some of which are divisions of big business. However, we are growing steadily. But now we are faced with a tax burden which certainly can weaken our standing.

The Supreme Court ruling permitting States other than California to tax us for sales within their States will cause us definite financial hardship. The tax itself could of course be collected from the purchaser, but the additional bookkeeping, clerical, auditing, and perhaps legal advice charges would be prohibitive in a small business.

We appreciate the interest in the problems evidenced by the three bills before the committee and urge passage of legislation to correct this obvious inequity.

Very truly yours,

GEORGE T. HEMMETER, *President.*

NATIONAL TOOL & DIE MANUFACTURERS ASSOCIATION,
Cleveland, Ohio, July 27, 1959.

Subject: Hearings on Senate Joint Resolution 118, S. 2213 and S. 2281
HON. HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: On behalf of the members of the National Tool & Die Manufacturers Association and other manufacturers of special tools and dies, I wish to file this statement for inclusion in the record of the above hearings.

Our association has more than 1,000 members, scattered over the country from coast to coast, and from Texas to the Twin Cities.

Taxation of interstate business by States would be little short of disastrous for the several thousand small businesses that comprise the special tooling industry. These small companies have very limited office staffs—often only one girl—and since they frequently receive orders from out-of-State customers, it would be most burdensome to keep the additional records required by such State taxation, to assign income to sales made in each State, and to file voluminous tax returns.

Furthermore, they are already so heavily taxed that it is very difficult for them to operate at a profit, to say nothing of accumulating sufficient funds after taxes to make it possible to buy the expensive machine tools they must have to meet the constantly increasing demands for greater precision in the special tools which they supply and which make possible the production of metal and plastic products.

Financing of these small companies, for the most part, must come from the investments of those who own and operate the business, and from reinvestment of profits. Outside sources of funds are almost entirely closed to tool and die manufacturers, except temporary bank loans. The Small Business Administration so far has not been much of a factor in meeting the need for additional capital, and it is problematical as to what the small business investment companies (a few of which are now being established) will mean.

The products of the special tool and die industry are all specially designed and manufactured to produce a particular metal or plastic part. They include stamping, forging, extrusion and die-casting dies; molds for plastics, rubber, glass; jigs and fixtures; special gages; special cutting tools and special purpose machines.

Although made up of small businesses, the special tooling industry is a large one in value of shipments, highly important in the stream of commerce. The annual value of its products in normal years is in excess of $1 billion—more than that of the machine tool industry.

Special tooling is manufactured by skilled craftsmen, who often must work to one ten-thousandth of an inch, that is, one-thirtieth of the thickness of a human hair. In fact, tolerances on guided missile parts and other electronic devices may be no more than a few millionths of an inch.

Tool and die makers and mold makers in this country are paid from $3 to $3.50 an hour. In European countries that have well-developed and efficient special tooling industries, the pay is only about one-fifth as much; in Japan, perhaps, a tenth.

While the U.S. Supreme Court decisions which definitely opened the way for States to tax interstate commerce dealt with corporations and income tax, the principles involved will also apply to individual proprietorships and partnerships and to sales and use taxes.

Regulations imposed by the different States inevitably will be at variance, and may well result in taxing more than 100 percent of the sales and income of the taxpayer. Just keeping up with the State regulations will be a tremendous task, especially for these small businessmen who have no tax specialists, accountants, or attorneys on their staffs.

The subjection of business to taxation in States where it has no property or permanent establishment should be prohibited, and we urge that appropriate legislation be enacted at this session of Congress. Great confusion and hardship will result if this is not done.

Sincerely yours,

GEORGE S. EATON,
Executive Vice President.

NEW YORK CLEARING HOUSE,
New York, N.Y., July 27, 1959.

Re: S. 2213 and S. 2281.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: The recent decisions of the U.S. Supreme Court in *Northwestern States Portland Cement Co.* v. *State of Minnesota* and *Williams* v. *Stockholm Valve & Fittings, Inc.*, which substantially broadened prior concepts as to the rights of the States to tax interstate commerce contain a real threat to the free flow of funds in the United States. It has been the practice for many years for banks in one locality to participate with banks in other parts of the country in loans granted to their customers.

The New York Clearing House banks and their correspondent banks throughout the country have been doing this for many years to their mutual benefit. Where a correspondent bank is asked to make a loan to its customer which exceeds the bank's lending limits, or at a time when it is pressed for funds, the correspondent bank may grant to a clearing house bank participations in such loans, thus enabling the correspondent bank to make available larger banking resources to its customer.

The recent Supreme Court decisions have raised a considerable doubt as to whether loans of this kind, as well as loans made by banks in one State to customers outside the State would not subject the banks making such interstate loans to local taxation, burdensome not only in amount but even more so in the detailed paperwork required.

It is accordingly urged that either of the above bills be amended to make clear that interstate bank loans shall not be subject to taxation and that such bill be enacted. We understand that the American Bankers Association has furnished you with proposed amendments to the bills. The form of these amendments we believe to be satisfactory for the purpose.

Yours very truly.

HOWARD SHEPPERD, *President.*

STATEMENT BEFORE THE SENATE COMMITTEE ON FINANCE ON SENATE JOINT RESOLUTION 113, S. 2213, AND S. 2281, BY LAWRENCE S. MARTIN, SECRETARY-MANAGER, NATIONAL ASSOCIATION OF FROZEN FOOD PACKERS, THURSDAY, JULY 23, 1959

Mr. Chairman and members of the committee, the undersigned, Lawrence S. Martin, secretary-manager of the National Association of Frozen Food Packers, apreciates the opportunity to make this statement in behalf of the association in connection with the above-captioned proposals now before your committee.

The National Association of Frozen Food Packers is a voluntary, nonprofit association organized for the purpose of promoting and protecting the interests of the American frozen-food industry. Its membership represents substantially 80 percent of the frozen-food packers in the United States with headquarters office located at Washington, D.C. Its members' packing plants are located throughout the United States and are engaged in processing, selling, and shipping frozen foods with distribution nationwide. Total frozen food production is now in excess of 5 billion pounds annually, with a retail value of about $2.6 billion.

The highly competitive nature of the frozen food industry makes it desirable that most packers distribute their products in as many of the States as commercially possible. Such multistate distribution is accomplished in several ways. Sales may be made through brokers, distributors, a traveling sales force, or by direct negotiations with customers. Whatever the method, products are commonly sold in many States in which the packer maintains no place of business. Shipments to customers are made direct from the freezing plant, from a packer's distribution warehouse, or from a public refrigerated warehouse.

Traditionally, frozen food packers felt obligated to pay State income taxes only to States in which they maintained a place of business. However, the recent Supreme Court decision in the *Northwestern Cement* and *Stockham Valve*

cases affirmed the right of the States to tax the income of out-of-State companies doing solely interstate business in those States. This raises the possibility that freezers may now become liable to pay income taxes in all States in which their products are sold, no matter by what means and without regard to maintenance of a place of business. A freezer's products are rarely distributed exclusively in States where he maintains a place of business. Accordingly, this concept of taxation would be oppressive generally and could result in diminished activity and even business failure for some frozen food packers.

The tax itself would be burdensome and costs of additional personnel and overhead incidental to keeping necessary records would be prohibitive. The result would be to reduce the number of States in which a packer could afford to distribute his products. Compliance with the varied provisions of conflicting State income tax laws would for many packers reduce profits in certain States to the point where distribution would be unjustified.

For example, a typical moderate-sized company might pack frozen fruits and vegetables in New York State and sell them in all States east of the Mississippi through brokers and traveling sales representatives, making deliveries direct from its plant or through public refrigerated warehouses. In the past its only income tax liability would be to the State of New York. Without prompt remedial legislation the possibility exists that he may now have to pay income taxes in all States in which his products are sold. A large packer might have plants in two or three States and regional offices in a couple of others. But with his products being sold in all States his income tax liability jumps from 4 or 5 States to perhaps 50. The answer is obvious: neither company could possibly afford to continue to distribute its products in many States. And these are not hypothetical situations, they are typical of our entire industry.

This association believes that any force tending to restrict the distribution of a freezer's products to fewer States would be contrary to public interest. We firmly believe that broad distribution of the products of individual freezers makes available to the consumer the widest possible variety of frozen foods at reasonable prices established in a competitive market.

Accordingly, the National Association of Frozen Food Packers urges the passage of legislation during this session of Congress to accomplish the following:

First, until enactment of a permanent solution to the problem, prohibit the States from imposing a tax upon income derived from interstate commerce of a company that does not maintain a place of business in the taxing State.

Second, delegate the appropriate congressional committee to undertake a comprehensive study of the problem and issue a report upon which Congress, within the next few years, can establish fair and uniform standards for the imposition of State income taxes upon businesses engaged in interstate commerce.

Because of the immediate seriousness of the matter and in recognition of the fact that its complexity renders a fast solution impossible, we recommend the above course of action—temporary relief from the situation and provision for a permanent solution when one can be worked out on a sound basis. However, we respectfully request that any such legislation embody certain safeguards and spell out clearly the following:

First, a frozen food packer who sells through independent food brokers in a given State is not doing business in that State..

Second, the temporary storage of stocks of goods in a public refrigerated warehouse should not of itself subject a packer to State income taxation. Such storage is often a necessary step in delivering products from the packer's plant to his customer and involves the seller in no additional activities in the State which can be construed as "doing business."

Third, the legislation should apply to taxes imposed upon or measured by income.

In view of the facts set out above, speaking in behalf of our industry and its trade association, I earnestly solicit the intercession of your great committee for the enactment of legislation along the lines herein advocated.

Respectfully submitted.

LAWRENCE S. MARTIN,
Secretary-Manager.

STATEMENT OF LOUIS M. WEBER, COUNSEL, FOR WHOLESALERS ASSOCIATION OF AMERICA, INC.

This statement is respectfully submitted on behalf of the Fur Wholesalers Association of America, Inc., in support of a pending bill to limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce (S. 2213).

The members of our association sell fur garments to retail fur establishments throughout the country. Most of the business conducted by our members is procured by traveling salesmen who solicit and procure orders while traveling on the road.

The members of our organization are very concerned about recent decisions of the U.S. Supreme Court which upheld the right of a State to impose a tax on purely interstate business which was procured by solicitation of traveling salesmen representing concerns who did not maintain any plant, office, warehouse, or other place of business within the State which imposed the tax.

A large percentage of our members are small firms whose future would be jeopardized if they were required to pay taxes to all States through which their salesmen travel. The requirement to file tax returns in these States would also be very burdensome. Some of our members do not have bookkeepers, but all their bookkeeping is performed by accountants whose representatives come to their places of business weekly or monthly.

The members of our association do not manufacture the products that they sell, but they purchase the completed products from fur manufacturers and sell them to fur retailers. They are so-called middlemen between the manufacturer and the retailer, and their margin of profit is small, and for that reason it would be most difficult to absorb the additional tax and accounting costs required by the filing of these various returns and payment of these additional State taxes.

The difficulty which confronts our members was stated with great clarity by Mr. Justice Frankfurter in his dissenting opinion in the case of *Northwestern States Portland Cement Co.* v. *Minnesota* and *Williams* v. *Stockham Valves and Fittings, Inc.* (27 L.S. 4141). Mr. Justice Frankfurter pointed out that interstate commerce will be actively burdened, first, because thousands of small and moderate size corporations will be subject to a separate income tax in each State and, as a result, "will have to keep books, make returns, store records, and engage legal counsel, all to meet the diverse and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining net income, and different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States."

Retail fur stores throughout the country have several methods of purchasing fur garments. One of these is to send their fur buyers to New York City where more than 80 percent of fur garments sold in the entire country are manufactured. Other retailers who handle furs are represented by so-called resident fur buyers in New York City. However, many small retailers throughout the country cannot afford to send their buyers to New York and are too small to procure representation by New York City resident buying firms. The only source through which they can make purchases of fur garments is through traveling salesmen. The continuation of the right of the various States to impose these local taxes may make it impossible for fur wholesalers to send their traveling salesmen to these retail stores, with the result that many thousands of these small retailers throughout the country will be deprived of their fur business.

We have been informed that many States have been reluctant to impose taxes on purely interstate business procured by traveling salesmen because of their uncertainty as to whether the imposition of such a tax was in violation of our Constitution. The recent decisions of the U.S. Supreme Court upholding this right of taxation will undoubtedly motivate many other States to impose these taxes.

The fur business is a seasonal business and this is the height of the 1959 season. Many fur wholesalers are uncertain as to whether they shall send their salesmen on the road because of the possibility of the imposition of taxes by the States through which these salesmen travel. It is most important that

the bill introduced by Senators Bush and Keating be passed by Congress as soon as possible, and we respectfully urge the members of the Senate Finance Committee to report this bill out of committee as soon as possible so that it may be brought before the Senate and the House of Representatives for a vote during this session of the Congress.

Respectfully submitted.

PERMANENT STAINLESS STEEL, INC.,
July 27, 1959.

HON. HARRY F. BYRD,
Senator of Virginia,
Washington, D.C.

DEAR SIR: The Senate Finance Committee, of which you are a member, is at present considering a number of bills prohibiting States from imposing net income tax on income derived exclusively from interstate commerce. This letter is sent urging you to support legislation at the present session, limiting the taxing power of States in respect to net income taxes on receipts from interstate commerce.

Some of the points of view in support of this relief legislation are as follows:

The present situation makes taxation of more than 100 percent of income possible.

Where corporations operate in many States a very considerable amount of company income will be paid out on State income taxes. These, of course, will be deductible from Federal income taxes, and this could in turn have a very considerable effect on Federal income tax results, making it necessary for the Federal Government to set up a compensatory increase.

Compliance by corporations doing business in many States will become a terrific burden.

A large proportion of the time of the auditors of such a company will be taken up handling auditors showing up from time to time from the various States.

Some States now require, in the case of enforcement of use taxes, that the taxpayer pay the cost of auditing. This practice certainly can be expected in a new field of taxation.

The theme of permitting taxation of interstate commerce by the State is a revolutionary trend in thinking:

Up to now the United States has constituted one market. Taxation of interstate commerce will cause it to be a clutter of markets.

The small businessman will be heavily affected and will be more and more forced to limit his taxable activities to one State.

Thanking you for your favorable consideration for immediate action on any and all legislation designed to prevent this balkanization on American industry, we remain

Sincerely yours,

E. M. FREY, *President.*

ELECTRONIC INDUSTRIES ASSOCIATION,
Washington, D.C., July 30, 1959.

HON. HARRY F. BYRD,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: On behalf of the Electronic Industries Association, the national trade association for the electronics industry, I respectfully urge early enactment of legislation along the lines set forth in S. 2213 (introduced by Senator Bush) and S. 2281 (introduced by Senator Saltonstall), which would clarify the authority of the States to impose income taxes on certain activities in interstate commerce.

Legislation on this subject is necessary to avoid the costly and complex administrative burdens that are inevitable as the result of the recent Supreme Court decisions. Moreover, such legislation is of particular concern to small business which constitutes a majority of the membership of this association. It is our strong belief, therefore, that legislation to resolve this important issue is urgently needed in order to—

(1) Assure that interstate commerce will be fostered rather than impaired;

(2) Preserve, as well as facilitate, the industrial growth of small business concerns which lack the capital to market their products in interstate commerce under the conditions established by the recent U.S. Supreme Court decisions;

(3) Establish uniformity among the numerous States in the imposition of income taxes on interstate transactions; and

(4) Eliminate the inevitable burdens which will result from multi-State taxation.

It is not our purpose to challenge the rights of States to tax commerce within their respective jurisdictions. However, it is our firm belief that this legislation, if enacted, would permit the States to continue their tax programs for those activities where potential revenue is not outweighed by the foreseeable difficulties and costly administrative burdens that will be encountered in collection.

Accordingly, the Electronic Industries Association requests early action on these bills in order to remove the extreme burdens that are bound to result as a result of the recent Supreme Court decisions.

It is requested that this letter be made a part of the record of the proceedings in these hearings.

Respectfully,

D. R. HULL, *President.*

(Whereupon, at 4:20 p.m., the committee adjourned, to reconvene at 10:15 a.m., Wednesday, July 22, 1959.)

STATE TAXATION OF INTERSTATE COMMERCE

WEDNESDAY, JULY 22, 1959

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:15 a.m., in room 2221, New Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Kerr, Frear, Long, Anderson, Gore, Talmadge, McCarthy, Williams, and Carlson.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The committee will come to order.

The first witness is Mr. Paul Mickey, of the National Association of Motor Bus Operators.

Will you take a seat, sir, and proceed?

STATEMENT OF PAUL F. MICKEY, NATIONAL ASSOCIATION OF MOTOR BUS OPERATORS

Mr. MICKEY. Mr. Chairman, and members of the committee, my name is Paul F. Mickey. I am a member of the firm of Sutherland & Johnson, and I appear on behalf of the National Association of Motor Bus Operators.

The National Association of Motor Bus Operators is the national trade association which serves as spokesman for over 700 intercity motorbus carriers who provide transportation service for passengers, package express, first-class pouch mail and newspapers. The members of the association serve practically all major cities and towns in the Nation and carry passengers to and from almost any point on an estimated 250,000 miles of highways.

For some 40,000 communities intercity buses are the only means of public transportation, and this number is increasing as rail passenger service continues to be reduced or abandoned. About two-thirds of all interstate bus carriers within the jurisdiction of the Interstate Commerce Commission are small businesses within that Commission's definition of small business.

It is clear that the service of the intercity bus lines is a major and essential part of the Nation's public transportation system, particularly as affecting the lower income groups. Nevertheless, these carriers as a whole have been experiencing increasing financial difficulties, primarily as a result of the increased use of private automobiles. The seriousness of the situation may be illustrated by the fact that in New York State alone 73 communities have been deprived of all or substan-

stantial part of their bus service since 1951, as a result of the fact that 103 companies supplying such service are no longer in business.

In the struggle to maintain their operations the members of this association have found duplicate State taxation a major financial problem. Consequently, we regard the subject of State taxation of interstate commerce which is before this committee today as of vital importance to public transportation, just as it is to other forms of commerce among the States. But the problem transcends the scope of the specific legislation before this committee and the scope of the Supreme Court decisions which generated those proposals.

The decisions which have been principally referred to in previous discussion are those involving Northwestern States Portland Cement Co. and Stockham Valves & Fittings, Inc., both of which concerned only net income taxes. Our members and most other interstate businesses are subject not merely to State net income taxes, but to State sales, use, gross receipts, property, and franchise taxes as well. This fact is noted by the report concerning multistate taxation of income from interstate commerce by the Select Committee on Small Business (S. Rept. 453).

Any legislation which is confined solely to net income taxes only scratches the surface of the problem.

Moreover, the burdens upon interstate business resulting from the multiplicity, the duplication, and the lack of uniformity in the laws of the various States, which is also noted by the report I have just mentioned, require legislation that is not confined to the definition of marginal interstate activity where no tax is deemed appropriate but which also reaches situations where some properly apportioned State tax may concededly be levied.

For example, as a partial solution to the problem of duplicate taxation, we in this industry have long urged the acceptance by the States of a uniform system of apportioning State income, license, and fuel taxes, according to the proportion of total vehicle miles traveled within each State—a solution which was suggested by several Supreme Court opinions.

Many States have acceded, but a great many have not. Some carriers pay income taxes in one State on an apportioned income which is as much as 280 percent of the income which would be subject to tax by that State upon a mileage basis. Interstate carriers are frequently required to pay State registration fees on all vehicles in as many as 10 or a dozen States, at the full rates applicable to intrastate buses, despite the fact that any one of the interstate vehicles uses the highways of a given State for only a fraction of its total operating time. In a number of instances carriers are required to pay State sales taxes on motor fuel purchased in one State and a use tax on the same fuel in another State upon whose highways it is consumed.

To correct this type of inequity there is a basic need for uniform legislation which apportions to the taxing State a fair share of the total State taxes exacted from any interstate enterprise.

In the past, there have been literally hundreds of decisions by Federal and State courts involving the application of apportionment formulas and there are a number of Supreme Court opinions which recognize frankly that these decisions are hopelessly confused and conflicting.

Moreover, the Supreme Court has said repeatedly that the problem is not susceptible of solution by judicial decision, but requires congressional action. See *Northwest Airlines, Inc.*, v. *Minnesota*, 322 U.S. 292, the references by Justice Clark to the failure of Congress to act in the majority opinion in the *Northwestern States Portland Cement* case and the dissenting opinion of Justice Frankfurter.

In his dissent, Justice Frankfurter said:

> The problem calls for solution by devising a congressional policy. Congress alone can provide for a full and thorough canvassing of the multitudinous and intricate factors which compose the problem of the taxing freedom of the States and the needed limits on such State taxing power.

He also referred there in the footnote to the fact that after the Court had suggested a study of the matter by Congress in the *Northwestern Airlines* case, a study was made by the Civil Aeronautics Board which submitted a report to the Ways and Means Committee, and to the fact that no action had been taken.

Therefore, we strongly urge this committee not to postpone longer the full exercise of its constitutional prerogative respecting taxation of interstate commerce.

We ask the committee to broaden the scope of the inquiry proposed by Joint Resolution 113 to include all types of State levies upon interstate business and to endeavor to prescribe rules which will provide an equitable distribution of the contribution which interstate commerce must make to the governments of the various States.

As indicating the need for a broader approach to the problem we suggest that the two Senate bills and the interim provision of the Senate Joint Resolution do not even meet the problem presented by the Supreme Court decisions in *Northwestern States Portland Cement Company* and *Stockham Valve & Fittings*. Both of these cases have been criticized as permitting, for the first time, State taxation of interstate businesses which maintained only a minimal sales activity in the taxing State. But in both cases the activity of the interstate business within the State included maintenance of a local office and each State we have some terminal facilities and employees.

The *ET and WNC Transportation Company* case, which has also been mentioned, likewise included local terminal facilities located in the taxing State and operated by employees of the trucking company.

I might say that that is a situation in which all of the motorbus carriers find themselves with respect to net income tax, because in each Satte we have some terminal facilities and employees.

As we read the proposals before the committee, they would provide exemption only where the sole activity is solicitation of orders, if there is a local office, warehouse or stock of goods. Clearly the proposed bills would not have prevented the taxation of Northwestern States Portland Cement Co. or Stockham Valves. The bills would cure only the situation involved in the *Brown-Forman Distillers Corporation* v. *Collector of Revenue of Louisiana*, in which there was no local office, plant, warehouse or stock of goods. This case was not decided on its merits by the Supreme Court. The appeal to that Court was dismissed per curiam (359 U.S. 28) upon a motion of the State alleging that the taxpayer had waived an appeal and that there was no case or controversy before the Court.

Therefore, it is not yet clear that the Supreme Court would sustain the tax in that situation if its application to such limited activity were properly presented. The proposed legislation, thus, may be directed to the correction of an evil that may never arise.

It is perfectly clear from Senate Report 453, and from the previous discussions before this committee, that the purpose of the proposed bills is to meet the *Northwestern*, *Stockham* and *ET & WNC* cases. If this purpose is to be achieved, a completely new legislative approach is required. We suggest that Congress cannot prescribe in practical terms the size of a local office, the size and permanence of a stock of goods, or the degree of warehousing or storage which will demarcate between an exempt interstate activity and one which the States may tax.

Instead, we suggest, any workable plan must start with the proposition that all States in which there is any interstate activity must be allowed some share in the total State tax to be paid by the interstate businesses, and proceed with the problem of devising a uniform method of fairly apportioning this total tax burden among the affected States.

In our view this objective could be best and most expeditiously accomplished by a joint committee composed of representatives of this committee and the Ways and Means Committee, created to formulate a congressional policy and to recommend specific legislation on the overall problem of State taxation of interstate commerce.

We agree with the chairman of this committee that this is the most important problem which has confronted the committee in many years. It should not be allowed to lag and the responsibility for the study and solution should not be delegated beyond the confines of the Congress itself.

The CHAIRMAN. Thank you, Mr. Mickey.

Are there any questions?

Senator CARLSON. Mr. Chairman, just this one point.

As I get your statement here, you urge this committee not to postpone longer the full exercise of its constitutional prerogatives respecting taxation of interstate commerce.

Mr. MICKEY. Yes, sir.

Senator CARLSON. And then following on down, to include all types of State levies upon interstate business.

Do you mean by that that a State does not have authority to levy gas taxes, to set license fees, or that we should get into that field?

Mr. MICKEY. I am suggesting, Senator, very strongly, that it is necessary that Congress get into the field of regulating the duplication in those fields. I am not suggesting that the States do not have the right to impose those taxes.

As a matter of fact, this association recognizes that it must pay its way, and at the same time I refer, in answer to your question, to the situation I cited where we are required to pay a sales tax on gasoline in one State, and a use tax on the same gasoline in another State, and that situation has been corrected by negotiation with the States in some instances, by getting them to agree that if the gas upon which a sales tax is imposed is subsequently used on the highways of another State, a refund will be allowed.

A number of the States have recognized the equity of that type of approach to the problem, but a number have not, and it will be many years before, by negotiation, it would be possible to avoid the duplication of tax in that type of instance.

Senator CARLSON. That is all, Mr. Chairman.

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

The next witness is Mr. H. E. Dunkelberger, National Canners Association.

Proceed, Mr. Dunkelberger.

STATEMENT OF H. E. DUNKELBERGER, JR., NATIONAL CANNERS ASSOCIATION

Mr. DUNKELBERGER. Mr. Chairman, my name is H. E. Dunkelberger, Jr. I am appearing for the National Canners Association, a nonprofit trade association of 650 members canning in 48 of the 50 States and the Territories. Members of the association, including both independent canning companies and cooperative canning enterprises, pack approximately 75 percent of the entire national production of canned fruits, vegetables, specialties, and fish.

The National Canners Association urges that legislation be passed in this session of Congress to provide, first, that until a permanent solution is enacted, States may not impose a tax upon income derived from interstate commerce of a company that does not maintain a place of business in the taxing State, and second, that an appropriate congressional committee undertake an intensive study of the problem, so that Congress within the next few years can establish equitable and uniform standards for the imposition of State income taxes upon businesses engaged in interstate commerce.

Until the recent Supreme Court decision in *Northwestern States Portland Cement Co.* v. *Minnesota* and *Williams* v. *Stockham Valve and Fittings, Inc.*, most canners did not feel obligated to pay State income taxes unless they maintained a place of business in the taxing State. Those cases now throw considerable doubt on this position, and raise the possibility that canners may be liable to pay income taxes in all States where their products are sold.

This would be a particularly harsh result for the canning industry, for the products of a particular canner, no matter how small he is, are seldom distributed exclusively in States where he maintains a place of business.

The extremely competitive nature of the canning industry frequently makes it necessary that canners distribute their products in as many States as commercially possible. This multi-State distribution is carried out in a number of ways, and no matter what the size of the canner, it can safely be said that his products are sold in many States where he maintains no place of business.

These sales may be made by a traveling sales force, with or without a regional sales office, by independent brokers, or by correspondence with customers. Shipments may be made directly from the packing plant, from a regional company warehouse, or from a stock of goods temporarily stored in a centrally located public warehouse.

To assist the committee in viewing the problem as it specifically relates to canning companies that fall within the Small Business

Administration's definition of small business, we elicited the following facts from a few representative canning companies:

A company in central Michigan sells its products in 17 States where it has no plant, sales office, warehouse, or stock of goods.

A canner in Wyoming sells in 10 States where he has no place of business.

A company in Maryland sells its products in 13 States, but all of its plants and sales offices are in Maryland. Stocks of goods are maintained in public warehouses in three other States.

A canner in Pennsylvania sells his products in 32 different States, and has no plant, sales office, warehouse, or stock of goods in 22 of these States. He does maintain warehouse stocks in nine States.

Another Maryland canner sells in 17 States, and in 12 of these maintains no place of business or stock of goods.

A small Virginia canner sells his products in four States and the District of Columbia, and maintains no place of business outside of Virginia.

A larger Virginia canner, but still within the Small Business Administration's definition, sells into 25 States from his one Virginia plant, and maintains stocks of goods in only 12 of these States.

The National Canners Association firmly believes that the wide distribution of the products of individual canners is in the immediate public interest, for it makes available to consumers a wide variety of products at reasonable prices established in a highly competitive market. Any tendency on the part of canners to restrict the distribution of their products to fewer States would therefore be contrary to the interest of the consuming public.

Almost certainly the effect of State taxation of a canner's income derived from sales in States where no place of business is maintained will be to reduce the number of States to which he ships his products. Faced with the necessity of complying with the varied and conflicting provisions of State income tax laws, many canners will no doubt decide that the profit from sales in some States does not justify the added expense of keeping precise account of sales destinations, filing returns, storing records, and engaging additional accountants and legal counsel to assure full compliance with diverse State laws.

We recognize that the problems inherent in establishing uniform and equitable standards for State taxation of income derived from interstate commerce make a quick solution practically impossible. For this reason, we support the two-stage approach, embodying an immediate temporary provision, followed by an intensive congressional study looking toward permanent legislation.

The proposals before the committee to restrict State taxation to companies maintaining a place of business within the State provide a convenient temporary solution to the problem that requires immediate attention. The tests adopted in these bills are largely taken from prior court decisions, and are not likely to produce uncertainty or increased litigation.

Although the National Canners Association will support any legislation which incorporates the two-stage approach outlined above, we respectfully request that certain specific points be included within that legislation.

First, although sales by an independent broker have never been considered enough in themselves to subject a principal to the jurisdiction of a State, Congress should make it unequivocally clear that a canner who sells through independent brokers in a State is not "doing business" in that State.

Second, a stock of goods temporarily stored in original packages in a public warehouse should not in itself subject a canner (or other business) to State income taxation. Storing goods in a public warehouse is frequently a necessary step in the shipment of those goods from factory to customer, and involves the seller in no additional activities within the State that can fairly be called doing business. The mere fact that the goods come to a temporary halt should not subject the seller to State taxation.

In most cases the canner will have no employees in the State, making sales exclusively through independent brokers. The maintenance of a permanent warehouse, with a staff of employees, is quite a different thing, and certainly falls within what is generally understood as "doing business."

Third, the legislation should apply to taxes imposed on, or measured by, income. The name chosen by a State to describe its tax should be unimportant.

Finally, we want to emphasize that the association's support of a temporary solution hinging taxability upon maintaining a place of business in no way implies that we believe such a solution should be adopted as part of permanent legislation.

Although we have not yet developed a proposal for a uniform allocation formula, we anticipate that such a proposal will result in equal treatment for those engaging in similar activities.

For example, it might be contended that sales solicitation by company salesmen should be treated the same, independently of where a sales office happens to be maintained. The all or nothing approach of the temporary proposals draws arbitrary lines that cannot be justifiably defended, other than that they provide some help for many businessmen, pending further study. A permanent solution should include the establishment of uniform allocation formulas that would assign fair, relative weights to all of the significant factors.

We sincerely hope that this committee will see fit to recognize the real and imperative need of business for a solution to the problems raised by the Supreme Court decisions, and we respectfully request that Congress enact in this session legislation along the lines here advocated.

The CHAIRMAN. Thank you very much, Mr. Dunkelberger. Have you any specific amendments to suggest in any of the pending bills?

Mr. DUNKELBERGER. Yes, we do, Senator. So far as our specific requests, for example, the first one we mention had a brokerage point——

The CHAIRMAN. Would you put it in writing?

Mr. DUNKELBERGER. Well, I was going to——

The CHAIRMAN. And submit it to the committee, any specific suggestions you may have?

Mr. DUNKELBERGER. I was just going to say that we feel the language in the Saltonstall bill right now on the brokerage point covers it very

adequately. It is the last sentence in section 1 of S. 2281, which provides that the terms "agent" and "representative" do not include an independent broker, and we think this language is satisfactory on this point.

On the stock of goods point, the Saltonstall bill does not make a reference to a stock of goods, and there again that is the specific point we feel might be covered.

Finally, also section 3 of the Saltonstall bill makes it clear that the act will apply to taxes imposed on or measured by income.

Thus, so far as specific language changes, we feel that at least sections 1 and 3 of the Saltonstall bill, for a temporary solution, seem to provide the help that can be afforded now to the canning industry pending further study.

The CHAIRMAN. You prefer the Saltonstall bill as a basis for the committee to work on?

Mr. DUNKELBERGER. Yes, sir; we do. We take no position on the retroactivity. We realize this is a problem that we perhaps would prefer that no back taxes be collected, obviously, but we realize that there are some doubts as to the constitutionality or advisability of Congress doing this, and so far as section 2 of Senator Saltonstall's bill we take no position.

We do think that sections 1 and 3 would be a very adequate basis for the committee's consideration.

The CHAIRMAN. Thank you very much.

Senator TALMADGE. One question. Mr. Dunkelberger, do you know of any State that is now levying or attempting to levy a tax on any canner that does not maintain a place of business, an office or an agent or stock of goods or warehouse in any State?

Mr. DUNKELBERGER. Senator Talmadge, I guess the answer has to be "No, we do not know of any such situation yet." Certain States—we know that California, for example—are beginning to definitely think in those terms. It is our fear that this is, if not the holding in the *Northwestern* case, at least a clear implication, and, as has been said by many witnesses, we feel that if nothing is done by Congress, it will be very surprising, indeed, if the States did not proceed to tax on the basis of merely sales in the State.

We understand the two cases that were mentioned earlier this morning in Louisiana were just such a tax. For all we know, some canners may have been asked to pay that tax in Louisiana, but the national association has not heard of it.

Senator TALMADGE. Your testimony is predicated upon the apprehension that a tax might be levied rather than the fact that it is now being levied?

Mr. DUNKELBERGER. That is right, Senator. In the few months since the decisions we have not yet received actual incidents of taxes, although many canners have felt they would come immediately, and if nothing is done in this session they feel next year will see greatly increased requests for taxation on that basis. With the permission of the chairman I would like to have inserted in the record a memorandum which we have prepared on the constitutionality question.

The CHAIRMAN. Thank you very much, Mr. Dunkelberger. The memorandum will be incorporated in the record.

(The memorandum follows:)

MARCH 30, 1959.

MEMORANDUM: CONSTITUTIONALITY OF CONGRESSIONAL LEGISLATION TO REGULATE STATE TAXATION OF INCOME FROM INTERSTATE COMMERCE

In the recent cases of *Northwestern States Portland Cement Co.* v. *Minnesota*, and *Williams* v. *Stockham Valves and Fittings, Inc.* (79 S. Ct. 357 (Feb. 24, 1959)), the Supreme Court held that the Federal Constitution does not render invalid "State net income tax laws levying taxes on that portion of a foreign corporation's net income earned from and fairly apportioned to business activities within the taxing State when those activities are exclusively in furtherance of interstate commerce."

Mr. Justice Frankfurter in his special dissenting opinion at page 381 says that interstate commerce will be burdened for two reasons:

"First. It will not, I believe, be gainsaid that there are thousands of relatively small- or moderate-sized corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining 'net income,' and different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States.

"Second. The extensive litigation in this court which has challenged formulas of apportionment in the case of railroads and express companies—challenges addressed to the natural temptation of the States to absorb more than their fair share of interstate revenue—will be multiplied many times when such formulas are applied to the infinitely larger number of other businesses which are engaged in exclusively interstate commerce * * *."

He goes on to point out:

"These considerations do not at all lead to the conclusion that the vast amount of business carried on throughout all the States as part of what is exclusively interstate commerce should not be made to contribute to the cost of maintaining State governments which, as a practical matter, necessarily contribute to the conduct of that commerce by the mere fact of their existence as governments. The question is not whether a fair share of the profits derived from the carrying on of exclusively interstate commerce should contribute to the cost of the State governments. The question is whether the answer to this problem rests with this Court or with Congress.

"I am not unmindful of the extent to which Federal taxes absorb the taxable resources of the Nation, while at the same time the fiscal demands of the States are on the increase. These conditions present far-reaching problems of accommodating Federal-State fiscal policy. But a determination of who is to get how much out of the common fund can hardly be made wisely and smoothly through the adjudicatory process. In fact, relying on the courts to solve those problems only aggravates the difficulties and retards proper legislative solution.

"At best, this Court can only act negatively; it can determine whether a specific State tax is imposed in violation of the commerce clause. Such decisions must necessarily depend on the application of rough and ready legal concepts. We cannot make a detailed inquiry into the incidence of diverse economic burdens in order to determine the extent to which burdens conflict with the necessities of national economic life. Neither can we devise appropriate standards for dividing up national revenue on the basis of more or less abstract principles of constitutional law, which cannot be responsive to the subtleties of the interrelated economies of Nation and State.

"*The problem calls for solution by devising a congressional policy.* Congress alone can provide for a full and thorough canvassing of the multitudinous and intricate factors which compose the problem of the taxing freedom of the States and the needed limits on such State taxing power. Congressional committee can make studies and give the claims of the individual States adequate hearing before the ultimate legislative formulation of policy is made by the representatives of all the States. The solution to these problems ought not to rest on the self-serving determination of the States of what they are entitled to out of the Nation's resources. *Congress alone can formulate policies founded upon economic realities, perhaps to be applied to the myriad situation involved by a properly constituted and duly informed administrative agency.*" [Emphasis added.]

In a footnote to this discussion, the Justice said:

"See *Northwest Airlines, Inc.* v. *Minnesota* (322 U.S. 292). In *Northwest* we pointed to the desirability of congressional action to formulate uniform standards for State taxation of the rapidly expanding airline industry. Following our decision Congress directed the Civil Aeronautics Board to study and report to Congress methods of eliminating burdensome, multiple State taxation of airlines. (See H.R. Doc. No. 141, 79th Cong., 1st sess.) This report of the Board was a 158-page document whose length and complex economic content in dealing with only a single subject of State taxation, illustrate the difficulties and nonjudicial nature of the problem. Following the presentation of this extensive report, several bills were introduced into Congress providing for a single uniform apportionment formula to be used by the States in taxing airlines (H.R. 1241, 80th Cong., 1st sess.). None of these bills was enacted.

"Australia has resolved the problem of conflicting and burdensome state taxation of commerce by a national arrangement whereby taxes are collected by the Commonwealth and from these revenues appropriate allocations are made annually to the states through the mechanism of a Prime Ministers' Conference—the Prime Minister of the Commonwealth and the Prime Ministers of the several states."

This memorandum will elaborate on the constitutionality of Mr. Justice Frankfurter's suggestion.

CONSTITUTIONALITY OF CONGRESSIONAL ACTION

Although the Supreme Court has not specifically passed on the constitutionality of congressional legislation dealing with State taxation bearing on interstate commerce, there is compelling dictum in numerous opinions in support of such legislation.

Statements as to the power of Congress to legislate with regard to interstate commerce can, of course, be found in hundreds of cases. The Court said in *Houston, East and West Texas Ry. Co.* v. *United States* (234 U.S. 342, 350 (1914)), for example, that "It is unnecessary to repeat what has frequently been said by this Court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several States."

In a later case also dealing with regulation of transportation (*South Carolina Highway Dept.* v. *Barnwell Brothers, Inc.*, 303 U.S. 177, 189 (1938)), Mr. Justice Stone said for a unanimous Court:

"Congress, in the exercise of its plenary power to regulate interstate commerce, may determine whether the burdens imposed on it by State regulation, otherwise permissible, are too great, and may, by legislation designed to secure uniformity or in other respects to protect the national interest in the commerce, curtail to some extent the State's regulatory power. But that is a legislative, not a judicial function, to be performed in the light of the congressional judgment of what is appropriate regulation of interstate commerce, and the extent to which, in that field, State power and local interests should be required to yield to the national authority and interest."

Shortly thereafter, in *J. D. Adams Mfg. Co.* v. *Storen* (304 U.S. 307 (1938)), the Court held invalid an Indiana gross receipts tax that imposed a tax upon receipts from sales by an Indiana corporation to customers in Indiana and other States. The Court held that since such a tax would subject interstate commerce to the risk of a double tax—by Indiana and the States where the sales were consummated—it was a direct burden on that commerce, and therefore invalid under the commerce clause of the Constitution. Justice Black in his dissent, at page 320, emphasized that:

"The question, therefore, is whether—*in the absence of regulatory legislation by Congress condemning State taxes on gross receipts from interstate commerce*—the commerce clause, of itself, prohibits *all* such State taxes, as 'regulations' of interstate commerce, even though general, uniform, and nondiscriminatory." [Emphasis added.]

After discussing the precedents in this area, he turned to the possibility of congressional action:

"Congress was undoubtedly given the exclusive power to regulate commerce in order that undue, unjust and unfair burdens might not be imposed upon such commerce * * * it would seem that only Congress has the power to formulate rules, regulations and laws to protect interstate commerce from *merely possible future unfair* burdens."

These passages make it clear that Justice Black, at least, would find no constitutional objection to some kind of congressional legislation dealing with State taxation. He reiterated this view the next year in his dissent in *Gwin, White & Prince, Inc.* v. *Henneford* (305 U.S. 434, 448 (1939)). There the Court held invalid a Washington tax upon gross receipts from sales of fruit from Washington to customers in other States. Justice Black said in dissent:

"If the combined valid and nondiscriminatory taxes of many States raise a problem, only Congress has power to consider that problem and to regulate with respect to it.

* * * * * * *

"Only a comprehensive survey and investigation of the entire national economy—which Congress alone has power and facilities to make—can indicate the need for, as well as justify, restricting the taxing power of a State so as to provide against conjectured taxation by more than one State on identical income."

In discussing the power to establish a formula for apportioning the receipts from interstate business, Justice Black said at 451:

"When State statutes of apportionment come here this Court is unable to make the broad national inquiry necessary to reach an informed conclusion on this question of economic policy.

"But Congress has both the facilities for acquiring the necessary data, *and the constitutional power to act upon it.* * * *" [Emphasis added.]

The following year Justice Black again dissented in a State tax case—*McCarroll* v. *Dixie Greyhound Lines, Inc.* (309 U.S. 176, 183 (1940))—but this time he was joined by Douglas and Frankfurter, JJ. Their joint dissenting opinion concluded at page 189:

"We would, therefore, leave the questions raised by the Arkansas tax for consideration of Congress in a nationwide survey of the constantly increasing barriers to trade among the States. Unconfined by 'the narrow scope of judicial proceedings' Congress alone can, in the exercise of its plenary constitutional control over interstate commerce, not only consider whether such a tax as now under scrutiny is consistent with the best interests of our national economy, but can also on the basis of full exploration of the many aspects of a complicated problem devise a national policy fair alike to the States and our Union. Diverse and interacting State laws may well have created avoidable hardships * * * But the remedy, if any is called for, we think is within the ample reach of Congress."

The germ of the suggestions in these earlier cases came close to fruition following the decision in *Northwest Airlines, Inc.* v. *Minnesota* (322 U.S. 292 (1944)). Five Justices agreed in upholding a Minnesota personal property tax upon petitioner's airplanes, based in Minnesota but flying from State to State, but one of this majority, Justice Jackson, made it clear he differed with the reasons stated by Justice Frankfurter in the conclusion and judgment.

Justice Frankfurter noted the possible practical difficulties that might arise from the Court's decision, but said that these considerations were for Congress, not the Court. Justice Jackson in his separate concurrence noted that Congress "may subject the vehicles or other incidents to any type of State and local taxation, or it may declare them tax free altogether." In his concurring opinion Justice Black said at 302:

"The differing views of members of the Court in this and related cases illustrate the difficulties inherent in the judicial formulation of general rules to meet the national problems arising from State taxation which bears in incidence upon interstate commerce. These problems, it seems to me, call for congressional investigation, consideration, and action. The Constitution gives that branch of the Government the power to regulate commerce among the States, and until it acts I think we should enter the field with extreme caution."

This time Congress took up Justice Black's suggestion, and initiated a comprehensive study of the problem.

In at least two other cases since *Northwest Airlines* the suggestion has been made that Congress can attempt to clear up the problem inherent in State taxes bearing upon interstate commerce, but in one of them the suggestion was made, apparently for the first time, that there are constitutional difficulties with congressional action. In *Freeman* v. *Hewit*, 329 U.S. 249 (1946), the Court held the Indiana gross receipts tax could not constitutionally be applied to the gross receipts from interstate sales of intangibles. Speaking for at least four other justices, Justice Frankfurter again referred to congressional authority to legis-

late in this area, and cited the congressional activity following the *Northwest Airlines* case.

Finally, in *Braniff Airways, Inc.* v. *Nebraska State Board*, 347 U.S. 590 (1954), the Court was again concerned with a State property tax on flight equipment. In this case, however, Nebraska had adopted the allocation formula recommended by the Civil Aeronautics Board in the report to Congress following *Northwest Airlines*, and the Court held there was no burden on interstate commerce. Justice Reed in the majority opinion referred to the CAB study without specifically approving the constitutionality of its recommendation for congressional legislation. But in a separate concurrence Justice Douglas felt constrained to note:

"I do not think the Court takes a position contrary to what I have said. But there are passages in the opinion which blur the constitutional issues as they are blurred and confused in the interesting report of the Civil Aeronautics Board, House Document No. 141, 79th Congress, 1st session, entitled 'Multiple Taxation of Air Commerce.' Hence I have joined in the judgment of the Court but not in the opinion."

Justice Douglas does not make clear his objections to the CAB report, but it should be emphasized that in the *McCarroll* case, discussed above, he participated in a joint dissent that said Congress had the power to "devise a national policy fair alike to the States and our Union." In that case the State tax was upon gasoline in the gasoline tanks of automobiles and trucks coming into the State, but it was accepted that the tax was on the privilege of using the highways and not upon property. Perhaps Justice Douglas felt that Congress could go further in legislating with regard to a tax of this sort than a property tax, but this is only conjecture.

The 1944–45 study by the CAB, House Document No. 141, 79th Congress, 1st session, was supported by a constitutional opinion by Thomas Reed Powell. After considering the statements of the Justices in *Northwest Airlines*, and quoting extensively *McCarroll* and *South Carolina Highway Department* (both supra), Professor Powell concluded that Congress has the power "to lay down rules as to the extent to which the States may and may not burden interstate commerce by taxation." Id. at 156. He went on to suggest that a complete prohibition of State taxation might raise a question in the field of intergovernmental immunities. The CAB adopted Professor Powell's opinion almost verbatim. Id. at 10–13.

CONCLUSION ON CONSTITUTIONALITY OF CONGRESSIONAL CURATIVE LEGISLATION

The repeated statements by Justices Black and Frankfurter, impliedly supported by Justices joining in their opinions, give every assurance, short of absolute holding, that Congress may legislate with regard to State taxation bearing on interstate commerce. This position is supported by a highly respected constitutional scholar and by an important agency of the Federal Government. There might perhaps be some question as to a complete prohibition of State taxation, but it is extremely unlikely that Congress would see fit to take such a step.

It is believed that an allocation formula, designed by Congress to apportion the share of each State fairly and to eliminate unnecessarily burdensome record-keeping, would be approved by the Supreme Court.

The CHAIRMAN. The next witness is Mr. John Dane of the U.S. Chamber of Commerce.

STATEMENT OF JOHN DANE, JR., U.S. CHAMBER OF COMMERCE; ACCOMPANIED BY J. KIRK EADS, MANAGER, TAXATION AND FINANCE DEPARTMENT, U.S. CHAMBER OF COMMERCE, WASHINGTON, D.C.

Mr. DANE. Mr. Chairman, and gentlemen, my name is John Dane, Jr. I am a partner of the law firm of Choate, Hall & Stewart, in Boston, Mass., and I am appearing before you this morning on behalf of the Chamber of Commerce of the United States as a member of

its taxation committee, and as chairman of its subcommittee on State and local taxation.

May I identify at this time for the record the gentleman sitting at my right, who is Mr. J. Kirk Eads, the manager of the taxation and finance department of the national chamber.

I have a prepared statement, and I would like to respectfully request the permission of the committee to have that statement included in the record.

The CHAIRMAN. Without objection, the statement will be included.

Mr. DANE. Since most of the material in the first 10 pages of the prepared statement have been very adequately covered by previous witnesses before you yesterday and today, in the interests of saving the time of the committee I would like to skip over that material and commence with a discussion that begins on page 11 of the statement of the particular problems which these new decisions raise for tax administrators of the various States.

I have had the privilege of serving for 3½ years as a tax commissioner of the Commonwealth of Massachusetts, and for a year and a half was chairman of that body. As a former tax commissioner I am more and more disturbed by the administrative implications of these decisions.

The pyramiding of the overhead expenses to taxpayers arising from an increase in the number of States in which they are required to file returns by these decisions is going to be paralleled on the administrative side of the desk by very much increased administrative costs.

It was certainly our experience in Massachusetts, and I am sure it is true elsewhere, that auditing a $10 return may be as difficult as auditing a $500 or a $1,000 return. It takes up just as much space in our filing cabinets, and you have to make just as many entries in your books to cashier the payments.

But equally important, gentlemen, to what you call housekeeping items, is the problem of proper enforcement. So long as you confine liability in State taxation to those firms which have manufacturing facilities or warehouses or sales offices in your State, efficient and effective enforcement is going to be quite possible at reasonable cost.

However, when you start to extend State taxing jurisdiction, the mere identification of out-of-State firms which come into your State only through traveling salesmen is a very time-consuming and difficult tax, and an identification of these firms is not the end of the problem.

It is one thing for a State tax official to put his finger on a particular firm which is sending salesmen into his State, but he has to do more than that; he has to secure a tax return from that firm, and he has to check its correctness, and when all that is done, he has to enforce payment of a tax from an absent and very likely recalcitrant taxpayer.

In many cases, gentlemen, to make matter worse, the costs of collection may approach or even exceed the tax which you will get.

This puts the State tax collector in a very difficult dilemma. Should he try on the one hand for complete coverage, should he try to reach all of the firms which are coming into his State even though he knows some of them are not going to pay their way, or is he going to confine his collection activities just to those larger taxpayers where the game

is worth the candle, and wink at widespread tax avoidance among the smaller fry?

It has been suggested in some quarters, in fact it was suggested at the recent convention of the National Association of Tax Administrators in Buffalo, that the latter course should be followed.

I find that, Mr. Chairman, a very frightening suggestion from the standpoint of taxpayer morale.

Let me suggest to you that your business may be just big enough to have a State enforce a tax on your income, but your two chief competitors who in the aggregate do more business than you do in a particular State may each be just below that enforcement limit, and I leave you with the question of how you are going to feel about the equity of such a State tax enforcement policy.

Recent reports have indicated a few States are moving into this area with very great caution.

On the other hand, a majority seem intent on extending their tax jurisdiction to the furthest limits permissible under the most liberal interpretation of the recent cases.

I have attempted to find out from a number of omy former associates in tax administration just how much tax they would expect to receive from the application of their taxing statutes beyond the firms which would come within this minimum activity classification. And I have not yet seen any figures on that score.

I, for my part, feel that the firms which do not come in and have some sort of permanent establishment would not yield any very substantial amount of tax revenue. If there are figures to the contrary, I have not seen them.

After all, gentlemen, the collecting of taxes is somewhat like the mining of coal. In a coal mine you have some large seams which are easy to mine and you get a good quality of coal. You have some narrow seams that may be winding and difficult to get at, and they yield a poor quality of coal.

I think the minimum activity type of bill is going to exclude the States only from the poorer and narrower seams of potential tax revenue.

Now, I think the point has been brought out that at the recent convention of the National Association of Tax Administrators a resolution was adopted urging the appropriate committees of the Congress to recommend a withdrawal of any action in this field until the study commission has had a chance to make an examination and make a report.

Now, of course, the function of a tax administrator is to maximize tax revenues, and I feel perfectly sure that were I still on the Massachusetts State Tax Commission, I would have voted for the resolution which was adopted at Buffalo.

But the members of your committee, gentlemen, I need not remind you, have a much broader responsibility than that of the tax administrators. You have to balance the desires of those who seek golden eggs against the welfare of the goose.

May I turn now to the possible methods of preventing what is likely to be a serious discrimination against medium and small businesses operating in interstate commerce as a result of the new decisions.

There is no question but what these small and medium sized businesses should pay their fair share of the overall tax burden. But, on the other hand, they should not be saddled with discriminatory tax and compliance costs in comparison with larger businesses who are paying taxes in every State in any event, and there are always firms who do business in only one State and pay taxes in one State.

The first way in which discriminations between small and medium sizes may occur may result in diverging from the allocation formula by which a firm may be forced to pay taxes on more than 100 percent of its income.

This is not, as has been suggested in some sources, an imaginary problem.

Professor Studenski of New York University, in an article which appeared in the November–December 1958 issue of the Harvard Business Review, gave facts on 23 specific concerns on which they had collected full data on State income taxes, and in the case of 4 of these 23 concerns, or over 15 percent, an assessment was made by the various States on more than 100 percent of net income.

I am not here to suggest that 15 percent ratio would apply across the board. But I do want to refute any contention that it is impossible for a firm in practice to be taxed on more than 100 percent of its income.

Now, even though a firm may not be taxed on more than 100 percent of its income, the compliance costs of filing in a great many States where it has customers, in some of those States the tax may be less than the cost of preparing the return. This compliance cost may be discriminatory against small and medium sized businesses because the larger concerns are much better equipped and can afford to install electronic data processing equipment to solve the problem.

Several suggestions have been made as to the proper method of solving the problem raised by the decisions, and the most well-known suggestion to date has been that of the adoption by the States of a uniform allocation formula. This would, of course, if adopted by all 50 States, solve the problem of a firm being taxed on more than 100 percent of its income. But it would not solve the problem of unduly high compliance costs.

This would particularly be the case if any uniform formula included a sales factor which was based on a State of destination approach. If such a sales factor were adopted, it would insure that firms would pay taxes in the maximum number of States.

Furthermore, the adoption of a uniform allocation formula would only solve one part of the problem. It would mean that a firm would have to make only one allocation of net income, but no uniform allocation formula which has yet been proposed includes in its scope a uniform definition of net income, and it might well be that a firm operating in 20 States may have to—and I think this is no exaggeration—make 15 or more computations of net income.

In the view of the national chamber, the best solution so far advanced is the so-called minimum activity type of bill which is now before you. Although these bills are not identical in every detail, they follow in general the pattern which has already been adopted by the Congress in enacting a corporation tax statute for the District of Columbia.

The Saltonstall bill, S. 2281, is an almost word for word repetition of the applicable provisions of the District law.

These bills would prohibit a State from taxing the income of a company doing solely interstate commerce within its borders where the company has no office, warehouse, or other place of business in the taxing State.

The minimum activities type of bill, Mr. Chairman, is not going to solve the problem of a corporation being taxed on more than 100 percent of its income. But as you restrict the taxing jurisdiction of the States, as you cut down the number of States in which a corporation will be forced to pay a tax, there is going to be very much less chance that any corporation is going to be taxed on more than 100 percent of its proper income.

We feel at the national chamber that the most pressing need at the present time is the certainty in this area, and I would like to read one very brief paragraph from the report of the Senate Small Business Committee, and I am quoting:

> The small businessmen who communicated with this committee pointed out two major problem areas. First of all, they did not find a full answer in the Supreme Court decision to the question of the limit of a State's power to tax. It did not provide guidelines to the amount or kind of business activity which constituted a sufficient nexus to bring a company under the taxing jurisdiction of a State.

Just to give two or three specific examples, it is clear under the decisions that if a corporation has a sales office in a State it is subject to that States' taxing jurisdiction. It is not clear, and I have heard different opinions among different State tax administrators, as to whether a firm which enters a State solely by mail order solicitation, or by radio solicitation, or by the solicitation through the medium of the television is taxable.

I think the statement was made at Buffalo that a firm which comes into the homes of a great majority of the people in the State through a national television program has just as much nexus with that State as the one who sends in its individual salesmen in flesh and blood.

Now, so long as every company selling outside the limits of its home State is in doubt as to tax liability, needless restraint is going to be imposed on economic activity and on competition. Business management is going to be confused as to its tax obligations, and it is going to resist new tax claims until the smoke is cleared away, and tax administrators, and quite understandably on their part, are going to stake out the widest possible claims for themselves.

All that this can add up to, gentlemen, is greatly increased administrative costs, direct and indirect, for everyone concerned, and it is for that reason that we at the national chamber favor a minimum activities type of bill, particularly as that set forth in S. 2281.

The CHAIRMAN. Are there any questions?

(No response.)

The CHAIRMAN. Thank you very much, sir.

(The prepared statement of Mr. Dane is as follows:)

TESTIMONY OF JOHN DANE, JR., FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES ON S. 2213, S. 2281 AND SENATE JOINT RESOLUTION 113

My name is John Dane, Jr. I appear on behalf of the Chamber of Commerce of the United States as a member of its taxation committee and chairman of the subcommittee on State and local taxation.

I would like to discuss the effect of the recent Supreme Court decisions which give the States the right to tax income of companies engaged in interstate commerce and to record the national chamber in favor of the basic minimal activity approach embodied in the bills before you. This approach involves a definition of doing business, similar to provisions embodied in the District of Columbia Code, for purposes of determining the extent of jurisdiction of a State to tax income from sales therein by concerns located outside of the State.

BACKGROUND OF RECENT SUPREME COURT DECISIONS

While lacking the terrific impact of Federal taxation, the burden of State taxation on business is very substantial. As the States have one by one exhausted the revenue surpluses built up during war years and have begun a frantic search for funds to meet the need for added schools, improved highways and the like, the percentage of the businessman's tax dollar which is spent on State and local levies has been increasing and the portion of his time and that of his legal and accounting advisers which is taken up with complying with State and local tax requirements has been going up even faster.

The businessman's problems were serious enough prior to the Supreme Court's decision on February 24 in the landmark *Stockham Valves* and *Northwestern States Portland Cement* cases. These opinions have not only vastly increased his liabilities under existing State tax legislation. They have also opened the door to other States to tax business which up to now they believed, rightly or wrongly, to be beyond their taxing jurisdiction.

Two very important issues arise when a State seeks to tax a corporation which has been incorporated in another State. First, does the State have jurisdiction to tax such corporation, and second, assuming that it has jurisdiction, how do you determine what proportion of the company's income is subject to tax in the State.

Of course, there are other tax bases than income, but the recent Supreme Court decisions related to taxes on income which are by far the most common type of corporate tax to be levied at the State level.

While these decisions deal with the income of corporations, the principles established will also apply in the case of individual proprietorships and partnerships doing business in interstate commerce. The new decisions may also have certain implications in the sales and use tax field.

When corporate income taxes were originally imposed by the States—the first significant one being in Wisconsin in 1911—the tax was justified on the basis of the benefits which the corporation was presumed to receive from the taxing State.

Such benefits consisted of the various protective and economic services which the State furnished to the corporation and which assisted it in operating and earning an income. The amount of the State-furnished benefits was supposed to be measured in terms of the income which the corporation earned in the State.

Two logical corollaries flowed from this benefit theory.

First, jurisdiction to tax existed only in the case of corporations which operated property or maintained permanent business establishments in the taxing State.

Second, the tax should be imposed only with respect to that portion of the corporation's income which was reasonably attributable to its productive activities in the taxing State.

As can readily be seen, these original concepts of jurisdiction and allocation were strongly oriented in favor of the States where manufacturing activity took place or where stocks of goods and branch offices with authority to accept orders were located. States in which the sole business activity was confined to solicitation of orders by traveling salesmen or drummers, had no jurisdiction to tax.

There were some earlier attempts to deviate from this pattern, but it was not until World War II that the voice of the "market" States, as distinguished from the "producing" States, began to be heard in earnest. Generally speaking, no States attempted to collect income taxes from companies engaged solely in sales activities until the early 1940's. California was the first State to construe its corporate income tax to apply to sales activities, its lead being followed by Georgia, Louisiana, Minnesota, Oregon, and Mississippi.

Paralleling this trend to extend jurisdiction to tax to businesses which enter a State solely for the purpose of soliciting orders and have no manufacturing

facilities, stock of goods, or permanent establishment within the State, attempts were made by "market States" to allocate to themselves a greater proportion of income in cases where admittedly there was jurisdiction to tax.

Allocating formulas are of various kinds, the most common being the so-called Massachusetts three factor formula based on property, payroll, and sales in the taxing State as compared to the firm's total property, payroll, and sales. The majority of the States not using this formula, do use sales, either alone or in conjunction with other factors, and it is in the computation of this sales factor that the greatest pressure for change has been felt.

The earlier tendency was to attribute a sale to a State only if it was accepted at an office in the State or if the goods were shipped from a warehouse in the State, thus adhering to the theory that the State where the firm had property or a permanent establishment of some kind supplied more benefits and therefore had a greater claim on the firm's tax dollar.

More recently States have sought to allocate sales to themselves, where solicitation has been made or where goods were shipped to purchasers within their borders.

RECENT SUPREME COURT DECISIONS

The recently decided cases involving the Minnesota tax liability of *Northwestern States Portland Cement Co.* and the Georgia tax liability of *Stockham Valves and Fittings, Inc.* were concerned solely with the issue of jurisdiction to tax.

No issue of the propriety of allocation formula was present. In neither case did the firm have any manufacturing facilities or warehouse of merchandise in the taxing State. No employee therein had authority to accept orders. The sole intrastate activity was the solicitation of sales orders which in both instances could be accepted only outside of the taxing State, and the shipping of goods into the State.

The amount of the intrastate activity varied. In *Stockham*, the company had only one sales representative in Georgia and he spent only a third of his time there, whereas in *Northwestern States* the taxpayer had five salesmen and a secretary.

On March 4, the Supreme Court denied review in a third case involving a Louisiana tax on *Brown-Forman Distillers Corp.* Here, intrastate activity was at a very low level, consisting only of shipping goods into the State and maintaining "missionary men" whose sole activity was to accompany salesmen of the wholesaler and to seek to persuade retailers to display the company's products prominently. In denying review, the Court did not pass on the merits of the litigation and there is some doubt among experts in the field as to what action the Court would have taken if it had handed down an opinion.

The taxpayers in *Northwestern States* and *Stockham Valves* contended that the imposition of the taxes complained of violated the commerce and the due process clauses of the Federal Constitution, a position which a majority of the Court refused to sustain. The Court held in substance that a State has jurisdiction to levy an income tax on a corporation incorporated and located in another State where the taxpayer's only activity in the taxing State was to solicit orders and ship goods to customers therein.

The Court, however, attached two qualifications to this grant of jurisdiction. These were that the income taxed must be fairly apportioned to the activities in the taxing State and that the corporation must have some minimum connection or as the Court put it, "nexus," with the taxing State.

Such qualifications, though, are not clear. For example, it may well be that a retail concern that advertises in a medium that crosses a State line, and thus derives mail or telephone orders from customers in an adjoining or even a distant State, would be subject to taxation in those States.

IMPLICATIONS OF THE SUPREME COURT DECISIONS

Regardless of whether the recent Supreme Court decisions in the *Stockham Vales and Fittings* and *Northwestern States Portland Cement* cases represent the blazing of new judicial trails, as the minority of the Court felt, or whether they are merely a reiteration of previously well-established principles, as was stated by the majority, small and medium-sized businesses now find themselves faced with new and pressing problems. Basically these problems arise from the fact that such concerns will be required to file tax returns in many more States than heretofore; and everyone knows that the more States there

are in which a business is required to file a return, the more likely it is that lack of uniformity in State apportionment and allocation formulas will work substantial injustices.

The Pandora's box of uncertainties which has been opened by these decisions must be closed soon if serious damage is not to be done. As it is, company treasurers are receiving tax bills from States which had previously been nothing more than names on salesmen's expense accounts. Auditors are burning the midnight oil in an effort to decide on the form of their certificates and to arrive at a proper answer to the question of what reserves should be made for previously unsuspected State tax liabilities. Creditors are worried as to whether tax liabilities for prior years are going to render meaningless the balance sheets they had relied on.

It seems quite clear that the impact of the new Supreme Court decisions will fall most heavily upon medium and small businesses by making it more difficult for them to compete with countrywide concerns which are already paying taxes in all or almost all 50 States. For these latter concerns the new extension of State tax jurisdiction will mean little, if any, increase in overhead expense. But take the case of a typical business which has, for example, its manufacturing plant in one of the Middle Atlantic States. Salesmen from the main office cover the Atlantic seaboard. It also has a warehouse and sales office in St. Louis to cover the Midwest.

Under the former theory of jurisdiction to impose an income tax, only its home State and Missouri, where the warehouse and sales office were located, could have imposed taxes on this company.

Now it would appear that this concern may be liable to taxation in every State which its salesmen enter to solicit orders even though such salesmen may not live or have an office in the taxing State.

This is no fanciful case. Out of 139 replies received in a recent survey, 65 companies paid income taxes in 5 States or less. Yet out of this same sample, 102 companies had salesmen who traveled with some degree of regularity in 21 or more States. For 65 reporting companies with gross annual sales under $25 million, only 21 paid income taxes in more than 5 States. Forty-one companies paid taxes in one State or less. Yet of these same companies, 37 had salesmen who traveled regularly in more than 21 States.

The most graphic presentation of the problem which business faces under the new Supreme Court decisions is contained in the defendant's brief in the *Stockham Valves and Fittings* case:

"Just to catalog the various criteria used to allocate income points up the tremendous burden which will result from efforts to comply with these laws. The interstate company must first obtain an analysis of the income tax laws of all the States in which it carries on sales activities. Based on these laws, it must tabulate the criteria by which income is allocated to each of those States. It must then set up recordkeeping procedures so that this information will be available at the end of the year. Sales must be tabulated by origin, destination, place of goods when ordered, location of negotiating personnel, location of office out of which such personnel worked, place where order was accepted, and whatever other elements a State may consider material. This information must be tabulated with respect to every invoice so that the taxpayer can determine which sales to include in the gross receipts ratio for each State. In like manner, data for every factor used by a State in its apportionment formula must be collected and tabulated. Thus, payroll accounts must be broken down as to type of compensation and as to type of employees compensated. Average property ratios must be calculated with respect to all real and tangible personal property, with respect to intangible property and with respect to inventories. From day to day, records must be kept so that this information will be available at year-end. Accounting procedure for tabulating this data must be adopted.

"At the end of the year the corporation must prepare income tax returns in each State in which it carries on selling activities. The information required on each return differs and the legal auditing and clerical job of preparing and filing the returns, in and of itself, will constitute a tremendous burden.

"Filing a return is not, however, the end of the problem. The interstate concern must look forward to periodic audits by representatives of the taxing authorities in each jurisdiction where it pays income taxes. Not only are these visits time consuming, but the States have now adopted a practice of making the company pay the expenses of the auditor. Unless the concern pays such costs, the State threatens to subpena all of the company's records and cause the company to produce its records in the office of the tax commissioner.

"Finally, there are the costs of resolving controversies and the costs of possible litigation to prevent unreasonable State exactions."

While small business should bear its part in supplying the revenues necessary for the proper functioning of State government, to subject the average small business to taxation in States where it has no property or permanent establishment creates serious implications.

Let us illustrate the point by adding some figures to the previous example. Let us suppose that the net income subject to allocation of our hypothetical company is $100,000, that it sells its products in 20 States, that all these States employ the same allocation formula and have a uniform rate of tax of 5 percent. The total tax bill which it will have to pay is $5,000.

Under these circumstances, for this firm it is much better to divide this between the State of its main office and the State where its warehouse and sales office is located, rather than to split it up among all 20 States. The tax burden in either case would be exactly the same, but the cost of compliance—the overhead expense of securing legal advice as to the various State laws, the clerical and accounting expense of preparing returns—in the first instance would probably be in the neighborhood of one-tenth of what it would be in the second.

We have assumed here that all States involved use the same allocation formula so that 100 percent—no more and no less—of our hypothetical small business income is subject to tax.

This, of course, is a very unrealistic assumption. Allocation factors vary widely.

For instance, under Massachusetts law, a sale is allocated to Massachusetts unless it is "negotiated or effected in behalf of the corporation by agents or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the corporation outside of the Commonwealth." If a salesman operates from his own house outside the Commonwealth, the sale is allocable to Massachusetts.

Nor is Massachusetts uniquely unreasonable in this regard. It seems quite clear, therefore, that the more States in which a firm has to pay a tax, the more chance there is that it will be taxed on more than 100 percent of its income due to disparity among allocation formulas. Of course, the problems arising from interstate divergencies in allocation formulas existed long before the decision of the Supreme Court in the recent cases. These decisions, by widening State jurisdictions to tax, merely make the problem more acute.

ADMINISTRATIVE IMPLICATIONS OF RECENT DECISIONS

As a former tax administrator, I am more and more disturbed by the administrative implication of these decisions. The pyramiding of the overhead expenses of taxpayers arising from an increase in the number of States in which returns must be filed will certainly be paralleled by a comparable increase in the administrative costs of the States. Auditing a $10 return is often as complicated as auditing a $500 return. It takes up just as much filing space. Just as many accounting entries must be made in order properly to cashier the tax payment.

But even more important is the problem of enforcement. So long as liability for taxation is confined to companies having manufacturing facilities, warehouses or sales office in a State, efficient and effective enforcement is possible at reasonable cost. However, the mere identification of out-of-State firms which do business in the State only through traveling salesmen is a tremendously time-consuming task, nor is identification the end of the problem. It is one thing for a State tax official to know that a particular out-of-State firm has been sending salesman into his State. It is quite another to secure a tax return from such a firm, check the correctness of its preparation and after all that has been done, enforce the payment of the tax against an absent and perhaps recalcitrant taxpayer.

To make matters worse, in many cases the tax liability of an out-of-State firm may well be less than the cost of collection. This will leave the State tax administrator faced with an unhappy choice—should he try for complete coverage of all taxpayers even if some of them do not pay their way, or should he confine his collection activities to just those larger taxpayers where the game is worth the candle, and wink at widespread tax avoidance on the part of smaller firms?

It has been suggested in some quarters that the latter course should be followed. I find this a very frightening suggestion from the point of view of its effect on taxpayer morale. Suppose that your business is just big enough to have a State enforce its income tax against it. But your two chief competitors, whose

aggregate sales exceed yours, are each below the enforcement limit. I leave you with the question of how you will feel about the equity of such a policy.

Recent reports indicate that a few States are moving into this area with great caution. More, however, appear to be intent on extending their tax jurisdiction to the further limits permissible under the most liberal interpretation of the recent decisions.

EFFECT OF DECISION ON FEDERAL REVENUE

If any substantial number of States follow the footsteps of Georgia and Minnesota, and with the blessings of the Supreme Court already secured, tax out-of-State firms which merely solicit sales within their borders, the economic implications for the economy of the entire country may be both very substantial and very unfortunate.

If mere solicitation of orders in a State is now going to subject a firm to that State's tax requirements, the small businessman will think twice before extending his operations into new areas where profit potentialities may be conjectural at best. This will invariably tend to leave the market to larger firms whose activities are already widespread and which can better absorb the overhead expense both of securing the best tax advice and of keeping adequate tax accounting records segregated on a State-by-State basis.

It should not be assumed that this additional overhead expense of keeping accounting records, preparing tax returns and securing legal advice is a concern solely of the particular businesses involved. All these nonoperating expenses, all these costs of complying with diverse State requirements and nonuniform apportionment formulas, represent deductions in the computation of net income subject to Federal tax. Thus 52 percent of the burden—the amount of the Federal tax on corporate income—is borne, not by the individual firms involved but by the Federal treasury—which is another way of saying that it is borne by the general body of taxpayers.

POSSIBLE METHODS OF PREVENTING DISCRIMINATIONS AGAINST SMALL- AND MEDIUM-SIZED INTERSTATE BUSINESS RESULTING FROM RECENT SUPREME COURT DECISIONS

Small- and medium-sized businesses operating across State lines should pay their fair share of the overall State tax burden. On the other hand, they should not be saddled with discriminatory tax and compliance costs in comparison with businesses operating in only one State. However, the new Supreme Court decisions open up two possible areas where such discrimination may develop.

First, due to the divergent apportionment formulas which are to be found in the various State tax statutes, any interstate business may be forced to pay a tax on more than 100 percent of its income. This is not an imaginary problem. In the study made by Professor Studenski of New York University which appears in the November-December 1958 issue of the Harvard Business Review, 4 of the 23 concerns for which complete data on State income taxes were available—or over 15 percent—were assessed by the various States in which they were taxable, on more than 100 percent of net income.

Second, even though a particular interstate business is not taxed on more than 100 percent of its income, it may be required to file returns in such a large number of States, in some of which the tax due is less than the cost of preparing the return, that its cost of complying with the various State tax laws is vastly greater than the corresponding costs of a firm doing business in but a single State.

Several solutions to these two possibilities of discrimination against interstate businesses suggest themselves. The solution that has had the most publicity over the years is the proposal that all the States adopt by statute a uniform allocation and apportionment formula. The enactment of a uniform formula would remove one of the possible sources of discrimination against interstate business in that it would eliminate the risk that a corporation would be taxable on more than 100 percent of its income. It would not, however, in any way reduce the risk of discrimination arising from inordinately high compliance costs. On the contrary, if it required the computation of the sales fraction on a State-of-destination basis, it would guarantee that interstate business would be required to file in the maximum possible number of States. Furthermore, the mere agreement on a uniform apportionment formula would solve only one aspect of the problem. A second aspect, and one where the States might be even more reluctant to change their existing rules, involves the determination of what constitutes the net taxable income subject to allocation.

To these theoretical objections to a uniform apportionment formula as a solution to the problem of discrimination against interstate business is to be added a basic practical objection. Tax practitioners and administrators have been debating a uniform apportionment statute for years, but there would seem to be little more chance of the adoption of such a statute now than there was 25 years ago. The type of formula that would be acceptable to the manufacturing States is unacceptable to the market States and vice versa.

The second possible solution is the one suggested in Mr. Justice Frankfurter's dissenting opinion in the *Stockham Valves* and *Northwestern States Portland Cement* cases, namely, that Congress enter the field by enacting a statute which would permit the various States to tax income from interstate commerce on condition that they adopt a congressionally devised uniform apportionment formula. Some of the dangers of this approach are given in the report of the Senate Small Business Committee.

RECOMMENDED SOLUTION

In the view of the national chamber, the best solution advanced thus far is that embodied as the principal provision in the bills you are now considering. Although these bills are not identical in every detail, they all follow the general pattern already adopted by the Congress in enacting a corporation tax statute for the District of Columbia and would prohibit a State from taxing the income of a company doing solely interstate commerce within its borders where such company does not have or maintain an office, warehouse, or other place of business in the taxing State.

While the minimal activities type of Federal statute would not, in and of itself, prevent a company from being taxed on more than 100 percent of its income, it would restrict jurisdiction to tax to those States where the company had some sort of permanent establishment. With taxing jurisdiction so restricted, the risks of taxation on more than 100 percent of income would be greatly reduced. Such a statute would also go a long way toward solving the compliance problem for small- and medium-sized businesses which have permanent establishments in only a relatively few States but send salesmen into a majority, if not all of the 50.

The final and by no means the least persuasive argument in favor of such legislation is that it would not put the Congress in the position of overruling the recent decisions of the Supreme Court. If such a statute had been in force during the taxable years involved, the right of Georgia to tax Stockham Valves and of Minnesota to tax Northwestern States Portland Cement would in no way have been affected.

The most urgent present need is to bring the greatest possible measure of certainty into this area. So long as every company selling outside of its own State is in doubt as to its tax liabilities, a needless restraint is imposed on economic activity and hence on competition. Business management, being confused as to its tax obligations, will in many cases resist all new tax claims until the smoke has settled.

Tax administrators, quite understandably, will, on their part, be engaged in staking out the widest possible claims for themselves. All that this can add up to is greatly increased administrative costs, both direct and indirect, for everyone concerned.

The CHAIRMAN. The next witness is Mr. Philip G. Kuehn, American Warehousemen's Association.

STATEMENT OF PHILIP G. KUEHN, AMERICAN WAREHOUSEMEN'S ASSOCIATION; ACCOMPANIED BY CHARLES BUTLER, COUNSEL FOR LAWRENCE WAREHOUSE CO., CHICAGO, ILL.

Mr. KUEHN. Mr. Chairman and gentlemen of the committee, I am accompanied by Mr. Charles Butler, counsel for the Lawrence Warehouse Co., of Chicago, and member of our association.

My name is Philip G. Kuehn of Milwaukee, Wis. I am president of the Wisconsin Cold Storage Co. and general vice president of the American Warehousemen's Association.

It is my privilege to appear before you as the spokesman of the American Warehousemen's Association, the only national trade association that functions for the public refrigerated and public merchandise warehousing industries of the Nation.

There are 882 members of the American Warehousemen's Association, practically all being small businessmen, vitally interested in and affected by the proposed legislation being considered by this committee.

The association is aware of the necessity of remedial action by the Congress to relieve business concerns, and particularly small business, from the dangers inherent in the decisions of the Supreme Court in the *Stockham Valves* and *Northwestern Cement* cases affirming the right of the States to tax the income of foreign corporations and companies notwithstanding the strictly interstate character of the business transacted by such concerns within the taxing States.

The Association does not question the right of any State to impose or not to impose an income tax on any company doing business within the confines of such State, but it is the sincere belief of the association that the Congress should, through the enactment of legislation clearly designed for the purpose, protect the flow of interstate business by prohibiting the taxing of income resulting from the transaction of interstate business as such, by any company not doing business within the State.

Under current practice, manufacturers store merchandise in public warehouses in many States for the ready availability and convenience of their customers. Sales are actually made by independent agents, such as brokers, manufacturers' representatives, or a salesman from a home or regional office in some other State.

Should the phrase "stock of goods" be included in any remedial measure, many firms would be subject to income taxation by any State simply by virtue of having an inventory which has temporarily come to rest in a public warehouse in that State.

Further, a small businessman, seling competitively in another State, must either ship directly to his customers in small quantities, at premium transportation costs, or have their orders filled from a stock maintained in a public warehouse near the customer, which stock has been shipped in by economical carload or truckload transportation. Many have found the latter course to be their most efficient means of distribution.

It is self-evident, therefore, that many small businesses in particular would be deeply and possibly fatally penalized if the phrase "stock of goods" remains in the final version of this proposed legislation. This includes, of course, many members of the American Warehousemen's Association as well as many of its customers.

For example, in the case of frozen foods, which require expensive transportation, the net result would be higher prices to the housewives and gross inconvenience to retail or wholesale organizations doing business in any given State.

While the association believes that Senate bill 2213, Senate Joint Resolution 113, and Senate bill 2281, are clearly intended to achieve the purpose of invalidating the imposition of an income tax derived from a trade or business by a person engaged in interstate commerce unless such person is doing business within the taxing State, Senate

bill 2281 containing no reference to a "stock of goods" most accurately expresses the evident intent of all three of the proposed acts.

It is apparent that a stock of goods may temporarily rest within a State in its movement in interstate commerce, yet if maintaining a stock of such goods is to be a decisive factor in determining whether business is being done within the State, the evil sought to be eliminated would, nevertheless, remain and various States would seize upon such circumstance as warranting the imposition of the tax Thus, the very purpose involved in the proposed legislation would be defeated.

Owing to the very nature of warehousing generally, involving constant movement of goods and commodities in interstate commerce, particularly foodstuffs and consumer items by a large number of business concerns throughout the country, such business should not be subjected to the additional hardship, cost, and expense following the imposition of a State income tax unless, in truth and in fact, such business concerns are maintaining an office, warehouse, or other place of business in the State or have an officer, agent, or representative in such State.

In other words, the mere presence of a stock of goods in interstate movement absent such additional conditions should not be allowed to serve as an invitation to State legislatures to impose an unwarranted tax on such a large group of business concerns.

We respectfully suggest, therefore, that either Senate bill 2213 or Senate Joint Resolution 113 be so amended as to delete the phrase "stock of goods" therefrom, and as so amended, either of such bills, or Senate bill 2281 be favorably reported for prompt enactment by the Congress.

Mr. Chairman, there was some apparent interest yesterday expressed in specific examples, and I would like to cite one specific case to make my point more clearly.

The Jesse Jewell Co. is located in the State of Georgia. It packs frozen poultry for sales in many States.

In Wisconsin, for example, the Jesse Jewell Co., of Georgia, sells through an independent broker, and consequently it has no place of business within the State of Wisconsin.

To the larger buyers in the State it can ship frozen poultry in its own trucks directly from the production plant in Georgia to the facilities of the larger buyer, clearly an interstate movement and, therefore, subject to no tax by the State.

But to the smaller buyers, however, Mr. Jewell likes to carry consignment stocks in a public warehouse in the State of Wisconsin, for the availability and convenience of his smaller customers. Consequently, if the phrase "stock of goods" were to remain in this legislation there would be discrimination between the larger and smaller buyer, and that is why we feel so strongly that the "stock of goods" phrase should be deleted.

I might add that we also feel very strongly that because of the brokerage feature of the Saltonstall bill, as well as having no reference to the stock of goods, that the Saltonstall bill is, by all odds, the best measure.

Senator TALMADGE. Mr. Chairman, if the witness will yield, is the State of Wisconsin now levying or attempting to levy a tax on Mr.

Jewell by virtue of the fact that he is attempting to store the frozen poultry in warehouses?

Mr. KUEHN. No.

The CHAIRMAN. Are there any further questions?

Senator Gore.

Senator GORE. Well, they are not prohibited from doing so.

Mr. KUEHN. The State of Wisconsin——

Senator GORE. By State law.

Mr. KUEHN. The State of Wisconsin has some criteria upon which it bases taxes on foreign corporations. But in the instance cited the State of Wisconsin does not levy a tax on income earned by Mr. Jewell because he has poultry stored in the State of Wisconsin.

Senator TALMADGE. Is there a provision in the law that provides that merchandise must come to a final resting point before it is taxable?

Mr. KUEHN. Yes. If it is delivered directly to, let us say, the A. & P. Tea Co. warehouse, then it is taxable, of course, to the A. & P. Tea Co. in the State of Wisconsin, but not Mr. Jewell.

Senator TALMADGE. Does the taxing authority consider commodities in warehouses to be in transit?

Mr. KUEHN. Yes; because it originates from a movement outside the State into storage inside the State for shipment inside the State, and it is to be presumed in transit, and consequently, except——

Senator TALMADGE. Do all of the State laws have the same provisions?

Mr. KUEHN. No, sir; they vary from State to State.

Senator TALMADGE. Do some States now tax frozen foods, we will say, while they are in warehouses, in transit?

Mr. KUEHN. I am no tax expert nor am I a lawyer, Senator Talmadge, but I think in some States they do.

Senator TALMADGE. Thank you.

Senator GORE. Do you think the State of Wisconsin should be limited by the enactment of one of these bills?

Mr. KUEHN. The State of Wisconsin has indicated, fortunately, that despite those two cases, they do not intend to alter their present criteria for taxing out-of-State corporations.

Senator GORE. That is an indication that would not apply to my question.

Mr. KUEHN. I am sorry, Senator. Would you ask your question again?

Senator GORE. Do you think Congress should pass a bill to limit the right of the State of Wisconsin to levy a tax which is within the constitutional powers of the State now?

Mr. KUEHN. No.

Senator GORE. You see no necessity for passing a bill at all?

Mr. KUEHN. On the contrary. I thought I made my point quite clear, Senator Gore. If the phrase "stock of goods" is left in there it is an open invitation to the States to tax shippers simply by virtue of having an inventory in a public warehouse.

Senator GORE. You do not understand, do you, that this bill confers upon the State a right which it does not now have? You say by inference it would be an invitation.

Mr. KUEHN. Yes; I do.

Senator GORE. Is that the full import of the bill?

Mr. KUEHN. Certainly.

Senator GORE. That is all, Mr. Chairman.

Mr. KUEHN. Thank you.

Senator TALMADGE. Mr. Chairman, I notice that all of these witnesses are somewhat repetitious in their statements.

We have not yet, in 2 days of hearings, heard from a State.

The Senate will convene in 50 minutes, and a lot of us will have to leave at that time to go to the Senate. I ask unanimous consent, Mr. Chairman, that the agenda be changed to permit Mr. Fred L. Cox of the Georgia Revenue Department, to appear as a witness at this time.

I would like to hear his testimony before I have to leave, and I feel sure that members of this committee would like to hear the attitude of the taxing authorities of the States at this point.

The CHAIRMAN. Without objection, the committee will hear Mr. Cox.

Senator GORE. Reserving the right to object, I ask that the statement of General Dickinson of the State of Tennessee appear in the record immediately following the estimable gentleman of Georgia.

(The statement of Mr. Dickinson appears on p. 222.)

The CHAIRMAN. Without objection.

(The prepared statement previously referred to will be found following the statement of Mr. Cox.)

The CHAIRMAN. Mr. Cox will be introduced by Senator Talmadge.

Senator TALMADGE. Mr. Chairman, I would like to present Mr. Cox to this committee. He is a long time career official of the Georgia Revenue Department. I had the privilege of knowing him quite well when I served as Governor of my State.

He served under a great many revenue commissioners of Georgia, I believe, since the creation of the Georgia Revenue Department.

He enjoys an outstanding reputation in my State. I believe he is an official of the National Association of Revenue Commissioners—will you state at this point what your title is and whom you represent, Mr. Cox?

STATEMENT OF FRED L. COX, CONFEREE, REVENUE DEPARTMENT, STATE OF GEORGIA

Mr. Cox. I am conferee for the department of revenue, State of Georgia; former director of the department of revenue.

Senator TALMADGE. Don't you serve as chairman of some committee?

Mr. Cox. Chairman of the Interstate Allocation of Business Income Committee of the National Tax Association.

The CHAIRMAN. Would you mind explaining the title of conferee? Does that mean you confer with with them or what is it?

Mr. Cox. If a protest is filed to an assessment by the department it is referred to me for adjudication.

The CHAIRMAN. We do not have that in Virginia, and I just wondered what it was.

Mr. Cox. I would like to say in the beginning——

Senator TALMADGE. Do you have copies of your statement, Mr. Cox, on file with the committee?

Mr. Cox. How is that?

Senator TALMADGE. Do you have copies of your statement on file with the committee?

Mr. COX. No, I did not have an opportunity when I first got the notice to prepare any statement, and what I have to say will have to be extemporaneous.

The CHAIRMAN. You may proceed, sir.

Mr. COX. I would like to state in the very beginning that I am in favor of the objective of the proposed legislation, but I am fearful that the proposed remedy is worse than the disease.

It seems that the cart is placed before the horse.

I favor the Commission to make the study, but it appears logical that the study should precede any legislation that will so vitally affect the budgets of some of our States.

It is altogether possible and, I believe, probable that an accurate appraisal of the tax impact as the result of the decision will reveal that no legislation is needed at all.

This is not a single-barreled, one-gallus proposition with which we are faced.

The economic welfare of the States must be weighed in the balance with the free flow of commerce, and who can say that it is of less importance to the national welfare?

The suggested definitions of doing business, it appears to me, would create more problems than they would solve.

Senator GORE. You are referring now to section 101?

Mr. COX. Yes; and that has been evidenced by the many questions that have been asked by your committee as to what those definitions mean.

Since 1918, when the first decision was made by the U.S. Supreme Court in a State income tax case, and that case was the cornerstone of all net income tax cases, the *U.S. Glue Company* case, 90 percent or better of the cases, of tax cases, measured by net income have been privileged tax cases, and in those instances it was necessary that the question of doing business be determined.

So the net income tax cases, where the incidence of the tax is on the net income derived from operations within the State, does not have to have any particular type of business done.

The very fact that the income was earned from a source in the State by reason of activities engaged in within the State is sufficient to sustain the imposition of the tax.

Senaor GORE. Would you yield for a question there?

Mr. COX. Sure.

Senator GORE. Is that not also true in the case of some States that levy a privilege tax measured by net income?

Mr. COX. No, no. The question there has to be determined as to whether the corporation is actually doing business as required by the act.

Senator GORE. I understood your description of a hypothetical case to meet those requirements.

Mr. COX. No. If you are required to perform some certain specific duties within the State before you are liable for the tax, such as a tax on the privilege of doing business in the State, an occupational tax or a tax to engage in corporate form in the State, as I believe Tennessee has, then you are required to meet the definition of doing busi-

ness as prescribed in the act or the generally accepted term in the judicial sense.

Senator GORE. Then if those requirements are met your answer to my question would be in the affirmative?

Mr. COX. That is right.

Senator GORE. All right.

Mr. COX. The definition of doing business in Georgia for our net income tax is the engaging within the State in any activities or transactions for the purpose of financial profit or gain whether or not the corporation is qualified to do business in the State and whether or not the corporation maintains an office or place of doing business within the State, and whether or not any such activity or transaction is connected with interstate or foreign commerce.

Now, as to the minimum requirements for filing returns, that is controlled by regulation.

The Commissioner is empowered to hold that a corporation will not be required to file a return where its activities are merely isolated or occasional.

I might give illustrations of that. For instance, a citizen of Georgia notices an advertisement in a paper or hears it over the radio or over television of a certain product he believes he needs, and he orders a carload or a part of a carload.

But for some reason, after the shipment arrives the order is rejected and stored in a warehouse there rather than paying the freight on it back to Chicago, and the goods are sold out in partial lots to citizens of Georgia.

Now, certainly that is a taxable event, but since it is an isolated transaction and the corporation has no activity whatever in the world in the State or transaction in the State, we do not hold that that taxpayer, that corporation, would be subject to a return.

As to an isolated activity, let us assume that a president of a fabric corporation in New York City is visiting in Atlanta, and while there he calls on Rich's Department Store to get acquainted with the officers of that department store, and during the course of the conversation the officer of Rich's gives him an order for a lot of goods which are shipped, but the corporation in New York has no other activity in the State, and, therefore, that is an isolated or occasional activity which we do not hold to subject the taxpayer to the filing of a return.

Each case has to stand on its own bottom.

The CHAIRMAN. Mr. Cox, I wish to ask you this question. Georgia, as I understand it, has this tax?

Mr. COX. That is right.

The CHAIRMAN. And Minnesota; are they the only two States?

Mr. COX. No; there are several others.

The CHAIRMAN. Several others?

Mr. COX. Yes.

The CHAIRMAN. I would be very much interested in knowing exactly how it has operated.

First, what is the total revenue you receive from that tax?

Mr. COX. We have no statistical department, Mr. Chairman, and for that reason I do not know where to draw the line as between those that are, that would be excluded under the bills that are here.

But I would estimate it—and this is somewhat of an educated guess—that the revenue that we would lose under these bills, as proposed, would be somewhere between three-quarters and a million dollars a year.

The CHAIRMAN. Would you give an illustration to the committee of some particular company that would pay a tax, a substantial tax?

Mr. COX. I will be happy to do so. I cannot give the names of the taxpayers, but——

The CHAIRMAN. And what they do, how they conduct their business.

Do you have a tax, for instance, on the consignment of goods into Georgia?

Mr. COX. Yes, if they maintain a stock of goods from which they sell to the public out of that stock of goods, why, of course, that is maintaining a stock of goods in the State.

The CHAIRMAN. In other words, if produce of any kind is consigned to Georgia, it would be taxable on the assumption that the ownership has not been transferred?

Mr. COX. If the goods are eventually sold to customers for the out-of-State corporation that is true.

The CHAIRMAN. Suppose we take a commission merchant. Suppose you consign something——

Mr. COX. Commission merchant, that would be true.

The CHAIRMAN. That would be true?

Mr. COX. Yes.

Now, if the broker in Atlanta buys the goods himself, and the corporation merely stores them there with him for sale by him to his own customers, and the out-of-State corporation bills the broker in Georgia for the goods, why then, we do not hold that to be a stock of goods for sale to the customers in a State.

Senator WILLIAMS. Suppose a farmer in Florida ships a carload of potatoes to Atlanta, Ga., to be sold on consignment. Is it taxable to the farmer?

Mr. COX. I would rather think, Senator, that that would be an isolated activity or transaction where that just one occasion of it occurred. But if it was a regular practice of his doing so, why then, it would be.

Senator WILLIAMS. Well, during the seasons he ships 5 or 10 cars, a car a day for an interval of 5 or 10 days during the period. Would it be taxable to the farmer as the shipper?

Mr. COX. That would be true. But if he is an individual, of course, the State permits a personal exemption, and his profits on that would have to be considerable before he would have any tax liability.

Senator WILLIAMS. It would be subject to filing a return?

Mr. COX. He would be subject to taxation if he had any taxable income after the allowance of personal exemption and the deduction of business expenses.

Senator WILLIAMS. But in order to determine that, the farmer would have to file a return in Georgia; isn't that correct?

Mr. COX. Not necessarily. He would merely furnish us the information of the goods sold and we can determine that, whether there is any profit in it which would overcome his $1,500 personal exemption.

Senator WILLIAMS. If I might pursue that, how do you determine that? Do you mean that none of these people are supposed to file

returns until you ask them or are they supposed to file information returns, or how does that work?

Mr. Cox. Well, ordinarily that kind, they do not file returns until we ask them or we write them.

If they make substantial profit in the State, they usually file the returns and pay the tax without any question.

Senator WILLIAMS. Well, it just so happens, to continue with this argument about potatoes, occasionally the markets may be clear, and the market may be selling at a substantial price. How does the man know whether he is to file a return or whether he does not have to?

Mr. Cox. I beg your pardon, I did not get your question.

Senator WILLIAMS. How would the farmer know when he is supposed to file a return?

Mr. Cox. Like anybody else.

The CHAIRMAN. Does a commission merchant report consignments so you can get a return from the shipper?

Mr. Cox. Yes. We get the report of the consignment.

The CHAIRMAN. You find out by writing to the man who consigns the produce?

Mr. Cox. That is right.

Senator WILLIAMS. And you would not expect him to file a return, until you had written him and asked him about the extent of the profit he makes on that business?

Mr. Cox. Well, the law puts the burden of filing the return, of course, on the taxpayer.

Senator WILLIAMS. That is the point I was trying to get clear. I did not quite understand it. But then the burden would be on this farmer to file such a return?

Mr. Cox. To know whether he was due to file a return.

Senator WILLIAMS. Yes.

The CHAIRMAN. But now——

Mr. Cox. But he is allowed certain deductions when he files his return.

Senator WILLIAMS. I understand that.

The CHAIRMAN. How do you calculate the profit?

Mr. Cox. In calculating the profit?

The CHAIRMAN. Suppose it is a car of potatoes, as Senator Williams says. Does the shipper have to estimate what the potatoes cost him to produce?

Mr. Cox. Well, it is——

The CHAIRMAN. How do you figure the income?

Mr. Cox. It is his business to be able to furnish the costs of it.

The CHAIRMAN. I know it is, but is that the way it is done? He takes his costs of production and the freight?

Mr. Cox. That is right; any business expense.

The CHAIRMAN. And when he gets the check from the commission man, the difference between the two would be the profit?

Mr. Cox. That is true. If his business——

The CHAIRMAN. At what percent is that profit taxed?

Mr. Cox. After the personal exemption is allowed, the tax on the first $1,000 is 1 percent, on the next $2,000 it is 2 percent, and on the next $2,000 it is 3 percent, and on up to 6 percent when the highest bracket is reached at $10,000.

All above $10,000 is 6 percent.

The CHAIRMAN. Six percent.

Suppose they shipped to half a dozen commission merchants does he have to consolidate his returns?

Mr. COX. Sure.

The CHAIRMAN. In other words, he consolidates everything he ships into Georgia?

Mr. COX. In the State of Georgia.

The CHAIRMAN. At one time?

Mr. COX. That is right.

Senator WILLIAMS. The question was asked a moment ago in the case of Mr. Jewell's transaction in Wisconsin. If that were reversed, and it was a man in Wisconsin having the same transaction and storing it in Georgia, would he be taxed under the Georgia laws?

Mr. COX. We do not tax it. We have hundreds of people who store merchandise of one kind or another that requires cold storage in the Atlantic warehouse in Atlanta, and we get the report on it. But when we find out the character of it we do not require a tax return on it.

Senator GORE. But it is within the purview of your State statutes to do so?

Mr. COX. Not if it is still in the course of interstate commerce and has not been released for sale.

If it is put in the warehouse and is subject to the orders of brokers for it to be delivered out of that warehouse, then it is a taxable event.

Senator GORE. It would be quite an unusual situation when something was stored in Atlanta not for sale or use or availability in the State of Georgia, but merely a transit proposition.

Mr. COX. Well, not too unusual, because we have storage facilities there that some of the neighboring States nearby the line do not have, and then frequently we find that there are not sufficient storage facilities maybe in Florida, the State south of us.

The goods are stored in Atlanta to be later shipped to Florida when they have a purchase for them.

Senator GORE. If I remember correctly your description of your State statute, it is as all-inclusive as it would be humanly possible for one to write?

Mr. COX. Purposely so.

Senator GORE. So to all intents and purposes the action of your State in not assessing tax liability and not requiring a return is a matter of discretion, decision, and grace rather than lack of legal authority?

Mr. COX. Well, there may be a combination of those. But we do not hold that that is a transaction that is engaged in within Georgia for profit merely by the storing in a storage warehouse in the course of the transportation of goods for sale outside the State.

Senator GORE. But in any respect——

Mr. COX. It is subject to ad valorem taxes now in the State.

Senator GORE. Yes.

But if in any respect it is held, stored or used or intended to be used for profit in commerce within Georgia, it is then within the purview of your statute?

Mr. COX. That is right.

Senator GORE. Do you feel that Georgia should be denied this right by Federal statute?

Mr. COX. No, sir; I do not believe that any Federal statute should be enacted to encroach upon or usurp the powers of the State.

I think that the tendency in that direction has already gone far beyond national requirements.

Senator GORE. Well, then, how do you endorse the objective of the pending bills?

Mr. COX. I do not endorse the enactment of these limitation provisions, but I do endorse the part relating to the establishment of a commission to make the study.

Senator GORE. You are in favor of the study but opposed to the limitations?

Mr. COX. That is right; and I think legislation should follow the study, and study should certainly precede legislation.

Senator GORE. Thank you, Mr. Chairman.

Senator FREAR. May I ask a question?

The CHAIRMAN. Senator Frear.

Senator FREAR. Under the laws of the State of Georgia, just what can you tax? Can you tax services as well as property?

Mr. COX. Yes.

Senator FREAR. Can you tax energy? Can you tax electrical energy?

Mr. COX. We do not tax anything under the act until it has been reduced to net income.

Senator FREAR. Don't you receive from the Senator's home State their electrical energy from TVA in the State of Georgia?

Mr. COX. Sure.

Senator FREAR. Do you tax that?

Mr. COX. TVA does not file a return with us.

Senator FREAR. Why not?

Mr. COX. It is a Federal instrumentality, and we do not tax it.

Senator FREAR. Well, isn't the way to avoid tax in the State of Georgia to get it all federalized?

Mr. COX. I think that is the way to avoid them anywhere. [Laughter.]

Senator FREAR. Do you recomend that?

Mr. COX. No, I do not recommend it.

The CHAIRMAN. Suppose a private utility company were sending power, would you tax the electric power that came over a State line?

Mr. COX. We tax utility companies, yes.

The CHAIRMAN. You do that?

Mr. COX. We tax the profits from utility companies.

The CHAIRMAN. You tax private or public utilities that bring electric power into Georgia?

Mr. COX. If they buy it and sell it, yes. We tax them on the profit they make from it.

The CHAIRMAN. Do you tax airplanes going over the State?

Mr. COX. Not that fly over it.

The CHAIRMAN. If they stop, do you tax them any?

Mr. COX. Yes.

The CHAIRMAN. Do you tax the railroads that stop for passengers?

Mr. COX. Yes, sir.

The CHAIRMAN. Do you collect a passenger tax for people riding on the railroads?

Mr. COX. No, we tax the profit that railroads make attributable to the State of Georgia.

The CHAIRMAN. In addition to the tangible tax, you tax the roadbed and cars that go through the State, and then if they make any profit on the passengers and freight you tax that, too?

Mr. COX. Yes, just like any other corporation.

The CHAIRMAN. You do not tax an airplane that goes over the State—you tax it if it stops?

Mr. COX. If they have a scheduled flight through the State and they make a stop to let off or pick up passengers.

The CHAIRMAN. You could hardly check up 10,000 or 20,000 people.

Senator GORE. I believe it would be within the purview of their statute.

The CHAIRMAN. I do not see why you should not tax them by their using the Georgia sky as well as the land.

Mr. COX. Senator, you may put ideas in my head. [Laughter.]

Senator GORE. I think it must have been in the minds of the authors of your tax statutes.

Senator WILLIAMS. Do you have a State income tax on individuals?

Mr. COX. Yes, sir.

Senator WILLIAMS. Do you tax the earnings of the pilot who is flying this plane over?

Mr. COX. No, sir; not unless he is a resident of the State of Georgia.

Senator WILLIAMS. Only if he is a resident?

Mr. COX. That is right.

Senator CARLSON. Mr. Cox, what would be your situation with a concern that is operating in a State that has no income tax? They sell goods in the State of Georgia or any other State that does have an income tax.

Do you tax them in a State that does not have an income tax?

Mr. COX. We do not discriminate as between the corporations if they are engaged within the State of Georgia and have operations; in that event we tax them.

The CHAIRMAN. Do you tax a pilot who flies over Georgia, tax him on his personal income?

Mr. COX. Not unless he is a resident of the State of Georgia. We tax him only if he is a resident.

The CHAIRMAN. I would like to go back a moment to this consignment proposition. A farmer will send produce for consignment. There are a number of different conditions under which they are sent. There are some where they have a minimum guarantee of price—I know something about it.

There are others where they just consign them without any guarantee.

Do you construe, then, that this commission merchant is an agent, becomes a business agent, of the farmer that consigns his goods?

Mr. COX. I would construe that he was an agent of that farmer, or whoever he might be, for the purposes for which he was compensated.

The CHAIRMAN. If this merchant in Georgia, in Atlanta, would purchase the produce outright at an f.o.b. price from where it would be shipped, he would not then be taxed?

Mr. Cox. That is right. We would tax the broker himself.

The CHAIRMAN. Your theory is if the consigning is to a firm to sell, even though it is not stored, it may be sold the day it comes in, then there is a tax placed upon it on the idea that this commission man is a part of the business organization of the shipper; is that right?

Mr. Cox. That is right.

The CHAIRMAN. It does not have to be stored, it may be sold in bulk as soon as it gets there?

Mr. Cox. Senator, I might give you two illustrations. I have had experience with this, and they are clear in my mind, as to the difference between manufacturers' agents who are sometimes referred to as independent operators.

I speak now of an Ohio corporation which maintains a stock of goods in Atlanta in the name of its representative in Atlanta.

Now, the goods are, the title to the goods are, in the name of the corporation, that is, they belong to them.

They are merely a charge on the books to the representative in Atlanta.

When the representative in Atlanta takes an order for goods, if they have it in stock they fill it from that order and send the invoice to the office in Ohio.

If they do not have the goods in stock they send the order to Ohio and it is shipped immediately to the customer, and the Ohio concern collects for the amount of the invoice.

Now, there is a competitive line of merchandise where the representative in Atlanta purchases the products himself from the out-of-State corporation which happens to be a New York corporation.

Now, in that case if he does not have the goods on hand himself, he will send the order to the New York concern for shipment to the customer, but he collects, the Atlanta representative collects, for it himself, and the New York concern bills the operator in Atlanta, so there are two different and distinct operations that are carried on although both of them are carried on under similar names of manufacturers' representatives.

The CHAIRMAN. Well, is such an operation taxed?

Mr. Cox. In other words, it depends upon what are the facts looking behind the form to the substance of it.

The CHAIRMAN. I can understand——

Mr. Cox. One of them is taxable and the other is not.

The CHAIRMAN. I can understand a shipper who stores the goods in his own name, that is one situation.

But where they are consigned, especially if there is a guarantee of a minimum price, which frequently is the case, you require all the commission merchants in Georgia to make a report as to everything they receive on consignment, and then you write to the farmer, wherever he may be, or whoever it is, and ask him to pay the taxes?

Mr. Cox. Senator, ordinarily before we ever contact the out-of-State owner, we have cleared with the representative in Georgia as to the exact character of the operation, and sometimes there may be, because of the contract that is in existence, that the out-of-State operator would not be held subject to the tax, and in other instances the very nature of the contract may subject him to the tax in the State.

You have some very close lines of demarcation sometimes between those, in those cases.

The CHAIRMAN. You require the commission merchants to make a report on all goods consigned to them to be sold?

Mr. Cox. The way we get our report is that their report is made to the city and county tax office, and we get it from the city and county tax office.

The CHAIRMAN. This commission man may be the representative, then, of a hundred or 200 or 300 people?

Mr. Cox. He could be.

The CHAIRMAN. Suppose you give some illustrations of some substantial tax collections on interstate commerce.

Mr. Cox. I have no one in mind, Senator, for the reason that ordinarily the profit——

The CHAIRMAN. I do not mean the names, but some transactions, where there are some taxes imposed on some operation of business which bring in a substantial revenue.

Mr. Cox. Well, I can recall right now the operation of a canner in the Northwest, I do not remember the exact location of it, and they store in the warehouse, cold storage warehouse, in Atlanta, canned goods, usually fish of some kind.

It depends on the nature of that storage, as to the purpose that it is in that warehouse, and the uses made of it as to whether there is a tax liability generated.

If those goods are sold out to the public from that stock of goods in the warehouse, they are liable for the tax.

If, however, the storage is merely made for a future transportation to a point outside the State, we do not hold those subject to tax, because no profit was realized from that in the State of Georgia, and we tax only profit, and if there is no profit there is no tax.

The CHAIRMAN. In determining the profit, do you permit the shipper to take off the State income tax of his State, if he has one?

Mr. Cox. No. The statute provides that the State income taxes are not a deduction from gross income.

The CHAIRMAN. And neither is the Federal tax?

Mr. Cox. That is true.

The CHAIRMAN. But you take the gross income, take the business expenses off, and then you arrive at a unit cost of these different articles?

Mr. Cox. Whatever his profit was.

The CHAIRMAN. Well, I say you have got——

Mr. Cox. Some may have one method of determining a profit and another may have another, but at any rate the profit comes out in the same way. He has to determine it.

The CHAIRMAN. What base do you use? Suppose someone shipped in 100 bushels of potatoes. Do you take the unit cost of 100 bushels of potatoes, or do you take a percentage of this shipper's profits on the 100 bushels?

Mr. Cox. Senator, I think maybe you have a misconception of the basis of a unitary operation.

If this out-of-State operator, whoever he is, is following that procedure in many States, then the income is apportioned by the State on the basis of our statutory formula, and there are three factors to that formula.

The first one is inventories within the State of Georgia to the total inventories that he maintains everywhere averaged on a monthly basis.

The other factor is the payroll factor in Georgia, to the payroll factor everywhere.

The third factor is the receipts from sales to customers in Georgia to the total receipts from customers everywhere.

Those three ratios are added and divided by 3 to obtain the average ratio which is applied against the net income of a corporation after all of the expenses everywhere have been deducted.

The CHAIRMAN. But that would not be applicable to goods consigned. You have no storage, you would have no costs——

Mr. Cox. It may be if he is engaged in a unitary operation and an integrated operation in other States, and was not able to file a return, accurate return, on the basis of books of accounts with the State of Georgia.

Most of these people, however, are rather limited in the amount of income that they make in the State, and are able to file a return on the basis of separate accounting because they have all of their business that is done usually with one broker in the State.

The CHAIRMAN. I asked you about the unit because I happen to be a producer of apples, and I have shipped into Georgia for 50 years.

I ship Delicious apples that bring a certain price, a very much higher price than others.

I ship the York Imperial that brings about one-half as much as Delicious apples, and I have not looked up the returns I am required to make, but I was wondering whether you put them on a unit basis?

Mr. Cox. No, sir.

The CHAIRMAN. Because there is a big difference in a bushel of one kind of apples that are worth far more than another bushel of apples.

Mr. Cox. It is determined entirely on a profit.

The CHAIRMAN. The lowest grades come in by trucks, Senator Talmadge, and high-grade apples come in wrapped. I am just wondering what the standard was.

Mr. Cox. It is determined entirely on the profit realized from the sale.

The CHAIRMAN. I say, but that formula which you just mentioned would not be applicable to the shipment of produce of different grades and different varieties, I should not think, on consignment.

Mr. Cox. It may not be in your instance, but it would apply with a corporation.

The CHAIRMAN. Some other standard would apply.

Would you care to express an opinion as to what effect the Bush bill, for instance, would have on the State?

Mr. Cox. Well, as I have already stated, I would dislike very much to see any legislation passed whatsoever until after you had the benefit of a report. Now there is a great deal that I would like to have been able to say, but time does not permit of it.

The CHAIRMAN. You take all the time you want. We will have another session tomorrow if you want it.

Senator Carlson?

Senator CARLSON. Mr. Cox, is the State of Georgia collecting a substantial amount of revenue, based on the interstate commerce and income from it, from other States at the present time?

I am interested, as a former Governor of a State, because I know the States have some problems, too, and I was interested in it, and I know it has got problems for everyone concerned.

Mr. COX. The question of determining what is exclusively interstate commerce is quite complex. But those claim that they are engaged only in interstate operations in Georgia, we have estimated that the tax will run somewhere in the neighborhood of $2 million a year.

Perhaps half of that would fall within the category of these bills if they were enacted.

But I repeat that the complex economy of this country, of which all of the States and the Federal Government are a part, the activities, the transactions, markets, and taxing areas of each overlapping and not always moving in separate and distinct jurisdictional orbits, makes doubtful the existence of any such things as exclusively interstate commerce.

Senator CARLSON. Thank you very much.

Senator GORE. Mr. Chairman, may I ask a question?

The CHAIRMAN. Senator Gore.

Senator GORE. Mr. Cox, you heard the statement yesterday that the Court decisions tended to permit and legalize a sort of tariff on interstate business.

I am sure you would recognize that as a problem, as I do.

If so, must that not be measured against these two factors: (1) The possible impact on State financial budgets, and (2) the possible discrimination as between a corporation domiciled within a State and doing business within a State, thus clearly subject to State income tax, on the one hand, and a corporation competing and doing comparable business within that State though exempt from tax within that State by reason of the fact that it is domiciled from without the State?

Mr. COX. I certainly do, and I would like to give this illustration.

Now you take in the *Stockham Valve* case, the tax liability there for each year, I think it was 3 years involved in it, was a total tax liability of something like $1,700, whereas another corporation which I have in mind, has some 30 or 40 salesmen that constantly exploit the market in the State of Georgia, but the corporation does not maintain any office or any other place of business within the State, and pays us from $5,000 to $10,000 and, I think, as high as $15,000 a year in taxes.

Under these bills that corporation would be exempt from the tax in the State of Georgia, whereas Stockham Valve would be liable for the tax.

Senator GORE. So this is not, as you said in the beginning, a simple, one-gallus question?

Mr. COX. That is right.

Senator GORE. I understand what you mean by a one-gallus question, and I agree with you. I doubt the advisability of rushing pell-mell into the enactment of a statute.

I thoroughly agree with you that we should study and explore the problem. I do wonder if such a study would be better conducted by a subcommittee of this committee than by a commission, but that is a separate question.

Mr. Cox. I certainly think that the study should precede the legislation in the matter, and I think it would be unfortunate if the Congress took an awkward step hastily.

Senator GORE. You agree with me then that section 101, which is described as one to preserve the status quo, would not at all preserve the status quo?

Mr. Cox. Yes, I agree with you. I think it would create more problems than it would solve. It would start more litigation than we have ever experienced in the State of Georgia.

Senator GORE. In the event the Congress does wish to enact a bill in this area, do you not think that it will be necessary to amend the language so as to define income tax as meaning a tax based upon net income?

Mr. Cox. Answering that question, I would say this: That we already have a bill prepared by the assistant attorney general of Georgia that if legislation is going to be passed of some kind, as a substitute for those that have already been offered.

Senator GORE. You do have in mind the question I raised?

Mr. Cox. That is right.

Senator GORE. Thank you, Mr. Chairman.

I want to compliment you, Mr. Cox. You have been a very able and very patient and very helpful witness.

Mr. Cox. I would like to make this other additional statement, if permitted to do so, with reference to a uniform formula.

I have for a number of years persistently advocated and worked for uniform formulas for the apportionment and allocation of multi-State income.

I have already stated I am chairman of the Committee on Allocation of Business Income of the National Tax Association, and we will be prepared to make a constructive report when the conference meets in October in Houston, Tex.

But until that time, I am unable to say what that report will be—until it has been approved by the conference.

I will say this: Of the members of this committee I have already heard from all but one member of the committee with an expression of opposition to the enactment of any legislation until after the study has been made in this matter.

I also have tentative approval of a draft that I have made of the commission on uniform State laws proposed formula which, I believe, will be certainly approved by the National Tax Association, has already been approved by the Committee on State and Local Taxation of the Controller's Institute of America, and a number of the leading members of the Tax Executive Institute, who have expressed their approval of the formula.

I believe when the National Tax Association committee has met that we will have something constructive to recommend to the commission or to a committee that is set up for the study of this problem.

I believe the solution to the whole problem is in uniformity and not in immunity from tax or in the attempt to hold the line status quo.

Now, I would like to read just a portion of an address that I made at a recent NATA conference in Buffalo, N.Y., as to the uniform formula. I have stated this:

A divided Supreme Court on the issues involved, and a wide difference of opinion by the taxpayers and administrators to their solution present a complex problem, one that, perhaps, could best be solved through the medium of a State and Federal compact apportioning multi-State income on the basis of a uniform measurement regardless of the incidence of the tax.

As I see it, there are but three avenues of approach presently in view to the situation with which we are faced.

One, independent action by Congress.

Two, independent State cooperation.

Three, an interstate compact by joint efforts of Congress and the States.

As to the first, I am unalterably opposed to any means to achieve uniformity that will, to any extent, usurp the powers and rights of the States or involve encroachment upon their jurisdictions by the Federal Government.

It is my conviction that the tendency in that direction has already exceeded just national requirements.

Rather, I think, the States and National interests would be better served by Congress releasing the restraints that have been placed upon the States by the Supreme Court, where the tax is imposed on the privilege or other similar legal incidence, and the measure of the tax is net income.

There is no economic difference in a tax unrelated to the regulation of commerce and a tax related to the regulation of commerce when the measure is the same.

As to the second approach, it is extremely doubtful whether the States will ever, certainly not within the time now allowed, attain even a semblance of workable uniformity by interstate cooperation alone.

For nearly half a century numerous studies have been made and formulas have been proposed for uniform use by the States, and so far as interstate cooperation is concerned, the studies and the proposals amounted to exactly nothing.

So far as visible results are concerned, the lack of uniformity is as certain, and the confusion from it is as great, as before the proposals were made.

From a practical standpoint, the efforts through independent State cooperation got exactly nowhere.

There is now no reason to believe that fish has become fowl, and that efforts by interstate cooperation alone would be more fruitful under pressure.

The natural tendency of interstate cooperation is to move slow. That is not new. It has ever been so.

The need for uniformity demands prompt action. The time element alone renders impractical the approach to a solution through independent State cooperation.

It is too striking a parallel to the proverbial story of the doctors conferring while the patient dies.

Now, as to the third approach:

It is my opinion that the problem, because of its magnitude, feasibility, and urgency, is one that should be approached jointly by the States

and the Congress. Before any worthwhile uniformity can be attained, there must be some centralized, authoritative, and powerful influence moving in that direction, an influence which Congress, by reason of multi-State impediments, is best fitted to initiate and supply.

For reasons perhaps far removed from those presently involved, but none the more binding because of them, there is incorporated in the Federal Constitution a prohibition against States entering into a compact without the consent of Congress.

While it can hardly be imagined that Congress would refuse to give its consent to a favorable solution of a problem of such magnitude, nevertheless, the provision of the Constitution must be respected, a provision the States approved by the adoption of the Constitution.

Thus, we see, if the States could and would agree on the basis of uniformity through independent State cooperation the consent of Congress must still be obtained for its enforcement. Without a binding compact an independent political agreement would be as difficult to enforce as to obtain.

Then Congress has a national interest in the economic growth and prosperity of the States. That which affects adversely the economy of the States cannot but in some degree affect adversely the national economy.

The expense of compliance and administration with the various conflicting apportionments reflects not only a decrease in State revenue, but also a decrease in Federal revenue.

Because of both State and National interest, Congress should intercede and furnish the necessary initiative, promotion, and even prodding of the States, if necessary, to bring about a joint Federal and State compact for uniform allocation and apportionment of multi-State income, regardless of the subject of the tax.

Furthermore, there is an involvement with which only Congress can effectively deal, that of the States taxing exclusively interstate income, when the subject of the tax is a privilege or some similar legal subject.

It is my belief that any formula which apportions to a State for taxation the net economic benefits reduced to net income furnished by the State, should not be held to be in conflict with the commerce clause of the Federal Constitution, whether or not the income is wholly of an interstate character, and without regard to the subject of the tax.

In view of the Supreme Court decisions to the contrary, Congress alone has the remaining constitutional authority to prescribe and circumscribe the proper methods and bounds for imposing a privilege tax on exclusively interstate income, and to prescribe measurements for a fair and equitable apportionment of all interstate income among the several taxing jurisdictions.

The solution to the problem is not State tax immunity to income; the States have a constitutional right to tax, but a proper apportionment of all interstate income.

The CHAIRMAN. Thank you very much, Mr. Cox. You made a very interesting statement.

Senator CARLSON. Mr. Chairman, I would like to state that I think it is one of the most helpful statements we have had, and I think it presented to the committee in a way that was not presented before, the magnitude and difficulty of this problem.

Your suggestion regarding interstate compacts with congressional approval is something that the States and the Federal Government have had experience with, and I think it is something we should explore.

Mr. Cox. If I had a week to give other illustrations I could give you some further information on the subject.

The CHAIRMAN. You made a very fine presentation.

Senator TALMADGE. Mr. Chairman, one thing, before Mr. Cox gets away.

Mr. Cox, I believe you had a suggested substitute for the bill?

Mr. Cox. Yes, sir.

Senator TALMADGE. Would you present it to the clerk of the committee for the consideration of the committee, please?

Mr. Cox. I will do that; yes, sir.

The CHAIRMAN. Without objection, that will be made a part of the record.

Do you want a copy to be sent to each member of the committee?

Senator TALMADGE. Yes.

(The document referred to follows:)

Re proposed substitute (2) for S. 2281 and similar measures.
Submitted by Ben F. Johnson, Jr., deputy assistant attorney general, State of Georgia.

To define the taxing powers of the States and political subdivisions thereof with respect to activities exclusively in interstate commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ANNUAL EXCISE TAXES MEASURED BY NET INCOME

SECTION 1. No person shall be relieved from the payment of any annual excise, license, or occupation tax, or tax on the privilege of doing business, when same is measured by net income, imposed by any State or political subdivision thereof on the ground that he is engaged exclusively in interstate or foreign commerce.

TAXES ON OR MEASURED BY NET INCOME

SEC. 2. (a) GENERAL.—No State, or political subdivision thereof, shall impose on any foreign corporation or taxable entity not domesticated or qualified to do business therein, a tax on net income derived therein from exclusively interstate commerce, or a tax described in Section 1 measured by net income, unless, during the taxable year, such corporation or taxable entity, within the taxing jurisdiction—

(1) maintains a warehouse, or a stock of goods which has become a part of the common mass of property therein, or

(2) an office or other place of business, or

(3) owns, leases or operates other tangible property therein on a more or less permanent and not transitory basis (except rolling stock regularly transiting the taxable jurisdiction without stops for picking up or discharging persons or property), or

(4) has an officer, employee, agent or other representative who has an office within the taxing jurisdiction. The term "office" shall include the residence of any officer, employee, agent or representative if such residence is identified in the trade with the business of such corporation or other taxable entity.

SALES AND USE TAXES

SEC. 3. No person, firm, corporation or other taxable entity, regularly engaged in selling or renting tangible personal property or services and regularly delivering, shipping, or transmitting same, or causing same to be delivered, shipped or transmitted, in interstate commerce to a destination in a State, or political subdivision thereof, whose law imposes an obligation on out-of-State sellers to

collect from purchasers and consumers within its taxing jurisdiction a tax on the use of tangible personal property or services therein, shall be relieved from compliance with such law on the ground that he is engaged in interstate or foreign commerce.

OTHER TAXES

SEC. 4. (a) EFFECT OF INCLUSION.—Sections 1, 2, and 3 hereof shall in no wise be construed as prohibiting, limiting, or restricting other methods of taxation of interstate commerce by States, or political subdivisions thereof.

EFFECTIVE DATES

SEC. 5. Sections 1 and 2 shall be effective for all taxable years beginning on and after January 1, 1959. Section 3 shall be effective as to all shipments made on and after the thirtieth day after the effective date of this Act.

The CHAIRMAN. The statement of Mr. Jacob McGavock Dickinson, commissioner of revenue of the State of Tennessee, will be inserted at this point in the record as requested by Senator Gore.

(The statement follows:)

STATEMENT OF JACOB MCGAVOCK DICKINSON, A MEMBER OF THE TENNESSEE BAR AND DIRECTOR OF THE FRANCHISE, EXCISE TAX DIVISION, TENNESSEE DEPARTMENT OF REVENUE

By direction of Hon. Alfred T. MacFarland, commissioner of revenue of the State of Tennessee, I respectfully present the following position of the Tennessee Department of Revenue relative to proposed legislation intended to prescribe limitations upon the power of the States to impose income taxes upon income derived exclusively from the conduct of interstate commerce.

We suggest that on a matter so vital as that of limiting the inherent power of the States to impose taxes, legislation may well be deferred until study and report by an appropriate commission to be set up by authority of Congress.

In any event, whether the Congress takes immediate action to set up some temporary controls or standards, or whether the Congress awaits the study and report of such a Commission before taking action in the form of final legislation, we strongly feel that consideration should be given to States which do not, and may not impose direct income taxes because of their own constitutional limitations. Tennessee is such a State.

By limiting the scope of action to direct income taxes, the State of Tennessee would be discriminated against because of our constitutional provisions with respect to an income tax. The Tennessee Legislature has enacted a franchise tax law, together with one imposing a privilege tax measured by net earnings known as an excise tax. And in the light of recent U.S. Supreme Court decisions the Tennessee Legislature imposed a privilege tax to be paid by corporations not paying franchise and excise taxes and in lieu of the same, which is a tax upon the privilege of being in receipt of or realizing net earnings in Tennessee. All of these laws provide for apportionment formulas to the end that Tennessee will tax only a fairly apportioned share of earnings from the business done in the State, or earnings realized in the State.

While the Tennessee excise tax has been construed by the Tennessee Supreme Court as a tax upon the privilege of doing business in Tennessee, whether intrastate or interstate, in corporate form, it is realized that such construction might not be approved by the Supreme Court of the United States. There is this very clear distinction, however, from the situation which arose in the *Spector Motor* case in that the Connecticut Supreme Court had construed the Connecticut tax as a tax upon the privilege of doing business, and the only business done in the State by the Spector company was in interstate commerce. It will be noted that the Connecticut Supreme Court had not construed the tax as upon the privilege of doing business in the State in corporate form, as our Tennessee tax has been construed.

It has been pointed out again and again in leading cases that a privilege tax measured by net earnings has an effect identical with that of a direct income tax. The Supreme Court of the United States necessarily decided that where the tax is imposed upon the privilege of engaging in interstate commerce, it is a direct burden upon interstate commerce. Only the Congress has the power to

construe a privilege tax measured by net earnings as being the equivalent of a direct income tax.

As heretofore pointed out, Tennessee rests its case upon the fact that any standard which permits only the levying by the States of a direct income tax on income derived from interstate commerce, necessarily discriminates against the State of Tennessee.

The CHAIRMAN. Senator Long has asked me, or requested me to say that Mr. Robert L. Roland, collector of revenue of the State of Louisiana, should be the next witness.

Senator LONG. Mr. Chairman, it is my privilege to present Mr. Roland, who is the collector of revenue of the State of Louisiana.

I am not sure whether you have copies of your statement, do you, Roland?

Mr. ROLAND. No, sir, Senator. It is my understanding, under your procedure, I will have an opportunity to present a written statement for your consideration.

STATEMENT OF ROBERT L. ROLAND, COLLECTOR OF REVENUE, STATE OF LOUISIANA

Mr. ROLAND. Mr. Chairman and gentlemen of the committee, my name is Robert L. Roland, and I am appearing before you today in my capacity as collector of revenue of the State of Louisiana, and I would like to say in the beginning that I certainly appreciate your kindness in giving me this opportunity to speak on the problem which certainly has two sides.

It is of very great interest to most taxpayers, and it has more than a passing interest to State officials who have fiscal problems of their own.

Because of the rather limited time that is available, I intend to touch only on the major points which are covered in the report of the Select Committee on Small Business and that resolution which has been proposed.

As I mentioned, I would be pleased to submit a formal written statement for the committee's consideration at a later date.

I had hoped, to paraphrase the words of Mr. Justice Frankfurter in his dissenting opinion in the *Stockham* case, that a full study would be made and that the claim of the individual States would be given adequate hearing before legislative formulation of policy was made by the representatives of all of the States.

In this connection, I am extremely disappointed that only a few representatives of the individual States have had a chance to offer any testimony thus far.

I think at the outset it should be understood when I speak to you today I speak of the problem as it affects Louisiana; and from the experience we have had in the last 10 or 15 years with this problem. I am going to try to steer away from some of the speculation and guessing which has been put in and give you some concrete examples and some concrete problems and see if perhaps we can help a little bit in your understanding of the problem.

What I say, of course, I think will reflect the views of the great majority of tax administrators throughout the States, particularly in light of the resolution which was unanimously adopted by that body at its annual convention earlier this month in which the Federal Con-

gress was urged to defer congressional legislative attention in this field until a study commission set up by Congress, and including appropriate State officials, has had time to study the question.

At this time I would like to respectfully ask the committee for permission to submit for its consideration a copy of that resolution which was adopted at the convention held in Buffalo July 8–11, and a copy of the report.

The CHAIRMAN. That is the tax commissioners of all the States?

Mr. ROLAND. Yes, sir. That is the resolution that was unanimously adopted.

Senator CARLSON. Mr. Chairman, that is a resolution I placed in the record yesterday based on my own State commissioner, Mr. Kirchner.

(The resolution referred to is incorporated in letter from J. E. Kirchner, director of revenue, State of Kansas, which appears on p. 13.)

Mr. ROLAND. I apologize. I did not know that.

I also have a statement which sets forth the considerations which prompted that resolution, and we have an 11- or 12-page discussion of the factors which prompted that resolution. If you do not already have that, I would like permission to offer that, also.

In that same connection and in connection with the remarks made concerning the State of Wisconsin, I have a letter from the tax counsel of the Wisconsin Department of Taxation, Mr. Arthur B. Barber, which I would also like to have incorporated in the record.

The CHAIRMAN. Without objection, it will be inserted in the record.

(The statement and letter referred to follow:)

STATEMENT ON PROPOSALS TO RESTRICT STATE AND LOCAL TAXATION OF INCOME DERIVED FROM INTERSTATE COMMERCE

Following discussions of various aspects of recent U.S. Supreme Court decisions relative to the taxation of interestate commerce, the State tax officials in attendance at the annual meeting of the National Association of Tax Administrators held at Buffalo, N.Y., July 8–11, 1959, adopted a resolution urging Congress to defer any legislative action pending a thorough study and investigation concerning the necessity for or desirability of such legislation. The considerations which prompted that resolution are discussed in this statement.

SUMMARY OF STATEMENT

Legislation to restrict State or local taxation of income earned exclusively from interstate commerce should not be enacted unless it is shown (1) that the administration of State and local income tax laws impose compliance burdens on interstate operations which are not commensurate with the tax liability involved and (2) that the States cannot take effective action to provide a reasonably uniform apportionment formula for income earned in multi-State operations. The testimony presented to the Small Business Committee on these points is mostly opinion or speculation and not a sound basis for legislative action.

Despite the fact that the tax principle confirmed in *Northwestern* and *Stockham* cases had been followed by several States over a period of years, no specific instances of the requirement of unreasonably burdensome recordkeeping, imposition of tax on the basis of trifling activity within the State, nor overtaxation by reason of the inclusion of the same income in the tax base of more than one State were cited. Moreover State income taxes are referred to as being applied to solicitation or selling. In fact, the basis of the tax is the earning of income within the State through business operations conducted directly by the taxpayer's representatives. The opinions about the potential cost of compliance

burden fail to give consideration to the fact that at most they are dealing with marginal costs and that the adoption of a reasonably uniform apportionment formula will mean in any case one standard method of keeping sales records for income tax purposes. There is some independent evidence available to support the view that the adoption of any one of three variations of a uniform apportionment formula would not significantly affect State revenues and thus there is a good possibility that progress toward a more uniform formula may be achieved by cooperation of both administrators and taxpayers.

The enactment of a place of business standard as suggested by the Small Business Committee would not provide equitable treatment to all taxpayers.

In view of this fact, it would be poor policy to enact that legislation and thereafter study the problem. The study and investigation proposed should precede any other legislative action. Indeed, such study and investigation might indicate there is no need for legislation by Congress in this area.

RECENT CASES INVOLVE NO NEW PRINCIPLES

The *Northwestern Portland Cement* and similar cases involve no new principle. Any doubts on that score must certainly have been resolved by *West Publishing Company* v. *McColgan*, 166 p. 2d 861, aff'd. per curiam 328 U.S. 823 (1946).

It is equally certain that States were imposing direct income taxes on income earned exclusively in interstate commerce prior to the judgments in the *Northwestern Portland Cement* and *Stockham* cases. For example, the tax on which a refund was sought in the *Brown-Forman* case was assessed with respect to the year 1951. *Moore Motor Freight Lines, Inc.* v. *Wisconsin Department of Taxation*, Wisconsin BTA Docket No. I–1345 involved an assessment for the year 1948. This company operated a trucking line in interstate commerce but it had no terminal or office in the State and was not certificated for intrastate operations. The assessment in the *West Publishing* case mentioned above involved income for the years 1937–38 and 1939.

These examples picked at random indicate that in these States it was the understanding long prior to February 24, 1959, that the U.S. Supreme Court sanctioned the imposition of direct income taxes on income exclusively from interstate commerce.

Neither is there anything novel in the proposition that routine and regular solicitation of order by company representatives within the State furnishes a sufficient nexus in the due process sense for purposes of tax jurisdiction (the *Brown-Forman* case), even though the orders taken are for shipment in interstate commerce. This point was decided with respect to the obligation to collect and remit State use taxes in *General Trading Company* v. *State Tax Commission*, 322 U.S. 335 (1944), and with respect to the payment of employment taxes in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945).

It is a corollary of these cases that State legislatures may define "doing business" in broad and inclusive terms provided only that the activities specified have a physical situs in the taxing State. The legislation proposed would substantially restrict this power of the States.

NOT A TAX ON SELLING OR SALES

The net income tax is not a tax on selling activities or on sales or solicitation. The basis of the tax is the earning of income from business activities conducted within a State. These activities may consist of personal services essential to the type of business carried on, manufacturing, processing, the utilization of property within the taxing State, the maintenance of a stock of goods, etc., or some combination of these or other business activities.

The measure of the tax is the net income earned from the aggregate of all business activities carried on by the enterprise. A share of this income is apportioned to each State in which the business activities giving rise to the earnings are conducted. In general this is achieved by attributing to a State that proportion of the total net income which corresponds to the relative amounts of property, personnel costs, and sales associated with the enterprise in that State. This is something quite different from a tax on property, payrolls or sales, solicitation or order taking although the latter are the terms that have been quite commonly used in the discussions of the *Northwestern* and *Stockham* cases.

It should be further pointed out that if the incidence of property, payrolls, or sales in a given State is a small fraction of the whole, then the amount of

net income apportioned to the State (against which the tax rate is eventually applied) will be proportionately small.

SUBSTANTIAL BUSINESS ACTIVITY REQUIRED

The basis of tax jurisdiction is the direct conduct of business activity within the State; the essential factor in this connection is the presence of the taxpayer or his directly controlled employees or representatives or his property within the State. It may be further stated that the kind of activity required is that directly related to the production or realization of income in the regular course of business.

The reasonable interpretation of these principles excludes income taxation in the following among other circumstances:

(1) Where the sole activity of the company is infrequent or incidental to the principal purpose of the business and the company is not otherwise engaged in business in the taxing State. For example, X, a Massachusetts manufacturer sends a factory expert to Louisiana to repair a machine made by X. No tax liability is incurred by X.

(2) Where the activities in question are not carried on directly by the company or by its directly controlled employees or representatives, e.g., advertising in newspapers or on the radio, distributing circulars, etc., provided, of course, that the company is not otherwise engaged in business within the State.

(3) Where a company merely ships goods direct to customers or sells and ships to bona fide independent distributors or wholesalers within a State for subsequent disposition by the wholesaler or distributor, and the company is not otherwise engaged in business within the State.

(4) Where a company makes only mail-order shipments to customers in the taxing State and is not otherwise engaged in business within the State.

(5) Where the sole activity of a company is the infrequent, occasional, irregular, or incidental presence of its officers or representatives within a State; e.g., to negotiate a contract, and the company is not otherwise engaged in business within the State.

It is significant that no instances were cited in the Senate Business Committee hearings where income tax liability was asserted under the circumstances just enumerated. There were numerous expressions of fears that this would be done in the future but the fact is that a number of States have been imposing taxes on income earned in interstate commerce for some years now and they have followed a policy of restraint as to occasional, irregular, or inconsequential activities, and have in no case asserted liability as to activities which do not involve a company's physical presence within the State through their employees or agents.

COST OF COMPLIANCE ESTIMATES ANALYZED

Costs of tax compliance are a matter of concern to any business. However, with the exception of one witness who presented actual cost data for a large corporation, which incidentally wouldn't be affected one way or another by the *Northwestern* and *Stockham* cases, the evidence of potential compliance burdens presented at the Small Business Committee hearings is pretty much speculation. For example, one witness reported that his auditor had advised him that the company had in the past year filed 804 tax forms in the home State of the business. This indicated the possibility that 4,000 forms would have to be filed if the company were taxed in all five States in which it operated.

A tabulation of all the tax returns required in that State, according to the tax chart appearing in the Commerce Clearing House tax service volume for that State, indicates that the estimate of 804 is fantastically high. According to the CCH data on returns required, if this business were dealing in cigarettes (12 monthly returns), beer (12 monthly returns), liquor (12 monthly returns), and gasoline (12 monthly returns) in addition to general merchandise which involves sales, use, and occupation tax returns; if it were also taxed as a public utility and paid various corporation qualification and franchise fees—if it were subject to all these taxes the total number of returns involved would be approximately 100; if this business filed general property tax returns in each of the 55 counties, 55 more returns would be added to the total; if the business in addition were liable for gross receipts privilege taxes (quarterly return) in the 26 home rule cities of the State an additional 104 returns would be required. This is an impressive list of taxes but even so the total is only 259—not 804 and it is not necessary to point out that most of the returns mentioned above are required only for specific types of businesses.

The actual cost figure for maintaining State income tax records cited by the witness first referred to is large but actually it amounts to about .0001 percent of the corporation's annual sales. The overall cost of compliance—for all taxes, Federal, State, and local—would be much higher than this and as a matter of information it might be noted that 60 out of 74 corporations participating in a study made by the National Industrial Conference Board reported their overall costs of tax compliance as falling in the range one one-hundredth to one-half of 1 percent.

It is important to note that little or no attention was given to the point that additional or increased costs of compliance, if any, attributable to the *Northwestern* and *Stockham* cases might very well be largely marginal. Basic income tax, employment, and withholding tax records must be kept by any business. If a firm has salesmen continuously employed within a State, even though it has no place of business there, it must keep unemployment compensation tax records and pay unemployment compensation taxes in that State. If the company makes sales of goods to consumers through salesmen operating within the State on a routine basis it must under existing law in most States collect and pay sales and use taxes and make the required returns.

On the whole, therefore, for a company which maintains substantial routine solicitation of business in a State, but does not maintain an office or place of business in that State, the net effect of the increase in compliance burden, would be the requirement that it maintain records of sales delivered to customers in that State. It is to be presumed that the net income of the business as determined under the Internal Revenue Code, as it stands or with some minor adjustment, would suffice for State purposes and the only original data that would have to be supplied would be the apportionment data. Presumably the business already has had to furnish data on wages paid (the payroll factor) for unemployment tax purposes; the real item of additional cost, if sales records are not maintained on a destination basis already, would be the cost of keeping records on that basis. Assuming that most States will come to agreement on a uniform sales factor, there would be no additional cost since the destination basis, or whatever basis is adopted, would become the standard basis.

A survey made in Canada a few years ago asked business taxpayers to indicate whether sales information was more easily obtained on a destination or on a source basis. The replies were as follows:

By location of purchaser	58
By location of permanent establishment from which goods are delivered	78
No preference	23

The inference from this survey is that it doesn't matter particularly what basis is selected so long as some specific standard is adopted.

A UNIFORM APPORTIONMENT FORMULA

It is likely that the *Northwestern* and *Stockham* cases will intensify efforts to obtain more uniformity in the matter of the apportionment formula used to divide multi-State income among the States in which it is earned. Indications are that the three factor formula using property, payrolls, and sales will eventually be the standard formula for general mercantile and manufacturing corporations. A fairly wide measure of agreement is evident now with respect to the property and payroll factors. The difficulty is with the sales factor and the single most important point in the whole subject of apportionment is the basis for attributing sales, whether to the State from which goods are shipped, or to which they are shipped, or to the place of negotiation, etc. What seems to be necessary here is to obtain a substantial measure of agreement on some one of these bases of attribution and thereafter to work and negotiate persistently for its adoption.

The proposed Uniform Division of Income Tax Act promulgated by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association, would provide a satisfactory point of departure either as the act stands or with some modification.

The question is not so much the matter of finding the perfect formula as it is finding one which will be acceptable in substance to all or to a very large number of the taxing jurisdictions. A good case can be made for a number of different factors but the trouble about a variety of factors is, as has been well pointed out, the possibility of over-or-under attribution or sales and the wholly unnecessary costs associated with keeping records of a single transaction in a number of different ways.

Much was made in the Senate Small Business Committee hearings of the possibility over overtaxation because of the inclusion of the same sales in the sales factor of more than one State. There was only one reference to the reverse of this situation, namely, the omission of sales from the factors of any State because of the use of different tests—origin, destination, negotiation, etc. It is not unreasonable to infer that if manufacturers or distributor are free to arrange their warehousing and sales facilities, they will take advantage of these situations. Specific examples of adjoining States where this is possible were cited in part I of the Senate Small Business Committee hearings.

What of the revenue effect of different bases for the sales factor? The Council of State Governments conducted a survey which throws some light on this point. A number of corporations were requested to report the amount of income taxes actually paid to the several States and then to recompute the amounts that would have been paid if the corporation used a three-factor apportionment formula with the sales factor alternatively based (1) on negotiation, (2) on origin and (3) on destination. While this survey was limited to a small sample of returns, the results are based on the actual tax returns filed. The conclusions drawn were stated as follows:

"From the findings of this survey, it appears that the States in general would not gain or lose appreciable amounts of revenue if they were to adopt uniformly any one of the proposed formulas. For a few States there might be significant increases in revenue; a few might suffer serious revenue losses."

Table 6 of this survey shows the percentage change between actual taxes paid and those which would be paid by the same corporations using a destination-basis sales factor. The largest decreases shown are for the District of Columbia (—33.4 percent) which apportions on the basis of one factor only, sales, and North Carolina (28.8 percent). At the time the survey was conducted, North Carolina did not include a sales factor in its formula; it has now done so. There were four States where the decrease was in the range 10 to 20 percent. These were South Carolina (—18 percent), Oregon (—17.8 percent), Vermont (—13 percent), and Virginia (—11.8 percent). Of these States South Carolina has since modified its formula along the general lines suggested by the NCCUSL Act.

Other data on the revenue effect of changes in the apportionment formula, or in the basis of the sales factor might be obtained from States which have recently modified them. It is significant that the actual revenue loss realized in North Carolina when the State adopted the three-factor formula with a destination-basis sales factor was considerably less than had been anticipated.

The foregoing indicates that it is possible to obtain data on possible revenue effects of changes in apportionment formulas and more important, that States are willing to change these formulas where it can be shown that such action is needed to provide an equitable means of apportioning multi-State income.

PLACE OF BUSINESS STANDARD

The place of business standard may have the advantage of simplicity but it is open to grave objection on the ground that it would include operations of relative insignificance while excluding important types of income producing activity carried on within a State. For example, a company which does a very small volume of business in a State but which has an order office there would be subject to tax while another firm in the same line of business, handling a substantial volume of trade through 10 or 20 or even 50 salesmen permanently operating in the State, though without a fixed company place of business in the State would not be subject to tax. Income earned in the conduct of trucking and other motor carrier operations of the kind involved in the *Moore* case mentioned above would be immunized from State taxation under one of the bills proposed. The taxation of income derived from the performance of various types of services might likewise be forbidden under such a standard.

Since the taxpayer is physically present in the State in both types of situations—permanent place of business or no permanent place of business—the objective to be achieved by the enactment of a standard of any kind should be the elimination of unimportant, sporadic, occasional and trifling activity. If it is possible for a business to escape State income taxation simply by elimination of a place of business owned by the company, even though the activities of its agents within the State may be permanent and continuous, it is to be expected that such arrangements would become more common, to the prejudice of locally based businesses in the same line which are subject to income taxes.

This is a point of great importance and it is the one big reason why careful study and investigation should precede rather than follow any action by Congress to prescribe a legislative standard for State tax jurisdiction involving interstate commerce.

Finally, it should be kept in mind that careful study and investigation may show there is no need for congressional action; that State income tax laws are in fact administered so that irregular, occasional, incidental, etc., activity by itself within a State is not regarded as doing business for income tax purposes.

(Submitted by Robert L. Rold, Collector of Revenue, State of Louisiana, on the 22d day of July, 1959.)

THE STATE OF WISCONSIN,
DEPARTMENT OF TAXATION,
Madison, Wis., July 17, 1959.

NATIONAL ASSOCIATION OF TAX ADMINISTRATORS,
Chicago, Ill.
(Attention: Mr. Charles F. Conlon, executive secretary).

GENTLEMEN: Your letter of July 15, 1959, addressed to Commissioner Harder and with reference to the hearings set by the Committee on Finance of the U.S. Senate for July 21 with respect to several resolutions that would restrict State taxation of income from interstate commerce, has been referred by Mr. Harder to me.

I have been instructed to advise you that this Department, prior your letter, had no notice or knowledge of such hearings, and, because of inability to change work schedules on short notice, will be unable to appear. We would appreciate it, however, if you would submit on our behalf to the committee in question the enclosed extra copy of this letter as representing the point of view of the Wisconsin Department of Taxation.

We are opposed to hasty, stopgap legislation in this vital area of taxation. We do not believe that interstate commerce should be exempt from State income taxation. The administration of the Wisconsin income tax law would be hampered by some of the resolutions to be considered by the committee, particularly in respect of the net income taxation of interstate truckers carrying on their trucking operations into, out of, and through our State without maintaining a place of business in our State. We fully support the resolution of the N.A.T.A. on the subject adopted at the convention this month at Buffalo.

Very truly yours,

ARTHUR B. BARBER, *Tax Counsel.*

Mr. ROLAND. I think this, gentlemen: That, in all fairness, even a body with as distinguished and learned people as you have in the Senate, and with the efficient committees and subcommittees which you have operating, cannot intelligently solve a problem which dates back more than 135 years after four or five short hearings, which I really think fall far short of the study.

Mr. Dane this morning pointed out that tax administrators, of course, have an inbuilt duty to maximize tax collection. I think to a great extent that is absolutely true, although in all fairness we do try to consider the good of the State and of the nation as a whole as opposed to whether we can get $1 or $5 more.

I think it is certainly worth noting that most of the people who have appeared before this committee thus far have been primarily concerned with the problem of minimizing liability for taxes in individual cases or in individual groups of cases.

The CHAIRMAN. Mr. Roland, could I ask you this question?

Mr. ROLAND. Yes, sir.

The CHAIRMAN. Have the tax commissioners made any study that would show whether all-State taxation of interstate commerce would more or less cancel out revenue advantages?

Mr. ROLAND. Senator Byrd, I do not think I understood your question.

The CHAIRMAN. Do you tax interstate commerce in your State?

Mr. ROLAND. Yes. If you will give me just a minute, I will give you a little background which might help us.

The CHAIRMAN. We have a tax commissioner in Virginia who is a man of very great ability. The residents of Virginia would pay the interstate tax to other States; is that not correct?

Mr. ROLAND. Yes, sir.

The CHAIRMAN. Louisiana taxes interstate commerce. Suppose all States imposed the taxes. All States would collect this revenue, and would pay these taxes.

Mr. ROLAND. In some instances; yes.

The CHAIRMAN. Would that approximately balance itself or not?

Mr. ROLAND. I do not think so, and I think I can give you some figures of the State of Louisiana, at least, which would show that.

The CHAIRMAN. What character of States would receive more than they pay out?

Mr. ROLAND. Well, let me give you, if you will, the example of Louisiana.

The CHAIRMAN. I just wanted to know if the commissioners had made a study of that.

Mr. ROLAND. I will try to answer your question.

As collector, I head a department which administers 32 taxes for the State of Louisiana. Last year for the fiscal year just ended, we collected $396 million. Included in that tax list is a nondiscriminatory net income tax which is levied on residents, nonresidents, and corporations, similar in many respects to the Federal income tax, after which it was patterned in 1934.

The rates vary from 2 percent to 6 percent, and we have liberal credits and exemptions. For example, you are authorized to deduct any net income taxes paid in any State; you are authorized to deduct any Federal incomes taxes which may have been paid.

In the case of corporations, the tax is levied at the rate of 4 percent on net income derived from sources within the State, and I would like to stop right here. We do not tax sales. We do not tax property. We do not tax consignments in this particular tax. We tax the net income after all of the credits and expenses have been allowed.

For example, and I will get into it a little bit further, in the case of the International Shoe Co., during one of the years that company had a $20 million net profit in the operations in all of the States.

Now, the State of Louisiana does not try to tax all of that $20 million. It tries to say, "Now, in this $20 million, you earned some of that income in Louisiana, and we want to try, under our statute, to see what amount of income can fairly be said to have been earned in the State of Louisiana," and that is the income which was taxed.

Senator LONG. What corporation was that?

Mr. ROLAND. The International Shoe Co.

All our records are privileged and confidential. I am not breaching any confidence when I give you any facts and figures in that case, since it was a case which went up through our State supreme court and in which the U.S. Supreme Court denied writs a little earlier this year, 1 or 2 months, I think, after the *Stockham Valve* and *Northwestern Cement* cases.

Generally speaking—and I say this because there are variations—generally speaking, in calculating Louisiana income we use a three-factor formula which consists of Louisiana property to total property, Louisiana wages to total wages, and Louisiana sales to total sales.

And in some of the illustrations which have been used, if you had no property in the State of Louisiana and you had no wages in the State of Louisiana, although it is impossible for that to happen, you would have a very small factor which would be used.

You get the arithmetic ratio of those three, and you apply it to the total net income to decide how much income the State of Louisiana is going to tax; and then after you give the proper credits and deductions, you compute the tax.

I realize that you are not——

Senator LONG. Let me see if I can get that straight. You take, under your formula, three factors: (a) how much property did they have and what percentage of it is located in Louisiana——

Mr. ROLAND. Let us take the International Shoe Co.

Senator LONG. Yes.

Mr. ROLAND. We took the amount of property which they had in Louisiana compared to the amount of property they had nationwide, and came up with a fraction.

Senator LONG. About 1 percent, let us say.

Mr. ROLAND. It was considerably less than that, because the only property they had in the State were left shoes and salesmen's automobiles.

We took Louisiana wages compared to total wages. They had 15 salesmen who regularly and systematically solicited the Louisiana market. They had salesmen, of course, who solicited throughout the rest of the country, so the wage factor was extremely small.

Then we took the sales factor. At that time we had a three-factor sales formula. Under the present setup we operate under the destination basis. We took the $5 million worth of Louisiana sales which had been made during this period, and compared it to the total of the sales which had been made throughout the Nation.

We came up with these three fractions, added them together, divided by three, and come up with an apportionment percent of something less, I think, than 1 percent.

We applied that back to the $20 million worth of net income during this particular year, and we came up with a tax liability, after we gave them their credits, of $1,700, roughly, for each of the years that was involved.

The CHAIRMAN. But that plant was in Louisiana, was it not?

Mr. ROLAND. No, sir. International Shoe Co. has no plant, no office, no warehouse in Louisiana. They are the people who are probably the largest shoe manufacturers in the country. They operate, they have plants, they have warehouses——

The CHAIRMAN. You do that with all businesses which sell in Louisiana?

Mr. ROLAND. Yes, sir.

Senator LONG. Businesses in Louisiana selling outside, do you give them the same consideration?

Mr. ROLAND. Yes, sir. Our statute is a comprehensive statute. We do not have a separate section which taxes interstate commerce, a

separate section which taxes foreign corporations. We have corporation sections, because the corporate rate is a standard rate.

In the case of corporations it is 4 percent, and in the case of individuals it is a sliding scale of two, four, and six.

The CHAIRMAN. Every company shipping into Louisiana, then, must make a tax return?

Mr. ROLAND. No, sir. And I think that is a misconception which should be cleared up.

The CHAIRMAN. Will you explain the difference between an ordinary shipment and this shoe shipment?

Mr. ROLAND. In the case of International Shoe—let me give you a mail-order illustration. I cannot give you any figures, but there is a tremendous mail-order house operating out of Chicago. They have no salesmen, no warehouses, no nothing in the State. All they have is a pretty good market, and they ship substantial amounts of merchandise into the State. They mail it in to the customers.

We make absolutely no effort to tax that, because, although they might have realized income—and when I say "we," I do not mean the administrators. I mean the statutes and the decisions—we make no attempt to tax that because there is not that sufficient minimum connection that the court spoke of, and I think it is pretty well settled in the cases that the fact that you merely have a customer in a Sate does not give rise to a liability. If you tried to impose a tax in that situation, you are going to violate the due process clause of the Constitution.

We do say that the regular and systematic solicitation of business with a large volume of business resulting therefrom does constitute a sufficient connection to justify the imposition of a net income tax. And we do not get a small amount of revenue from that. Our income tax last year yielded $30 million. Of this amount, corporations paid $17 million opposed to individuals.

The CHAIRMAN. I did not hear that. How much was the income tax return?

Mr. ROLAND. We had $30 million which we realized from our net income tax.

The CHAIRMAN. You mean that is the total?

Mr. ROLAND. Total.

The CHAIRMAN. How much of it came from the interstate business?

Mr. ROLAND. Corporations paid $17 million. Foreign corporations paid $12.5 million, and companies who derived their income wholly from interstate commerce—and, like Brother Cox, this is an educated guess, but it is on the conservative side—we collected between $500,000 and $750,000 from that source.

I realize that to you gentlemen who deal with billions every day, that is an insignificant amount; but to the State of Louisiana, the $30 million from the income tax, and the $750,000 we get in that situation, is a very important part of our fiscal picture.

In fact, you have heard a lot of talk about the cost of compliance. I would say that our cost of compliance in that situation is relatively small. We operate the entire department on an appropriation of less than $4 million a year, and we figure that it costs less than a half million dollars, less than $500,000, to operate our income tax division across the board, and we collect more than that from companies like

Brown-Forman, International Shoe, and other companies who regularly and systematically solicit the market.

The legislation which is before you does not preserve the status quo. It does not say we are going to allow you to tax only that which you have been able to tax in the past and we are not going to let you extend it.

We have collected substantial amounts of tax that we will be unable to collect under any of the proposals which are before you now.

The CHAIRMAN. Is the law in Louisiana similar to the law in Georgia?

Mr. ROLAND. To some extent; yes, sir. But our tax is not tied in with doing business. It is tied in to tax net income derived from Louisiana sources. And, as I say, you might derive income from Louisiana sources simply by virtue of the fact that you have a customer in the State, and I think Louisiana has a reputation, probably, for reaching out a little bit further than a lot of other States, but we have never reached or have never attempted to reach most of the situations which the gentlemen who have appeared before you these past 2 days and the gentlemen who appeared before the Select Committee on Small Business are worried that an effort is going to be made to tax.

You have been told that the Stockham Valves case and the Northwestern Cement case represent something new in taxes. We have never had any doubt as to the taxability of income earned in those two type situations, and we have taxed that income without serious argument in the State of Louisiana since 1946.

The difficulties we have come from this regular and systematic solicitation that we are speaking of, and I think you ought to keep in mind that the taxation of income from interstate commerce under our statute is simply a part of a general plan of State income taxation which reaches all income, whether from intra- or inter-state commerce, and whether it is from individual or corporation.

And we have, I would say, in Louisiana been actively engaged since 1948 in trying to see that this income is accounted for on our tax returns.

I think part of our success can be pointed out by the fact that in 1948 our income tax collections were $16.5 million, and last year they were $30 million. We have had no increase in rates, and in fact we have increased the personal exemptions from $1,000 to $2,500 and from $2,500 to $5,000.

I am not going to come before this committee and say that you do not have considerable problems incident to the taxpaying process generally, not just in the field of income tax; and certainly in the field of income tax where you have multi-State operations, you have some problems. I would be the last one to deny that.

But I do believe that: That that problem is one, as I mentioned before, of long standing. It has been with us to some extent for at least 135 years, and I think a lot of the difficulty and confusion which has arisen has been brought about by some of the speculation and some of the published reports of some of your newspapers and periodicals who say, "You have opened a Pandora's box."

As I say, we in Louisiana have not had any particular trouble in that field for the last 13 or 14 years.

My own fear is not that the States by their actions will so burden interstate commerce that a free flow of trade will be prevented, but rather, that the Federal Congress in attempting to solve the problem will enact artificial or superficial legislation which will create far more problems than it will solve.

With that little background, let me get into four specific points which I would like to make in connection with the report of the Small Business Committee and the proposed resolution, and I think in so doing you will be able to determine at least the Louisiana Department of Revenue's position on any similar legislation which might either be before you now or which might eventually come before you.

First, the point is made in the report that one of the basic problems presented to the committee was the difficulty of knowing what constituted doing business.

I think that completely overlooks the basic legal fact, and I think it is apparent from some of the questions that net income taxes are concerned with doing business only in an incidental sense; that what net income taxes seek to do is to fairly apportion net income earned by such businesses among the States which have participated in the earning of that income.

A lot of people say, "Well, a company earns its income by its manufacturing process." I think you have only to remember back to the depression days when you had tremendous amounts of goods which had been manufactured which sat up on a shelf because there was no market.

I think in fairness you have to admit that a company earns its money from the composite of what it has, from the capital it invests, from the labor it employs, and from the sales that it makes; and the three-factor formulas that are used with some modification by most of the 35 States levying income taxes—and I am not exactly sure that that 35 figure is right, but it is extremely close—take into consideration each of those particular facts.

I think in recommending that the Congress set limits upon the State's power—I do not think this is a factor—that in recommending that Congress set limits upon the State's power to tax such income, the Senate Small Business Committee points out on page 12 of its report that, although some States may now attempt to tax firms whose activities are confined to soliciting orders, even though extensive and systematic, it is believed that tax collections in such cases would be small and the cost of collection large.

So far as the State of Louisiana is concerned, this is simply not a fact. We have proceeded under the theory, and we think it is an extremely sound theory under the cases—that is, under the cases before the last two cases which caused all the consternation—that a regular and systematic solicitation of orders and exploitation of a local market give rise to Louisiana income tax liability.

As I mentioned earlier, we have collected considerable taxes over the period of the last 10 years from such firms.

Without having had time to go in and abstract each of our records, I can think offhand of at least 50 taxpayers in the State who have no office or stock of goods in the State, who have an extensive and regular and systematic solicitation, and their tax liability is not a small tax liability. They have paid us each year amounts ranging from $1,000

to $10,000 each, and I would like to go, for instance, to the—I mentioned the *International Shoe* case, where we got approximately $1,700 for each of the 3 years, and the *Brown-Forman* case, where the tax liability ranged from $4,000 to $7,000 annually during the years involved.

And these, gentlemen, are not isolated cases. We did not just pick out two cases and say, "Here is something that we can tell the committee where we have a lot of facts."

The reason I used those two is because the figures which are involved are a matter of public record.

I would like to emphasize again that while these collections may seem small to you where you have a Federal tax rate on corporations of from 30 to 52 percent, where we have a 4-percent rate like we have in Louisiana, with the exemptions and credits that we have, a $1,000 collection in an income tax case is a pretty substantial amount.

I said that the corporations paid slightly more than 50 percent of the income tax. They file only 3,000 or 4,000 returns annually. We collect from the individuals the remaining $13 million, and it takes us 98,000 returns to do it.

Senator LONG. As against how many corporation returns?

Mr. ROLAND. About—I can give you the exact figures for 1957. We had 98,306 current taxable individual returns in 1957. We had 3,042 nonresident individual current returns, 3,207 domestic corporate returns, 1,724 foreign corporation returns. In other words, out of 1,724 tax returns, give or take a few because of delinquency, out of 1,724 tax returns the State of Louisiana collected $12.5 million.

The CHAIRMAN. Were those companies which established businesses and plants in Louisiana?

Mr. ROLAND. Some have. For instance, we have a lot of foreign corporations. Your major oil companies, for instance, who have extensive activities in the State. They have offices, they have warehouses, they have maybe some of their most significant activity in the State. Those firms have never argued with us that they are engaged in interstate commerce where no tax would be due.

But the figure I think you are interested in, the income we derived from these interstate commerce situations where they are purely interstate commerce situations, conservatively ranges between $500,000 and $750,000.

The CHAIRMAN. How many returns?

Mr. ROLAND. I have no idea how many of the 1,724 returns are involved there, but I would say it would be a very small proportion.

Senator LONG. What would your guess be? Out of that 3,600, how many would there be?

Mr. ROLAND. I would say as to this $500,000, that we possibly got it with a hundred returns.

Senator LONG. A hundred returns?

Mr. ROLAND. About a hundred returns.

The CHAIRMAN. You mean there would be a hundred returns on the interstate business?

Mr. ROLAND. On cases where there are purely interstate business transactions, we probably have more than a hundred returns, but I would say out of the $750,000 we got, about $500,000 of it was accounted for by roughly in the neighborhood of a hundred returns.

It does not take up too many returns when you figure them at $10,000 a clip.

The CHAIRMAN. But making these returns is a great burden.

Mr. ROLAND. Yes, sir. That is a point which has certainly been raised both before this committee and before the Senate Small Business Committee.

The CHAIRMAN. How many returns do you think there are of that character? You say most of them come from a hundred returns.

Mr. ROLAND. Most of them would come, I would say, from in the neighborhood of a hundred, give or take a few.

The CHAIRMAN. How many returns in all are there?

Mr. ROLAND. In the——

The CHAIRMAN. I mean for the interstate business. That is what we are concerned about. We are not discussing the rest of it.

Mr. ROLAND. I cannot give you an honest answer, Senator, and I would rather not make a guess, which could be horribly wrong.

The CHAIRMAN. If you tax anybody who does any business in Louisiana, I would think there would be a great many more than a hundred returns paying substantial taxes.

Mr. ROLAND. We tax—and I would like to make this point crystal clear—we tax or attempt to tax only those firms which engage in a regular and systematic solicitation. If you send a salesman into the State on an occasional basis, you might get a letter from us by mistake.

The CHAIRMAN. You do not tax consignment of produce?

Mr. ROLAND. If that is all you have, no, sir, unless you end up with a bill like you have when we get into an argument about whether the consignment of those goods in that person's name makes it a place of business under the remedy you propose.

The CHAIRMAN. What is the limit, the legal limit, in your judgment, that you can tax without getting into the interstate companies?

Mr. ROLAND. It is extremely hard to draw a line as to what constitutes regular and systematic solicitation. I can only tell you the most extreme case to which we have gone so far is the case of Brown-Forman, which had four or five representatives. Another is the case of International Shoe, which had 15 salesmen who regularly and systematically solicited tremendous volumes of business.

And incidentally, under all of the proposals I have seen before the Federal Congress, that particular setup would be forbidden. We would not be allowed to collect the tax in that situation. A little later I would like to show you why I think that that is an extremely bad situation.

I would say this: Certainly one salesman coming into the State sporadically, there would be no question, that we could not tax. In the case of mail-order sales where you have nothing but a customer, absolutely not.

The CHAIRMAN. Suppose you had five in the State. Could you tax them then?

Mr. ROLAND. What?

The CHAIRMAN. Suppose you had five salesmen.

Mr. ROLAND. I think it depends on the quantity of the business done.

The CHAIRMAN. You must have some language somewhere. Taxes are supposed to apply equally to people who do the same kind of business; 10 salesmen or 12 salesmen—how many do you tax?

Mr. ROLAND. We have no set rules. We look at each case as it comes in. On the individual basis, that might not be desirable.

The CHAIRMAN. I thought taxes were supposed to be equally applied and collected——

Mr. ROLAND. Well, they are.

The CHAIRMAN. Among the same classes of people. One salesman, if he does a smaller amount of business or he may do a very large amount of business, nobody knows, why should he not be taxed if you tax 5 or 6 or 10 or 12?

Mr. ROLAND. Well, you have to get, as I see it, to the problem of whether or not you have a substantial connection with the State. I can see a situation where you could have 15 salesmen in the State where you might not have a substantial connection with the State; and, on the other hand, I can see where you could have 1 salesman in the State and——

The CHAIRMAN. The governing factor is the amount of business they do, the number of salesmen, or what?

Mr. ROLAND. No.

The CHAIRMAN. What is the formula you base the taxation on?

Mr. ROLAND. Well, the tax is levied upon any income, any net income derived from sources in Louisiana.

The CHAIRMAN. Well, you do not attempt to collect it, then.

Mr. ROLAND. We attempt to collect it as far as humanly possible. There has been a lot——

The CHAIRMAN. But you say certain people are exempt, if they have a certain number of salesmen or something else. What are the factors involved in actually trying to collect the tax? What is the formula involved? How do you do it?

Mr. ROLAND. We simply try to look at the nature of the activity involved and, if it appears to be substantial or systematic and regular, we tell them that they owe us an income tax.

Senator LONG. Let me try to get this straight. You did speak of a minimal connection; that there must not only be revenue derived from business in Louisiana, but there must be a minimal connection with their activities.

Mr. ROLAND. Yes, sir. And take the *Spiegel* case, where substantial——

Senator LONG. If they had not a single agent or representative in the State, even though they derived very substantial income, you would not attempt to tax them?

Mr. ROLAND. There is no minimal connection.

Senator LONG. So they have got to have a salesman or agent or some representative in the State to give them that connection, in addition to the income.

Mr. ROLAND. You have to have something which reasonable people would agree was a regular and systematic solicitation.

The CHAIRMAN. Who are reasonable people?

Mr. ROLAND. It is usually the people who are making the statement.

The CHAIRMAN. I thought the taxes were levied on some kind of a formula or some kind of a law.

Mr. ROLAND. We have a very definite formula, Senator.

The CHAIRMAN. I have been unable to understand what it is.

Mr. ROLAND. We can compute the tax in a given situation without any difficulty at all. We might have a tremendous argument with you and a big battle as to whether you are obligated to pay the tax that has been computed, because of the commerce clause or the due process clause, but the computation of the tax is certain.

The CHAIRMAN. I understand that, but there are certain people exempted and certain people taxed. Anyway, that is your business in Louisiana.

Mr. ROLAND. I think certainly on this business of cost of compliance, and I think we have it in the Federal Congress itself; certainly it costs us a tremendous amount of money to collect a $10 tax return from a resident individual who owes it, but we try to collect it, as far as humanly possible, to keep everybody on an equal basis; and I think in the case of some of these interstate firms, even though the amount of money involved is small, if we feel they legitimately and honestly owe us a Louisiana income tax liability, we are going to try to collect it.

The CHAIRMAN. We want to thank you very much.

Mr. ROLAND. Mr. Chairman, I do have one or two other points I would like to make, if you have time. I do not want to bore you, but I am greatly concerned with this. You have had tremendous amounts of testimony from business people and very few from the other side of the picture. If you would prefer, I will submit it in writing, but I would like to say it if I could.

Senator LONG. Proceed.

Mr. ROLAND. You have heard the remarks that more than 100 percent of income could be taxed because of taxation by various States with different formulas for allocating income and different tests for determining net income.

And, of course, you have the Harvard Business Review example which was cited by Mr. Dane this morning where he said in a sample of 23, 15 percent of them would owe a tax in excess of a hundred percent.

I can say this: that in the State of Louisiana, in the last 10 years, despite the literally thousands of tax returns which have been filed, thousands of corporate tax returns, I have yet to have had such a case brought before me in any capacity, as attorney or later in my capacity as a collector, in either case.

In fact, in the *International Shoe* case which I mentioned, the taxpayer stipulated that only one-fourth of its total income was taxed by the many States in which the company operated, and that included States in which it was set up with warehouses or was qualified to do business.

Parenthetically, I might point out that the total State tax bill in all of the States, during this year, in which the International Shoe Co. operated, ranged from $114,000 to $146,000, while the Federal income tax liability ranged from $8 million to $11¼ million for the same period.

I think it certainly is true as a legal matter that the Court in the *Northwestern* and in the *Stockham* cases very carefully and deliberately left the door open for a taxpayer in a given situation to come in and say, "The way these formulas are applied to me, you have a real and actual burden placed on interstate commerce."

I will admit that it is uncertain, but I really think that that affords a better method of relief than an arbitrary, though certain, legislative test.

Then the question you asked a while ago, Senator Byrd, about the fact that maybe Virginia gets to tax some income in one situation which maybe should be Louisiana's, and Louisiana would get to tax some that belonged to Virginia. That might very well be true.

In the Senate Small Business Committee report, the point is made that a great deal of economic waste is involved, and that the total tax bill is going to be the same; it should not matter too much whether State A or State B or State C gets it. And I think that is wrong.

I think that every State has got a very definite obligation to try to collect the tax on income that is attributable to the State, and I think if you have problems it is not because of the income tax, but it is because of our system of State governments with the Federal Government.

And I hope we never get to the point where we decide that the easiest thing to do is to let the Federal Government sit up here and parcel it all back, and that it is too much trouble for people to comply with each one of the 48 State laws that are involved.

You have had a considerable amount of testimony about the amount of recordkeeping, and I think the gentleman who testified for one of the transportation concerns pointed up the problem very clearly.

Most of these companies already have a tremendous number of tax returns to file. For instance, in the field of unemployment compensation, the Federal Congress has specifically provided that the fact you are engaged in interstate commerce is no bar to the imposition of unemployment compensation taxes. So most of the States have unemployment compensation taxes.

What I am trying to say is that the addition of an income tax return, while it might very well be the straw that breaks the camel's back, is no real increased expense to most of the concerns, because they already are required to keep records of wages because of the unemployment compensation; they are required to keep a record of personal property, and things like that.

The CHAIRMAN. In other words, because they are overburdened and we are simply adding another one, we should not argue about it. Is that your argument? I would like to see them cut down.

Mr. ROLAND. I would, too, Senator, but it disturbs me that you start in a field which has peculiarly been in the province of the States.

There is one last point, and I will be very brief.

I will take the pending proposal—I will give you two examples, of what we tax in Louisiana and what we could tax under the proposal.

Let's take the actual facts surrounding the International Shoe Co. It regularly and systematically solicits Louisiana business with those 15 salesmen I mentioned. Sometimes those salesmen are accidentally Louisiana citizens, sometimes they are citizens of Alabama or Georgia who happen to be working in Louisiana along with ont or two other States.

They annually get orders ranging from $5 million to $6 million. They maintain no office, warehouse or place of business in the State. Under the proposal, in fact, under all of the proposals, they would owe no tax although in the past they had been paying the tax.

Take Brown-Forman. They have representatives who are in the State on a very regular basis, and their sales to Louisiana customers obtained by the presence of those people who were in the State amounted to, ranged from $8 million to $11 million annually. That company also maintains no warehouse, no place of business in the State, and under the proposal it would escape what is presently a $10,000 tax liability.

Now, take that one step further, and assume that you pass the legislation which is pending. You take that same operation and you add to it one factor. You add a warehouse in the State or you add a Louisiana salesman who is a branch office manager, perhaps. They contribute not one iota to an increase in volume of business. The State continues to have about $8 million to $11 million worth of liquor sales from the Brown-Forman people.

Under the proposal you have here, the presence of that office or the presence of that salesman would suddenly convert something which would be nontaxable into something which is taxable.

The best examples I know are the *Stockham Valve* case and the *Northwestern* case. In the *Stockham* case the presence of an inconsequential office consisting of one female employee and one salesman who devoted one-third of his time to Georgia business, would make the company liable for the tax; whereas if you had no office maintained in the Northwestern States situation, you would have no tax due, even though 48 percent of the taxpayer's sales were made in Minnesota.

I thank you for your time.

The CHAIRMAN. Thank you, Mr. Roland.

(The following supplemental statement was subsequently received for the record:)

SUPPLEMENTAL STATEMENT OF ROBERT L. ROLAND, COLLECTOR OF REVENUE FOR THE STATE OF LOUISIANA, ON LEGISLATION PROPOSED TO LIMIT OR ELIMINATE THE CONSTITUTIONAL RIGHT OF A STATE TO LEVY NET INCOME TAXES ON INCOME DERIVED FROM INTERSTATE COMMERCE

In giving testimony before this honorable committee on July 22, 1959, I was given the right to submit a formal statement at a later date. Upon reading the transcript, it appears that a formal statement would serve no useful purpose since all the major points with which Louisiana was concerned appear in the transcript. However, the following points were not made because of the limited amount of time available, and it is the purpose of this supplementary statement to get them before the committee.

1. State tax administrators in general, and those in Louisiana and Georgia in particular, do not believe that legislation should be passed first and studied later. Although the proposed legislation is by its terms temporary, I think history, both at the State and Federal levels will show that temporary measures tend to become permanent. We urge that a careful and detailed study be made before legislation is adopted. Such a study may very well show that the facts, as opposed to speculation, do not warrant Federal intervention in this field.

2. Although the report also raises the problem of retroactive application of the cases, it offers nothing in the way of a solution, perhaps because of the serious constitutional questons involved in such retroactive Federal legislation. In Louisiana, the problem of retroactive application is not serious since we have been rather active in taxing such activities over the years and since we have a 3-year statute of limitations in tax matters.

3. In connection with the problem of additional cost of compliance on the part of the taxpayers, the point we wished to make was not that we had gone so far we might as well go one step further, but that the facilities for making the report were in many instances already in the hands of the taxpayer, thereby making the additional cost minimal. In other words, far from having to make an additional major investment in accountants, lawyers, etc., the taxpayer can

use the same facilities or records he is presently using for unemployment tax returns and sales tax returns in the various States in which he operates in interstate commerce. To eliminate the right to tax such concerns because of the additional expense involved to some of them seems to be equivalent to cutting off one's leg to remedy an ingrown toenail.

4. I do not believe that the speculative testimony I have thus far heard and read is a sufficient justification for Federal action at this time to restrict a State's constitutional right to tax such companies who actively compete with local concerns for the consumer's dollar. Already, the powers of States in State matters have been curtailed to the point where the States are in practical effect becoming provinces, and the system of government envisioned by our forefathers is rapidly disappearing. Certainly, the proposed legislation, if legislation is at this time needed, falls far short of an equitable solution. If guidelines are necessary, some attention should be devoted to the effect of a regular and systematic solicitation of the market in your home State by out-of-State firms who are actively and vigorously competing with your constituents' businesses.

5. In addition, the present proposals open the door wide for the creation of offices or warehouses or places of business in the few nonincome tax jurisdictions of the Union. In other words, with the artificial tests the proposed legislation creates, the opportunities for manipulation are multiplied and the problems which would arise will probably be more numerous than those solved.

The CHAIRMAN. Are the other witnesses who are here prepared to go through the luncheon hour?

The next witness is Mr. Charles H. Schreyer, Manufacturers Association of Connecticut.

STATEMENT OF CHARLES SCHREYER, MANUFACTURERS ASSOCIATION OF CONNECTICUT, INC.

The CHAIRMAN. I am sorry we are so late, Mr. Schreyer. We will either have your testimony now or wait until tomorrow morning, because there is a very important matter on the Senate floor.

Mr. SCHREYER. Mr. Chairman, I have filed a written statement with the committee, and I would ask leave to have that made a part of the record.

The CHAIRMAN. Without objection, that will be done.

(The statement referred to follows:)

STATEMENT OF CHARLES H. SCHREYER, ON BEHALF OF THE MANUFACTURERS ASSOCIATION OF CONNECTICUT, INC., IN SUPPORT OF S. 2213, S. 2281, AND SENATE JOINT RESOLUTION 113

My name is Charles Schreyer. I am a member of the bars of Connecticut and Pennsylvania, and for the last 10 years I have worked on the staff of the Manufacturers Association of Connecticut, 928 Farmington Avenue, West Hartford, Conn., for whom I am appearing today. I wish to thank this committee for the opportunity and privilege of appearing before you in support of the common objectives of the bills introduced by Senator Bush (S. 2213), Senator Saltonstall (S. 2281), and Senator Sparkman (S. J. Res. 113).

Our association represents approximately 1,850 manufacturing concerns comprising approximately 95 percent of the industrial payroll of Connecticut. The great majority of our members are small business concerns; 75 percent of them employ less than 100 workers, while 65 percent of them employ less than 50. I speak today particularly in behalf of these small companies, since a large majority of our bigger companies generally maintain sales offices in other States, which means that their tax liabilities would remain unaffected by any of the bills before you.

A large portion of my work for the association lies in the field of State and local taxation. Since our larger members either maintain their own tax departments or retain tax counsel, my contacts have been mainly with the smaller companies. Over the past 10 years, I have thus been requested by our smaller members on countless occasions to supply them with information concerning

the tax laws of other States and cities with which they were having difficulties. In this way I have come to know the extent and nature of their problems quite intimately.

Judging from my experience, the most frequent and also the most difficult of these problems involves the situation where a Connecticut manufacturer makes interstate sales to customers in another State which result entirely from the solicitation of salesmen or manufacturers' representatives calling upon such customers. As I understand it, this is the central factual situation at which each of the bills before you is aimed.

Up until the days this year that the Supreme Court handed down the Northwestern and Stockham decisions, the most difficult problem in this area involved the retail sales and use taxes of the various States. As you know, many of the States have laws which require an out-of-State seller who solicits business in the taxing State by salesmen to register as a seller, to collect the tax on all taxable sales, and to pay it over to the State at the time the periodic tax returns are due.

Since the U.S. Supreme Court in 1944 officially sanctioned, in General Trading and companion cases, the right of a State to impose its requirements on out-of-State sellers in these circumstances, we have been obliged to advise any member who is confronted by a demand from the sales and use tax authorities of another State that such State has the right to make such demand if the seller has a salesman operating there. The almost universal reaction to this information among our smaller members has been consternation and dismay. Many of them simply do not have the resources or the ability to act as tax collectors and to file tax returns in every State where they make retail sales. The result in many cases, I am afraid, is that the tax return blanks land in the waste basket and the demands of the taxing State are ignored, at least until it takes such drastic action as to impose, or threaten to impose, an arbitrary tax assessment. This is an entirely unsatisfactory situation from the point of view of everyone concerned, and its resemblance to the situation created by the Prohibition Act is striking. This troubled area should certainly not be enlarged.

Up until the time the Stockham and Northwestern decisions were handed down, the situation was entirely different when, instead of a sales and use tax, the tax involved was a net income or gross income tax, the two other principal types of taxes on business which reach across State lines. Although for a long time the matter was not entirely free from doubt, arising in part from the ambiguous per curiam decision of the U.S. Supreme Court in the *West Publishing Co.* v. *McColgan* case (1946), it was generally assumed by tax experts and the business community that a net or gross income tax could not be constitutionally applied by a State to an out-of-State concern whose only activities in the taxing State were entirely in interstate commerce, even if a sales office was maintained there.

This opinion received growing judicial support over the years in such cases as Eastman Kodak (1957) in which the Pennsylvania Supreme Court held that the Pennsylvania corporation income tax could not be constitutionally applied to an out-of-State corporation making interstate sales in Pennsylvania; and United Piece Dye Works (1954) in which the New York Court of Appeals struck down the New York City gross receipts tax for similar reasons and in similar circumstances. In both these cases the U.S. Supreme Court refused to grant certiorari. The U.S. Supreme Court itself gave support to the view that a State could not tax income from interstate commerce when it held in the Spector case (1951) that Connecticut could not constitutionally impose its corporation francise tax, measured in the main by income fairly apportioned to the State, on an interstate trucking concern which maintained extensive facilities in Connecticut for its interstate business. Thus, in recent years companies, large and small, have been generally successful in resisting attempts to impose upon them net or gross income taxes by States in which their sole business was in interstate commerce.

All this was dramatically changed in March of this year when the *Stockham* and *Northwestern* decisions were handed down. In both cases the taxpayers maintained an office in the taxing States. It is assumed that most companies large enough to maintain such establishments are now reconciled to the necessity of paying net income taxes even though their business there is entirely interstate. At any rate, none of the three bills before the committee is broad enough to affect this particular situation. Each of them would extend tax immunity only to those concerns whose activities in the taxing State are exclusively in inter-

state commerce, and then only if they maintain no stock, plant, office, warehouse, or other place of business there. There is, therefore, nothing in the legislation before you which would in any way overrule any decision of the Supreme Court.

Nevertheless, there appears in the Supreme Court decision in these cases general language which creates what I submit is a well-founded fear that, if the Court should undertake to decide a case in which the only activity of the concern in the taxing State consists of sending salesmen there, it might very well decide against the taxpayer. I refer, of course, to the famous "nexus" test applied by the majority opinion. Is the mere solicitation of business in a State by salesmen a "transaction within the State" which forms a sufficient "nexus" with the tax as to make it valid? In view of the fact that in the *General Trading* case previously referred to the Court had earlier declared that the solicitation by salesmen in a State gave that State a sufficient hold upon an out-of-State seller so as to subject it to the requirements of a sales and use tax law, and in view of the further fact that shortly following its decision in the *Stockham* and *Northwestern* cases, the Court refused to grant certiorari to a taxpayer in one case (*International Shoe Co.* v. *Fontenot*) and dismissed the appeal of the taxpayer in another (*Brown-Forman Distillers Corp.* v. *Collector of Revenue*), both of which were cases in which the only activity in the taxing State was the solicitation of business by traveling salesmen, I respectfully submit there is ample reason to suppose that the Court would rule in favor of taxability.

Meanwhile, these decisions have opened the door to any State which desires to take advantage of this new opportunity to press tax claims against out-of-State concerns whose only activity in the taxing State is the solicitaion of interstate business by traveling salesmen. There are growing signs that a number of States are even now moving in the direction of imposing income taxes on out-of-State concerns with no establishment of any kind in the taxing State. I understand that three States—Tennessee, Idaho, and Utah—have already amended their laws to bring this marginal group upon their tax rolls. As Justice Frankfurter said in his dissenting opinion in the *Stockham* and *Northwestern* cases, these cases will stimulate, if indeed they do not compel every State of the Union, which has not already done so, to devise a formula of apportionment to tax the income of enterprises carrying on exclusively interstate commerce.

Ironically enough, it is shrewdly suspected by those who know most about the matter, including State tax administrators, that the cost of administering and enforcing taxes in the marginal area in which relief is now sought, would probably far exceed any revenues which may be expected to be collected. Under the tax apportionment formula which every taxing State is required to employ, the amount of tax which can be collected by a State from any small corporation operating under these limited circumstances would be extremely small.

Let me give you a concrete example of how the tax apportionment formulas involved in all State income taxes tend to limit drastically the amount of tax that can be expected to accrue to a taxing State. One of our fairly large member companies has sales offices in Oregon and employs salesmen in Louisiana, who solicit orders which are accepted and filled at its Connecticut plant. This company has filed tax returns in both States. After applying the three-way apportionment formulas—tangible property, payroll, and sales—prescribed by the laws of these two States, it finds that (by coincidence) both States are entitled to claim just 0.41 percent of its income for tax purposes. This means that in Oregon, where the tax rate is 8 percent, the State will collect only $32.80 on each $100,000 of the company's entire taxable income, while in Louisiana, where the rate is 4 percent, the State will collect only $16.40 on each $100,000.

Balanced against these small returns, I venture to predict that the cost to a State of administering and enforcing its tax laws against small out-of-State concerns with no assets or establishment of any kind in the taxing State would be prohibitive.

On the other hand, the costs to the small business concern of complying with the income tax laws of every State in the Union to which it sends a salesman would be enormous. The thousands of such concerns throughout the country who find this the only effective way of soliciting business are the ones who will feel the brunt of what lies ahead.

The magnitude of the problem for such concerns is realistically described

by Justice Frankfurter in his dissenting opinion in the *Northwestern* case. Obviously, a small manufacturer is in no position to take on the added administrative burden which is thus described. I am sure your committee has already received many letters from manufacturers all over the country expressing their alarm at the situation which faces them, and asking you to help them before it grows worse. I know that our association has in recent months received hundreds of letters from our members to this effect.

It is not the amount of additional taxes involved which alarms our small companies, but the enormous cost of setting up the machinery necessary to develop the figures required to fulfill the widely varying formulas of the States in computing taxable income.

As an example of the disproportionate cost of filing such returns compared to the amount of tax, the Connecticut company referred to above, which pays taxes in Oregon and Louisiana, tells me that they estimate it takes a well paid employee 3 full working days, on average, to assemble the facts to prepare a State income tax return. The direct costs approximate $250 a return. This means that it costs this particular concern in direct costs roughly 15 times the actual tax it paid in Louisiana and about 7½ times the Oregon tax. These direct costs include only the costs attributable to the work of taking the necessary figures from the records, computing the formula and the tax, and making out the return. It does not include the substantial costs involved in accumulating on the records the information required by the return, including such things as breakdown of sales, payrolls, and property accounts. It also does not include the costs of supplying any information supplemental to the return, nor of negotiating with the tax authorities in the event of a disagreement over the return. There is no way of estimating costs of this nature but they certainly would increase the overall cost to much more than the $250 in direct costs.

Indeed, in many cases the cost of compliance would be beyond the capacity of a company, putting it in the distressing position of becoming an unwilling tax delinquent. This is indeed a serious matter to Connecticut's smaller industries.

So, on balance, it seems very likely that the enforcement of State tax laws in this area will only result in a net loss to the State and a tremendous burden to the taxpayer. Nevertheless, unless something is done by Congress to correct the situation, conscientious tax administrators will feel it their duty to use all means at their disposal to enforce such laws.

The situation is thus one of urgency calling for congressional relief at the earliest possible moment. The States have struggled with the problem for many years without avail, and it is universally accepted that no solution may be expected at the State level. On the other hand, the power of Congress to enact remedial relief has not been seriously questioned.

As between the three bills which your committee has before it, I feel that either the Bush bill or the Saltonstall bill would supply adequate relief in the very limited area in which it is sought. However, I understand that section 2 of Senator Saltonstall's bill (S. 2281), which makes the bill retroactive in some respects, may raise certain constitutional questions as to its validity. I would, therefore, respectfully suggest that if your committee decides to report out a bill in this form, you might find it desirable to add a severability section in the usual form.

The resolution (S.J. Res. 113) introduced by Senator Sparkman, while entirely satisfactory in other respects, contains a time limitation restricting its operation to taxable years which begin before January 1, 1961, which I do not think is desirable or necessary. Although I realize that the purpose of this resolution is to hold the line until the commission provided for in other sections of the resolution has had time to study the matter and submit recommendations to Congress, it is my conviction that within the limited area covered by this legislation your committee has already before it all the facts which a study commission would be likely to develop. You can reasonably conclude, for example, that this legislation is necessary not only because it has the effect of removing trade barriers between the States, but because in this limited area of tax resources permitting the States to tax is likely to result in little or no revenue to them and will certainly result in unnecessary hardship on small business. These, I respectfully submit, are reasonable conclusions which no amount of further testimony could prove more exactly or could disprove.

Accordingly, I respectfully urge your committee to report favorably a bill in the form of either S. 2213 or S. 2281 with the amendment suggested herein.

Mr. SCHREYER. In view of the testimony of the last two witnesses, with which I find myself in disagreement, I would like to have permission, apart from my prepared statement, to discuss one or two points they discussed.

The CHAIRMAN. Go right ahead, sir.

Mr. SCHREYER. Both witnesses lay great stress upon the loss to their own State of the revenue involved in this legislation. It is very hard for me, as an outsider, to argue with the tax department of a particular State as to how much revenue they will have actually lost.

However, these things should be kept in mind. Is this a door which has just recently been opened? It is true that Louisiana, which is one of the more aggressive States, has been for many years attempting to collect revenues in this particular narrow field. I think I should give you a little bit of my background so I can tell you from the point of view I look at this work.

I am a member of the Connecticut and Pennsylvania bars, and for the last 10 years I have been working with the Manufacturers Association of Connecticut.

During that time a major portion of my work has been in the field of State and local taxation. Our organization represents 1,850 manufacturing concerns comprising approximately 95 percent of the industrial payroll of Connecticut. The great majority of our members are small businesses: 75 percent of them employ less than a hundred workers and 65 percent of them employ less than 50.

I am talking today particularly and perhaps exclusively in behalf of these smaller companies, because a large majority of our bigger companies generally maintain sales offices in other States, which means that their tax liabilities would remain unaffected by the bills before you. Our larger members also have their own tax departments or their own tax counsel, so that my contacts over the years have been almost exclusively with the smaller fellows.

Over this period of time, I have been requested on countless occasions to supply these little fellows with information concerning the tax situation in other States and cities with which they were having difficulties.

In this way, I have come to know the extent and nature of their problems quite intimately. Judging from my experience, the most frequent and also the most difficult of these problems involves the situation where a Connecticut manufacturer makes interstate sales to customers in another State which result entirely from the solicitation of salesmen or manufacturers' representatives calling upon such customers.

The CHAIRMAN. I thought this interstate tax problem up to date had been mainly in a few States.

Mr. SCHREYER. It is true that up to this point, three or four States have been very active in attempting to tax out-of-State sellers whose only activity in the taxing State is the maintenance of a salesman.

That is the situation which the Bush and the Saltonstall and the Sparkman bills attempt to attack. They attempt to stop this encroachment at that point.

The States which have been most active in the past are Louisiana, Oregon, according to my information, and of course Georgia and Min-

nesota, who now have the active support of the Supreme Court cases. California is another State which has been active in this field.

The point I am making is that with respect to this revenue which States collect, we have been given figures of estimates or educated guesses of rather large figures in both States. But these are gross figures, and the cost of enforcing the law in this particular area against small out-of-State corporations with no establishment, with no property within the State, I think most people would agree would be enormous compared to the small amount of revenues which could be obtained.

In confirming that statement, the tax commissioner, Joseph Murphy, of the State of New York, in speaking before the Senate Select Committee on Small Business said this, and this is quite in contrast to what you gentlemen have heard today:

> How much justice have we achieved for the business community in general if the taxpayers' costs of complying with the tax law, maintaining detailed accounting records, legal expense of preparing returns, and so forth, far exceed the amount of tax liability? Furthermore, from the public standpoint we would be saddling the State government with additional administrative expenses to collect a pittance from the overwhelming majority of these new taxpayers.

With respect to how much revenue would actually be collected by States in this narrow area covered by the legislation in front of you, let me give a concrete example taken from one of our rather large members.

This company has sales offices in Oregon and employs salesmen in Louisiana. You will notice these are two of the more active States that I mentioned before. They solicit orders which are filled at the Connecticut plant. This company has filed tax returns in both States. After applying the three-way apportionment formulas in the income tax laws, which in both cases happen to be tangible property, payroll, and sales, the company finds that by coincidence both States are entitled to claim just forty-one one-hundredths of 1 percent of its income for tax purposes.

This means, the arithmetic of it is that in Oregon, where the tax rate is 8 percent, the State will collect only $32.80 on each $100,000 of the company's entire net taxable income; while in Louisiana, where the rate is 4 percent, the State will collect only $16.40 for each $100,000.

Those are the sizes of the returns, and the reason for it is that these apportionment formulas must fairly approximate the income attributable to States under many decisions of the Supreme Court and, therefore, they tend to follow one or two patterns which have received the official endorsement of that Court.

The most usual pattern is what is known as the Massachusetts formula. And Oregon and Louisiana, the States I am now talking about, follow that pattern.

The net effect of this requirement of the Supreme Court is that the lion's share of taxes which are on an apportioned basis must, of course, go to the State in which the plant is located, where most of their property is, where most of their payroll is.

By working out any of these formulas, you will get a very high percentage for the manufacturing State and an extremely low percentage, even under the Louisiana formula which claims all sales in which the destination is Louisiana or where the customer is in Louisiana.

Nevertheless, under these most aggressive of tax laws, we see a very tremendously small percentage of income attributable to taxes.

I do not know on what basis the figures given to you as tax revenue were obtained. I will say this, however, that this is still a relatively new situation, the doors have just now been opened, and although Louisiana, for example, has been attempting to enforce their tax laws for a number of years, I know from our own members that many of them have also been successfully resisting these taxes of these States—Louisiana, Oregon, Georgia, and so forth.

Some of them, the smaller men, the smaller companies, simply ignore the tax demands of the State, and it reaches a point where the State can no longer progress the case any further, so it is dropped.

This situation is by no means a new one. In the field of sales and use taxes, in 1944, I believe it was, the U.S. Supreme Court sanctioned the right of a State to impose upon an out-of-State retail seller the obligation to collect sales and use taxes where it operated with a salesman in the taxing State, collect those from its customers, and turn them over to the State periodically.

The experience with that law is something, I think, this committee might well think about. Since then, many sales and use tax States—Maryland is a good case in point—have aggressively pursued out-of-State sellers to come under this law, and yet I know from my own experience that although I have to advise our members, when they ask me, that the State has a legal right to impose these requirements upon them, that many, many times, most times, with the smaller companies, when there is no sales office or property in the State, they ignore the thing.

Why? Because they simply do not have the facilities to fill out tax returns in every State in which they make retail sales.

This is a compounding of the situation which, unfortunately, has existed in retail sales for many years, and it is a very unhealthy situation. Because what you are doing, what the States are doing, unless it is stopped, is making these smaller companies who simply cannot go through with the tax requirement, they are making unwilling tax delinquents of them.

It harks back a little bit to prohibition days. It is somewhat of the same situation.

Senator LONG. Could I ask a question of this witness?

What would you do about the kind of a case which the previous witness described, of Brown-Forman. Suppose they have 15 salesmen operating in the State, and they are doing perhaps 3 percent of their retail sales in that State. Would you feel they should be exempt from any income tax in that State? That is, that would amount to a tax liability of about $5,000 a year. What would you think about that situation? Should it be exempt from tax by Louisiana, or what?

Mr. SCHREYER. I think any out-of-State corporation which is doing strictly an interstate business in Louisiana should be exempt from the Louisiana corporation tax, income tax, if their sole activity there is sending salesmen in to solicit business. That is the area in which our people are mostly concerned and, as I say, it is mostly the smaller companies.

One or two of the larger companies operate in one or two States that way.

Senator LONG. Here is the point I have in mind. Here is a State like Kentucky, where they have most of the distillers, let us say, where most of the profits of the whisky companies is actually earned. Their manufacturing process occurs in Kentucky in most instances. Virginia has a few, Tennessee some, but most of it is in Kentucky. Certainly the sale of their product is a substantial portion of their overall operation, and if they are deriving income from all the other 48 States, you would feel that unless they actually have offices and warehouses in those States, their operations should be subject to income tax by Kentucky alone?

Mr. SCHREYER. That is right, sir, and actually that has been the situation, with one or two exceptions. Louisiana is one. Louisiana is a State which has tried as hard as it could to enforce taxes against out-of-State sellers with only salesmen in Louisiana.

But, as I say, among our own membership I have personal knowledge of the fact that they have resisted this thing. Brown-Forman is one of——

Senator LONG. Of course, your proposal would somewhat favor a manufacturing State over an agricultural State, would it not? There would be some favoring of a manufacturing State in some instances.

Mr. SCHREYER. Of course, if you had——

Senator LONG. Because a manufacturing State would have an opportunity to tax that income, whereas much of the revenue is actually derived from the agricultural State.

Mr. SCHREYER. That is right. However, if there is an office in the agricultural State, there will be no favoring. You see, it is the question of minimum activity. Should Congress in its wisdom decide that the States can go thus far and no farther in setting up trade barriers, is what it actually amounts to, in interstate commerce, actually unless something is done about it, as this situation gets worse our smaller manufacturers, if they feel the tax bite hard enough, will have to restrict their activities to a more narrow level, rather than to branch out and sell in any State in which they can find a customer.

So it has the tendency of interfering with interstate commerce by compartmentalizing the activities of the smaller businessman to the States in which he can afford to file tax returns.

Senator LONG. Of course, as you know, in most instances like in Louisiana, if you are a small company and you have one salesman or two salesmen, maybe one salesman or two salesmen operating, the odds are you do not pay any taxes, just as you said. The odds are that some day you might get a letter saying, "Look, we think you owe us some money. Would you please file a return?" If you do not file it, the chances are you will not get sued if all you have is one person there.

Mr. SCHREYER. That is right.

One of the witnesses, the gentleman from Louisiana—I have forgotten his name, I am sorry to say—was asked a question about one salesman, and he said, "Well, not if the salesman came sporadically."

Well now, any salesman, whether he is one or a hundred, when he comes in and comes around sporadically would not remain a saleman very long. In other words, any salesman engages in a systematic course of conduct, whether it is 1 or 15.

So the fact remains, if something is not done here, you are going to have the actual situation which was suggested by the witness from Louisiana, namely, that the State will go as far as it can after the big fellow, and the smaller fellows that it cannot reach will not feel the impact. So that it is an unfair and inequitable situation that you are forcing them into.

Senator LONG. Let me ask you this: Do you feel that sooner or later there should be some definite formula arrived at, a consistent formula? You referred to the so-called Massachusetts formula. I take it that is the same formula in effect in Louisiana; that once having effected taxing jurisdiction or power over your income, the State fixes one-third of it based on the amount of property in the State, one-third based on our payroll, and one-third based on your sales, and then divides by 3.

Do you think that is a fair way to do it?

Mr. SCHREYER. Yes, sir. Let me put it this way: I think it sounds like a fair way, and it might be the fairest way as a matter of compromise.

However, I think this thing breaks down into two different propositions: One, I agree wholeheartedly with the preceding witnesses that the States have hammered at this problem of getting a uniform apportionment formula for so many years we can say confidently, all of us, they are never going to reach a solution at State level. Each State has too much of a stake, financial stake, in maintaining its own type of formula for them to reach an agreement.

Therefore, I think that a uniform formula is ultimately the only thing that will be fair to business, to prevent this multiple and overlapping taxation of business income.

The only answer I can see, therefore, is congressional action. But that is a problem as distinguished from this present problem which calls for a full-scale study of the different factors. That is a difficult problem.

The CHAIRMAN. That would require an amendment to the Constitution, would it not? You would have to have an amendment to the Constitution; is that not right?

Mr. SCHREYER. Perhaps so.

The CHAIRMAN. Certainly the Federal Government cannot force all States to have uniform taxation. They are trying to do everything else to the State, but not that.

Senator LONG. It occurs to me, Senator Byrd, that the Federal Government, with its power over interstate commerce, could say "You shall not tax interstate commerce unless you do it on a uniform basis." In other words, I think it might be one of the things——

The CHAIRMAN. It certainly would be a violation of our form of government.

Mr. SCHREYER. It might well be, sir. All I am pointing out, sir, is that remedy can be made, and Congress has the power to do it. That is something which should ultimately be done.

But I do not think that this simple little question we have before us today requires any long-range study. I think you can study this case as long as you want to, and these facts will hit you in the face:

First, there is no question about this proposed legislation raising trade barriers on interstate commerce; and secondly, I do not think,

from the witnesses you have heard so far, you can conclude anything but that as far as the small business corporation is concerned, making it file a tax return in every State of the Union is going to cause a tremendous amount of difficulty, financial difficulty, for it. And it is not the amount of the tax; it is the problem of setting up his books, of employing personnel, and so forth.

In that line, the company I referred to before as doing business in Oregon and Louisiana, they tell me they estimated that it takes about 3 days for a good, well-paid man to draw off from the books the information necessary and to calculate the formula and file the tax return.

In direct costs, that costs this particular company about $250.

Compare that with the amount of tax they pay, $32 in the case of Oregon and $16 in the case of Louisiana. And that is not an unusual situation.

For these reasons, gentlemen, I sincerely hope that your committee will seriously consider the reporting out of a bill along the lines of either that introduced by Senator Bush or by Senator Saltonstall.

One final remark. With respect to the Saltonstall bill, since it contains an additional provision which makes the bill retroactive in some respects, I would suggest if you are considering reporting that type of bill out, that the usual severability clause be included.

Thank you very much.

The CHAIRMAN. Thank you very much indeed.

The next witness is Mr. George Newman, Iowa Manufacturers Association.

STATEMENT OF GEORGE F. NEWMAN, THE IOWA MANUFACTURERS ASSOCIATION

Mr. NEWMAN. Mr. Chairman, my name is George F. Newman. I am treasurer and counsel of Viking Pump Co., Cedar Falls, Iowa. Our company manufactures and sells internal gear rotary pumps, industrial products as distinguished from consumer products. I would classify our company as a medium-sized company. We employ about 520 people, the great majority of them in our main plant and foundries at Cedar Falls, Iowa, and have sales outlets in the principal cities of the United States. We sell in practically every State in the Union, and have some export business as well.

I appear before you today on behalf of the Iowa Manufacturers Association, of which our company is a member. The Iowa Manufacturers Association has a membership of nearly 600 manufacturing companies and over 400 of them employ less than 100 people.

Mr. Chairman, I have prepared a formal statement, and I ask that it be included in the record.

The CHAIRMAN. It will be received.

Mr. NEWMAN. It seems to me the problem before us is one of drawing a line. We have on the one side a company clearly subject to State income taxation because it is domiciled within the taxing State, and at the other end of the line a company who does nothing more than ship goods into a foreign State.

Now somewhere between those two extremes a line must be drawn. Whether that line should be drawn by the Court or whether it should be drawn by the Congress or whether it should be drawn by concerted action of the States is one of the problems.

The gentleman from Louisiana has drawn a line that I find difficult to comprehend. I have always thought that taxes should be uniform in their application: they should have a definite basis upon which you can apply a tax. And I do not think that that basis is present there.

The basis of the line in the Saltonstall bill is one that appeals to me personally.

We do not reverse the Supreme Court, in effect, as much as some of us might like to. It is a definite line, one that the tax administrator and the taxpayer can understand and live up to, and one which recognizes the facts of life.

If you draw further down the line, toward the end, when mere shipment into a State constitutes a taxable transaction, sooner or later you are going to run into a place where the total cost of administration on behalf of the States, and the preparation of returns and multitudinous recordkeeping of the companies on the other hand, is going to be greater than the tax realized.

It is a question of degree all the way through, and it seems to me that the Saltonstall bill and, to a lesser extent, the Bush bill, draw the proper line.

A further observation: This is a problem which is inherently a problem confronting small- and medium-sized businesses. The large national corporations have lived with this thing for years. They have the legal staff and the accounting staff to cope with the problems.

On the question of a uniform formula, I have talked with a number of those people and they do not seem to think it advisable. They have apparently been able to work out with the various State taxing authorities something with which they can live.

So it seems to me, Mr. Chairman, that this is a field in which Congress should act rather than wait for a compact among the States, or the courts to act, before insurmountable burdens are placed upon small business in keeping records and making returns and before large staffs are being put to work in the revenue departments of most States.

Thank you for your courtesy.

The CHAIRMAN. I thoroughly agree with you as to a uniform standard for all States. I was the Governor of a State, and I think it would be impossible without a constitutional amendment.

Mr. NEWMAN. Yes; I agree with you.

The CHAIRMAN. Because the States have different conditions and they are not going to set out a standard by dotting every "i" and crossing every "t."

Mr. NEWMAN. Well, you have divergent interests in virtually all States, manufacturing States against consuming States.

The CHAIRMAN. If we have to wait for that, the relief will take a long time.

Mr. NEWMAN. That is right.

The CHAIRMAN. Thank you, sir.

(Mr. Newman's prepared statement follows:)

STATEMENT OF GEORGE F. NEWMAN ON BEHALF OF THE IOWA MANUFACTURERS ASSOCIATION

My name is George F. Newman. I am treasurer and counsel of Viking Pump Co., Cedar Falls, Iowa. Our company manufacturers and sells internal gear rotary pumps, industrial products as distinguished from consumer products.

I would classify our company as a medium sized company. We employ about 520 people, the great majority of them in our main plant and foundries at Cedar Falls, Iowa, and have sales outlets in the principal cities of the United States. We sell in practically every State in the Union and have some export business as well.

I appear before you today on behalf of the Iowa Manufacturers Association of which our company is a member. The Iowa Manufacturers Association has a membership of nearly 600 manufacturing companies and over 400 of them employ less than 100 people. While Iowa is predominantly an agricultural State, its industrial activity is steadily expanding and has become a major factor in the State's economy. We think that we have a favorable business climate for manufacturing enterprises and much hard work has been done throughout the State to attract new industry to Iowa.

In my statement today I want to use my own company as an example, firstly, because I am intimately familiar with its operations and, secondly, because I think it is typical of the manner in which thousands of small- and medium-sized manufacturing companies operate not only in Iowa but throughout the United States.

There was some difference of opinion in the Supreme Court over the basis for the decision in the *Stockham Valves Company* and *Northwestern States Portland Cement Company* cases. The majority of the Court felt that this was merely an extension of existing doctrine. The dissenters, and particularly Mr. Justice Frankfurter, felt that new ground had been broken by these decisions. Whether the majority or the minority were correct in their analysis is not now particularly important. It is important, however, that the great majority of American businessmen believe with Mr. Justice Frankfurter that new ground has been broken and that the Court has departed from established precedent.

Our company maintains warehouses in two States other than Iowa. Sales personnel work out of these warehouses, and in both of these States we are qualified as a foreign corporation and are clearly subject to the jurisdiction of their taxing authorities. In four States we have district sales offices manned by our own employees. In each of these States we maintain no stock of goods and our sales representatives are not authorized to enter into contracts but merely to solicit orders for acceptance or rejection at the home office. They are not authorized to pass on credit or make adjustments. In several States we are represented by manufacturer's agents. These people are independent contractors, not employees, and maintain no stock of goods within the State, nor does our company. Most of their orders are sent to the home office and factory to be filled from there and occasionally they may order from one of our major distributors. We have major stocking distributors throughout the United States. These people buy from us for their own account and resell to the ultimate consumer.

We have engineers and sales people operating out of the home office in Cedar Falls, Iowa, calling upon distributors and customers. From my observation, I think our operation is handled in a typical manner and is duplicated by many, many manufacturers in the United States. We had assumed, and operated upon the premise, that, except for the States in which we maintain warehouses and are qualified, our method of operation resulted solely in interstate commerce and that we were not subject to the State taxing laws.

The *Stockham Valves Company* and *Northwestern States Portland Cement Company* cases settled one question for us in those States in which we maintain sales offices, we are liable for a fairly apportioned, nondiscriminatory income tax upon sales in that jurisdiction; but the cases opened up many, many new questions to which we now have no answers. The Court held that net income from the interstate operation of a foreign corporation may be subjected to State taxation, provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State, forming sufficient nexus to support the same. What, we ask, is the meaning of "Properly apportioned to local activities within the taxing State, forming sufficient nexus to support the same?" What is our position if we have only a resident sales representative in the taxing State? Suppose we have no employee but a manufacturer's agent an independent contractor? Is our advertising in the trade journals "local activity" sufficient to sustain the tax? What about direct mail solicitation? What is our position when we attend trade shows in a foreign State with displays of our product and sales activity? What is our position when our people go into the plant of a prospective customer in a foreign State for the purpose of soliciting

sales, doing some engineering perhaps in designing the layout and performing similar services?

These are but a few of the questions that immediately present themselves to us and, I am sure, to thousands of other small- and medium sized manufacturers in the United States. Essentially, this question is peculiar to small- and medium-sized businesses. The large national manufacturers have had the problem for years, have the accounting and legal staffs to cope with the many questions that have arisen, and apparently have been able to reach satisfactory conclusions with the various States in which they operate. The small- and medium sized manufacturers, on the contrary, must of necessity have limited legal and accounting staffs and are in no position to cope with the multitudinous problems resulting from these two cases.

The solution to our problem is not easy. One approach would be to await further development perhaps by further litigation—but this involves costly delays and, certainly, litigation is not an inexpensive way to meet the problem. A second alternative would be to hope that the various States will be able, through their taxing authorities, to work out a common solution. In view of the divergent interests of the States (as for example, between the manufacturing State and the consuming State) and the desperate need for revenues by the various States, we think this an entirely impractical solution. The third alternative, then, is to ask for congressional intervention under the commerce clause to draw a line or to prepare a solid basis upon which we can act and plan. Certainly, we should not deprive a State of needed revenues when it offers services and protection to a business enterprise. On the other hand, we must not harass small- and medium-sized businesses by forcing compliance with State taxing laws which, in many cases, would exact a far greater cost in the record-keeping and reporting requirements than in the actual tax itself. It seems to us, therefore, that the logical, just, and reasonable place for Congress to draw the line is at the point of the law where the Supreme Court, in these two cases, left it.

We believe that the Congress should provide that a State may levy a nondiscriminatory and fairly apportioned income tax upon profits arising out of sales within the taxing State only when the vendor maintains a sales office, warehouse or other place of business within the State; and that in the absence of that factor, the vendor should not be subjected to State income taxation. We must strike a balance between the conflicting interests, keeping always in mind the reason for the inclusion in our Constitution of the commerce clause; namely, as stated by Mr. Justice Frankfurter, that "whatever disadvantages may accrue to the separate States from making of the United States a free trade territory are far outweighed by the advantages not only to the United States as a Nation, but to the component States." It is our belief that the suggested line would recognize the law as it presently exists, form a basis from which we could plan our future operations, and offers a practical solution with which we can live.

We particularly urge speedy action by the Congress on this question. We commend the sponsors of the legislation before you and solicit early action by this committee and the Senate so that the issue may be presented to the House at this session and legislation enacted. If this line is to be drawn, it should be drawn now, to minimize the confusion now existing and before the various States feel required to greatly enlarge their tax departments to cope with the tremendous increase in filings and enforcement activity that otherwise must be anticipated.

We appreciate the opportunity afforded us to present the view of our association on this matter.

The CHAIRMAN. The next witness is Mr. Robert H. North, International Association of Ice Cream Manufacturers.

STATEMENT OF ROBERT H. NORTH, EXECUTIVE SECRETARY, INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS

Mr. NORTH. Mr. Chairman, in view of the time situation, I would like to have permission to file my statement, and I would also like to insert in the record —

The CHAIRMAN. Without objection.

Mr. NORTH. A wire from the National Fruit and Syrup Manufacturers Association supporting our brief in toto.

What we are asking of this committee, in the hope that it will come about, is some type of exclusionary bill such as the Bush bill or the other bills, which will provide that order-taking, delivery, and collection will be exempt from this kind of taxation.

I think the biggest difficulty in all of our industries, including the dairy industry and the suppliers and equippers to it, is the fact that there is a great feeling of uncertainty. We cannot anticipate our tax liabilities, and we urge the Congress in this session to do something to clarify the matter.

We feel that if there is going to be an extensive study of the whole interstate tax problem, it can be done later. We hope something can be done at this session to meet the situation to forestall the possibility that more States will adopt laws and attempt to levy taxes on even minimal business activity.

Thank you very much.

The CHAIRMAN. Thank you, sir.

Mr. North's prepared statement and the telegram referred to follow:)

STATEMENT OF INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS

My name is Robert H. North. I am executive secretary of the International Association of Ice Cream Manufacturers. Our officers are located at 1105 Barr Building, Washington, D.C.

Our organization represents over 80 percent of the ice cream gallonage of the United States. We have 1,640 ice cream manufacturer members.

Additionally, we represent 230 companies that are suppliers and equippers to the ice cream industry. These companies produce and sell nationally to the ice cream companies equipment, ingredients, flavoring, sweeteners, packaging materials, point of sale materials, advertising materials, refrigeration devices, trucks, and motor transport.

THE FACTS

Many of the ice cream manufacturers, particularly the small- and medium-sized plants, have one manufacturing plant from which they distribute ice cream and related products. A considerable number are crossing State borders and doing business in other States. Most of these companies do not have distributing depots or warehouses in the States other than their State of domicile, but only take orders and sell ice cream to their retail accounts. Some of the larger companies may have several plants located in different regions, from which they are making an interstate distribution of ice cream and related products. The interstate complexion comes about because the ice cream manufacturers now have refrigerated transport of all sizes and can move their products for hundreds of miles over our modern highway system.

Our suppliers and equippers for the most part are single-plant operations. They have one central office and factory that fabricates material, supplies, and equipment, from which they are distributed nationally. Such distribution is made in response to sales created by a force of traveling salesmen. These sales representatives usually cover regions comprising several States.

Because of the decisions of the Supreme Court, most of these companies are now facing exposure and possible taxation on their interstate business. The greatest difficulty encountered is anticipating whether or not they will be liable for taxes on their present methods of doing business.

Our industries are low-margin operations, and the increased administrative cost of filing multiple returns and additional recordkeeping alone will be a hardship.

The possible retroactive tax liability presents a serious problem to them and might well mean financial ruin.

CONCLUSION

We urge the enactment of uniform legislation which would at least serve to define doing business in the State so as to exempt companies from liability for taxes on interstate income when only order taking, delivery, and collection is involved.

We believe that the matter should be resolved now before there is further uncertainty as to tax liability in even more of the States. Unless the problem is resolved there will ensue extensive efforts to collect taxes on even the minimum interstate business activity. There will be an increase in State laws to tax interstate business. There will be additional litigation and a risk for business that they should not be forced to take.

The matter, in our opinion, should be corrected in this session of the Congress by the exclusion of minimum business activities which might otherwise subject our members to taxation.

NEW YORK, N.Y., *July 17, 1959.*

ROBERT H. NORTH,
Executive Secretary, International Association of Ice Cream Manufacturers, Washington, D.C.:

Our association, comprised of about 80 manufacturer members and their suppliers who manufacture and sell nationally fruits, syrups, and sundae toppings to the ice cream trade and food outlets, subscribes to the views contained in your statement to be made before the Senate Finance Committee on July 21. We would appreciate your informing the committee that we favor enactment of the legislation controlling the States rights of taxation on interstate business.

NATIONAL FRUIT & SYRUP MANUFACTURERS ASSOCIATION,
ROBERT M. RUBENSTEIN, *Executive Director.*

The CHAIRMAN. The next witness is Mr. John Geipe, of the Movers Conference of America. Proceed, sir.

STATEMENT OF JOHN W. GEIPE, MEMBER, ADVISORY BOARD, MOVERS CONFERENCE OF AMERICA, AND PRESIDENT, MOVERS' & WAREHOUSEMEN'S ASSOCIATION OF AMERICA

Mr. GEIPE. Thank you, Senator.

My name is John W. Geipe. I am the president of J. Norman Geipe Van Lines, Inc., of Baltimore, Md., a member of the advisory board of the Movers Conference of America, and the president of the Movers' and Warehousemen's Association of America.

My appearance here on behalf of the Movers Conference of America, national association of the moving industry, is in support generally of the objectives of the legislation before the committee, but with some exceptions concerning the immediate needs of the members of the industry for which I speak.

The most important thing that I can do during the few minutes allotted me is to indicate to you how a moving service is accomplished, how extensive an interstate mover's operations must be through a large number of States, and yet the financial inability of movers to sustain the accounting and legal requirements for compliance with the tax regulations of numerous States.

First, I would like to point out that one out of every five people move each year, and that we consider ourselves an important element and contributor to the American economy and way of life.

I have been in the moving business since my earliest recollections. My father started the business in 1916. My firm has authority from the Interstate Commerce Commission to provide a moving service throughout 32 States. Fuel taxes and many other types of highway-

use taxes are paid to each of the States through which we operate. Additional taxes are paid to the Federal Government, including a highway-use tax, fuel taxes, tire taxes, and other automotive excises.

My firm grossed $301,813 last year. My operating ratio was 98.2.

My firm, although among the comparatively few moving firms grossing more than $200,000 annually, is in most other respects typical of hundreds of other moving firms in the business. Only a handful of the 2,800 interstate movers have nationwide operating authority, but most have extensive authority to operate in numerous States. This is one of the significant characteristics of the moving business.

Another is that no regular routes or fixed schedules are observed by movers. We pick up a family's belongings and take them to that family's destination, anticipating that other shipments will be picked up and delivered along the way. This may require a certain amount of zigzagging through a number of States, but it is the most economical way of providing a personal service of this type.

Some of us operate with agents in various of the States. I do not. Those having agents are largely cooperative organizations, the purpose of the agents being to supply return loads for each other. The agents are autonomous business enterprises, paying taxes to the States in which they are domiciled and established.

The nature of the business requires a high degree of cooperation between carriers, or between the movers' agents in the larger agency systems. Operations through, into, or out of individual States may be sporadic and occasional, but nonetheless required.

This results in a high degree of exposure to the many conflicting tax laws of a great many States. Further, our business is highly seasonal, as any of you who have had occasion to move in the summertime may know, and the amount of money involved in the business is limited. Our ability to support complex and extensive legal and accounting requirements accordingly is limited.

Movers have had ample experience with allocation formulas and know the number and magnitude of the problems which develop even when there is sincere interest in their universal application and consistent administration.

We believe with respect to the legislation before your committee that agencies of the kind which I have described, representing autonomous business enterprises subject to all of the taxing authority of the States of their domicile, should be distinguished and precluded from the type of agencies intended to bring an interstate business within the taxing authority of such States.

We also believe that an interstate mover which picks up, delivers, and traverses a State exclusively in connection with its interstate business, should not be subjected to the taxing jurisdiction of a State other than that of its domicile or principal place of business.

We respectfully submit that this be done.

I have here a supplemental statement which I would like to submit to your committee.

The CHAIRMAN. Thank you very much, sir. You wish the other statement placed in the record?

Mr. GEIPE. Yes, sir; I do.

The CHAIRMAN. Without objection.

(The statement referred to follows:)

SUPPLEMENTAL STATEMENT BY JOHN W. GEIPE ON BEHALF OF THE MOVERS CONFERENCE OF AMERICA

The company which I head operates in 32 States. Thus I feel qualified to speak on the complicated problems of widespread interstate operations in the household goods moving field and the additional burdens imposed upon movers by the ever-multiplying demands of the States.

A detailed statement was presented to the Select Committee on Small Business at its hearing in Boston on May 1, 1958 (p. 284 of the printed hearings, pt. 2), in which we indicated the possible effect on movers of the specific provisions of the U.S. Supreme Court's decisions of February 25. We will not attempt in this statement, therefore, to review the Court's decisions but only to call attention to the effect of the proposed legislation.

The outstanding characteristic of the mover is his widespread operation in many States. Some of the larger moving companies operate in all of the States. The difficulties of the mover appear to increase in more than direct proportion as the number of States in which he operates increases.

Movers operate over irregular routes, going down this road one day and down another road another day, as they transport the household effects of the families of America to new homes when the breadwinners take new jobs or are transferred to other job locations by their employers. I might say here that the ultimate cost of moving is footed by these families and that as the load placed upon the shoulders of the mover grows heavier, so does the price paid by the American family compelled to go to another home.

By the nature of his business, the mover's work is sporadic with respect to any one place. He may never come back to the same home again, may not even return to the same village or town for months. Essentially, his role is pickup and delivery, the loading of a van at one location and the dropping off of its contents at another, one State or 10 States removed from the first location.

The financial resources of most movers are exceedingly limited. The bulk of the movers are in the category of smaller small business. Of 2,800 movers certified by the Interstate Commerce Commission, only 18 enjoyed gross revenues of more than $2 million in 1958. And these, generally among the more administratively efficient, with data processing machines at their disposal, had an average operation ratio of 97.9 percent, which means that they had expenses of 97.9 cents for every dollar that they took in. Only 120 movers last year grossed more than $200,000. The rest of the movers—some 2,700 of them—grossed less than $200,000 each.

Such little fellows obviously cannot support the weight of the manifold expenses entailed by the multitudinous State tax laws. How can they retain legal counsel in each of the States in which they operate? Certainly, no one tax counsel can handle their affairs in a dozen or more States. How can they meet the costs of accounting and bookkeeping and reporting and filing on such slim revenues? They are required to assume the auditing expenses when the States make audits of their books. Their experience under the present requirements has convinced them of the impossibility of meeting still more requirements.

That this is no idle statement is evidenced by the fact that 1 by 1, 10 by 10, the mover is disappearing. The rate of attrition is more than alarming. In 1948 there were 4,600 movers certified by the Interstate Commerce Commission. In 1958, the number had dwindled to 2,800, an average annual mortality of 180. The fatal tide still flows.

Ad valorem taxes, fuel use taxes, licensing proration, weight-distance taxes—these are some of the taxes, in addition to Federal income taxes and State income taxes in the State of principal place of business, which movers must pay as the price of doing any business at all. Rich indeed has been their experience in an attempting to breast this flood.

It was to gain some measure of relief from intolerable encumbrances that the household goods moving industry turned to the Congress with the Huddleston bill, H.R. 5175. This legislation would eliminate duplication by the States of certain regulations already promulgated by the Interstate Commerce Commission. It would, for instance, eliminate the necessity of filing a mover's ICC authority with State regulatory commissions, a requirement in 23 States. It would eliminate the necessity of displaying any identification device on or inside the vehicles of movers, a requirement in 36 States. It would eliminate the need to file insurance certificates or endorsements with the State commissions when properly filed with the ICC, a requirement in 32 States.

These duplicative regulations serve no practical purpose; what revenue they provide to the States perhaps is more than consumed in the expense of administering and policing them; yet they are costly to the mover, involving time, personnel, money. The Huddleston bill now is before the Congress for the second year. This is only the beginning of the tax relief which movers must obtain.

State tax administrators have assured Congress that there is no cause for alarm, that they aren't going to hurt small business with immediate application or extension of the February 25 decisions of the Supreme Court. But the movers assuredly feel alarm. Only yesterday, so to speak; on July 17, to be exact, the chancery court of Pulaski County, Ark., on the basis of these decisions, sustained an Arkansas ad valorem tax. The first pleadings in the Arkansas case were uttered in 1956. It took 3 years to get a decision in that case. How is the small mover, his earnings for a year of hard work a pittance, in some instances a bare livelihood, to prosecute and pursue the prolonged litigation there required against a tax law he feels to be inequitable and another menace to his beleaguered business?

For the third time the movers are attacking the Tennessee ad valorem tax law. The complaint was filed in December 1957. Almost 2 years have elapsed and the case still has not come to trial. Under the current Tennessee law movers are expected to report their mileage in each of the 90 counties, cities, and taxing districts of the State. Yes, movers have experience with State tax laws.

And now the movers are faced with uniform licensing proration proposals throughout the Midwestern States. These involve a taxing program which in itself is so complex that its adoption would spell disaster for many movers.

The structures of even the largest moving companies are made up of many small moving organizations with agents throughout the States. These agencies are autonomous business entities, paying taxes within their own States. The larger moving organizations developed from the need to obtain return loads for their vans which had dropped off cargoes at points remote from their home bases. The agents derive booking, packing, and hauling revenues on which they pay income taxes within their respective States.

Before this committee are Senate Joint Resolution 113, which proposes the establishment of a five-member Commission to make a longterm study of the multiple taxation of companies engaged in interstate commerce, and two bills, S. 2213 and S. 2281, which would limit the power of the States to prevent duplicative taxation of interstate business. None of these measures, from the standpoint of the mover, are far reaching enough to provide the relief he must have if he is to remain in business.

Uniformity is not the answer for the mover. There must be provided a definition which spells out that pickup and delivery and traversal of a State in connection with exclusively interstate commerce does not constitute doing business in a State for State income tax purposes. This would go a long way toward solving our problem.

We must solve the problem. If these agents are independent businessmen, if they are autonomous within their States, the definition of agent in section 101 of title I of Senate Joint Resolution 113 should be refined to exclude such agents from the meaning of the term. The same holds for section (b) of S. 2281. If the meaning of what constitutes doing business within a State can be thus clarified, the movers can support the measures as a whole.

It was long thought a well-settled doctrine that an income tax imposed on a local activity related to interstate commerce was invalid if the local activity was such an integral part of interstate commerce that it could not be separated realistically from it. And to settle the question of what local activities constitute an integral part of interstate commerce, the Supreme Court of the United States, in 1954, in *Railway Express Agency* v. *Virginia*, held specifically that local pickup, transportation and delivery within a State are an integral part of interstate commerce.

It is for reaffirmation of this doctrine that the movers pray.

The report of the Senate Select Committee on Small Business on the problems faced by small business in complying with multi-State taxation of income derived from interstate commerce, points out that prior to the recent Supreme Court decisions, "there were situations where local small-business firms were forced to compete against interstate business, sheltered against the assessment of taxes which were being paid by the local businesses." However, in more than one instance, interstate carriers have had imposed upon them State taxes wrapped up in "package deals" sold to the States by intrastate carriers to lighten the tax

load of the intrastate carriers, whether or not equity existed in the arrangement, and to keep others out of those States.

Continuing its comment on the Supreme Court decisions, the Small Business Committee's report adds:

"On the other hand, too much stress should not be laid on the beneficence of the change brought about by these decisions, so far as small business is concerned. It is apparent that tremendously serious problems arise when every business firm is held liable for complying with a myriad of different tax levies in almost every State and in many cities * * *."

The committee noted the prohibitive costs of complying with such laws, the inducement to smaller firms to evade taxation, and the costs of paying the tax collectors.

What amount or kind of business activity constitutes a "sufficient nexus," in the legal phrase, to bring a company under the taxing jurisdiction of a State has not yet been made clear, despite the Supreme Court's opinions. It is the contention of the movers that the exclusive interstate business they do conduct does not constitute a sufficient nexus to bring them under the taxing jurisdiction of any State for income tax purposes other than the State of principal place of business.

Senate Joint Resolution 113 would have the study Commission it seeks to set up report on February 1, 1961. The mover cannot afford to wait for the result of an elaborate study, cannot afford to struggle on until legislation is enacted on the basis of that far-off finding. The attrition in the ranks of the industry to which I have referred should be sufficient proof that delay means death.

The time to act is now, before the States, flushed by real or apparent new powers, overwhelm an industry vital to every family in the Nation.

The CHAIRMAN. The next witness is Mr. Joseph T. King, Associated Equipment Distributors.

Proceed, Mr. King. I am sorry we are so late.

STATEMENT OF JOSEPH T. KING, ASSOCIATED EQUIPMENT DISTRIBUTORS

Mr. KING. My name is Joseph T. King. I am an attorney with offices at 1028 Connecticut Avenue NW. My appearance today is on behalf of the Associated Equipment Distributors, a trade association composed of over 800 retailers of heavy construction equipment. The association's office is at 30 East Cedar Street, Chicago 11, Ill. I wish to express the industry's appreciation for the opportunity you have afforded me to express its concern about the problem you have under consideration. Since previous witnesses have reviewed the Supreme Court decisions and the various State tax laws which are involved, to preserve time I will not refer to them.

Members of our industry differ from other retailers only to the extent of their trading area. Functionally, they are no different than the farm equipment dealer. While there are approximately 20,000 retail farm equipment dealers, there are only 1,000 heavy construction dealers in the United States. The dealer's assigned territory in most instances is not determined by State lines, but by trading areas.

For example, a dealer in Memphis, Tenn., will have the west portion of Tennessee and parts of Alabama, Mississippi, Arkansas, and Missouri. A dealer in Baltimore covers eastern Maryland, Delaware, and the District of Columbia. A dealer in Salt Lake City may have Utah and portions of Nevada, Idaho, and Wyoming. This explains why these retailers are concerned with the problem. Although some dealers have branches, generally selling is done by salesmen traveling out of a single establishment. Those few who do maintain branches are sufficiently large to assume the expenses involved in filing multiple tax returns. When a dealer elects to establish branch offices these,

along with other expenses, were included as a necessary cost of doing business. The single establishment dealer mistakenly believed he was required to file tax returns only in the State in which his business is located.

Assuming there was an equitable apportionment formula and all State income taxes were substantially equal, these dealers would not have to pay more taxes than they are now paying. Our appeal here is not for tax relief. We are requesting relief from burdensome and unnecessary expenses which will result from the necessity of filing multiple tax returns. The latest industry cost-of-doing-business survey shows that the average distributor has a sales volume of approximately $1,750,000 annually. His net profit before Federal income taxes is shown as 2.46 percent of sales. This puts his Federal taxable income in the neighborhood of $43,000. All taxes, except Federal income taxes, total 0.65 percent of his sales dollar, or approximately $11,000. The survey does not indicate what portion of this was State income taxes. It would be relatively minor after deducting such items as real estate, personal property, social security, unemployment, motor fuel, and similar taxes paid to Federal, State and local governments.

In a recent survey referred to in an article by Paul Studenski and Gerald J. Glasser entitled "New Threat in State Business Taxation" [1] one accounting firm stated:

> We have three fairly typical situations. These three corporations are of medium size, $3 to $4 million sales volume per year, and are currently complying with State tax requirements similar to those [mentioned]. Their only activity within the taxing State is a salesman employee who solicits orders.
>
> Corporation A has complied with the particular State's requirements for 3 years. The average tax paid is approximately $75. The average cost to properly prepare complete tax returns is approximately $150 per return.
>
> Corporation B has complied to 6 years. In this case the average tax amounts to under $20. This extremely low figure is partially the result of two loss years with no minimum filing fee. The average cost to properly prepare these complete tax returns is also approximately $150.
>
> In both cases A and B above, no attempt has been made to file returns for years prior to the date of initial compliance.
>
> Corporation C has filed 12 such returns with a average tax of $46. In this case after complying with the particular State's request, the corporation filed eight returns at one time covering prior years. These eight returns were in skeleton form with many of the required schedules and computations omitted. Therefore, the average cost per return in this case is approximately $100.

As you will note, the three corporations referred to had sales volumes which were almost double that of the average construction equipment dealer. In addition to the costs involved in filing returns, there will be the additional accounting required to record sales and apportion income among the States involved. Although these costs may not be staggering, they are, nevertheless, additional impediments which make it difficult for a small business to survive.

One of the most difficult problems confronting small business is the complexity of Federal, State, and local laws and regulations which necessitate the employment of expert counsels, accountants, and management consultants. The larger the company the less burdensome are these expenses. Conversely, the burden of these expenses increases as the size of the company diminishes.

The Hoover Commission gave us some inkling of the magnitude of burdensome reporting required of American business. The Com-

[1] P. 89, Harvard Business Review, vol. 36, No. 6, November–December 1958.

mission found that the Federal Government alone imposed 4,700 different forms or questionnaires on private citizens or business concerns. The Commission estimated that the Government saved over $5 million annually and industry saved over $10 million annually by the elimination of duplicating reports in 26 cases.[2] This situation prevailed even though the Bureau of the Budget had been authorized to control the questionnaires and reporting forms sent out by the various agencies.

The problem before this committee is not one of depriving the States of their just revenue. The problem is uncertainty where certainty should exist. In a situation such as this it is no answer to tell the small businessman to seek relief in the courts. The costs and effort involved are prohibitive and the chance of success slight. He has no alternative but to abandon himself to governmental dictation. The Government agent knows the small businessman considers it cheaper to pay than fight. One might be tempted to describe this situation as legalized blackmail.

It does not take a prophet to foresee the retaliatory measures that each State will take to protect its revenue. Again, assuming an equitable apportionment formula and that the several State income tax rates were about the same, the total revenue of all 50 States would end up where they are now. Obviously, some States may reap a temporary benefit to the detriment of their sister States. In the absence of an increase in tax rates we might assume that a business will not pay more taxes, but merely pay them to different collectors. This assumption, of course, is based on a false premise that the States will not enact retaliatory tax measures. In the meantime, businessmen will be compelled to struggle with multiplicity of State tax laws, forms, and last, but not least, a multiplicity of tax agents, each having a different interpretation as to what is allowable or disallowable on a tax return.

I will make only one comment relative to the several bills before this committee. Section 2 of Senator Saltonstall's bill (S. 2281) would make the legislation retroactive. This provision raises a constitutional question which might endanger section 1. There is much to be said for section 2 but I suggest the committee consider a separability clause which would protect section 1 in the event the courts found section 2 unconstitutional.

I would like to comment on the testimony of the State tax commissioners. They have conceded that there are areas in which they probably will not collect taxes which under their tax laws are payable. They conceded, their State tax laws apply to small and medium size interstate businesses that probably would avoid paying the taxes. Such a situation breeds contempt for the law.

The very question before this committee, is whether a line shall be drawn between those who are required to pay and those who are not required to pay so that conscientious taxpayers can fulfill their responsibilities.

A good many of our people are confronted with this question. They do not know whether to file or not to file returns. If they file returns, they may find that they have paid taxes which are not due. If they

[2] Pt. II, "Paperwork Management," a report to the Congress dated June 1955, by the Commission on Organization of the Executive Branch of the Government.

do not file the taxes will accumulate as the statute of limitations does not run when no return is filed.

That is about all I have to add to my prepared statement.

The CHAIRMAN. Thank you very much. Your brevity has been very welcome. [Laughter.]

The next witness is Mr. John A. Gosnell, National Small Business Men's Association.

STATEMENT OF JOHN A. GOSNELL, GENERAL COUNSEL, NATIONAL SMALL BUSINESS MEN'S ASSOCIATION

Mr. GOSNELL. Senator, with your permission I would merely like to file our statement for the record, with an urgent plea for action for the benefit of the small businessman.

The CHAIRMAN. That is one of the best speeches that has been made.

Mr. GOSNELL. Thank you very much.

(Mr. Gosnell's prepared statement follows:)

STATEMENT OF JOHN A. GOSNELL, NATIONAL SMALL BUSINESS MEN'S ASSOCIATION

Mr. Chairman and members of the committee, my name is John A. Gosnell. I am general counsel of the National Small Business Men's Association, 801 19th Street NW., Washington, D.C.

Since the decisions of the Supreme Court of the United States in the so-called *Minnesota-Georgia* cases handed down on February 24, 1959, we have had numerous communications from small businessmen all over the Nation, expressing grave concern over the potential effect of these decisions. A great majority of the small manufacturers are engaged in interstate commerce and most of them do not own property, maintain inventories or warehousing facilities, nor even maintain offices in the States in which they operate.

A small seafood processor in New Orleans[1] states: "A law such as this will greatly add to the cost of doing business. Imagine the records necessary to determine the profit on each transaction or on sales in each State. The cost of recordkeeping will be tremendous, aside from the impact of the additional tax on profits. The cost of both of these items will have to be added to the cost of doing business, and to the sale price of commodities. This would give inflation one more boost. Today, we are fighting against it."

I would like to quote also from another letter.[2] "We are small business and such tax would raise the very devil with us. If we depended exclusively on [on sales in] New Jersey, we would either be out of business or would be trying to carry on with just a couple of men. We do business in about 20 States, and we have two roadmen soliciting business throughout nearly all of these States. The taxes that might be imposed by them would be small at the present time, but like all taxes they will grow, and we feel that even today it would amount to thousands of dollars, and no doubt would have a very serious effect on us. In addition, it would entail more records and bookkeeping and additional work for our CPA's and tax advisers. In our opinion small business will be hit very, very hard, and it might be that a good many of us could be wiped out."

Another company, in the manufacture of kitchenware, states:[3] "I hope you realize how serious this matter is to small concerns such as ours, if we were suddenly faced with the prospect of paying taxes in 49 States on our sales within those States. It would become a tremendous burden, and if it were allowed retroactively, as is being discussed, it might very well put us and many other firms out of business. It certainly would be a tremendous inflationary move. It would seem that the only hope that we and other manufacturers have at the present time is that Congress will develop some legislation which would be in time to hold this program in check."

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[1] Reuther's Sea Food Co., Inc., packers and producers, Post Office Box 773, New Orleans, La.

[2] Textile Proofers, Inc., 181 Culver Ave., Jersey City, N.J.

[3] Edlund Co., Inc., Burlington, Vt., 60 employees.

These typical communications reflect the general concern over the situation. This has already been expressed very fully in the hearings before the Senate Select Committee on Small Business in April 1959. It seems inevitable that the Supreme Court decisions will result in a somewhat chaotic application of varying tax formulas to interstate commerce. As noted by Mr. Justice Frankfurter, in his dissenting opinion, every State which has not already done so will be stimulated, if not compelled, to devise a formula of apportionment to tax the income of enterprises carrying on exclusively interstate commerce.

There would appear to be no doubt that Congress has the power to establish legislative guidelines delimiting the State power to tax interstate commerce. This is acknowledged by implication in the majority opinion of the Supreme Court. In the words of Mr. Justice Clark: "Commerce between the States having grown up like Topsy, the Congress meanwhile not having undertaken to regulate taxation of it, and the States having understandably persisted in their efforts to get some return for the substantial benefits they have afforded it, there is little wonder that there has been no end of cases testing out State tax levies."

This point was considered by the Senate Select Committee on Small Business, and part 2 of the committee report contains the following statement: "Therefore, your committee concludes that there is no serious question about the ability of Congress to act in the area of State taxation of income derived from interstate commerce and that a constitutional amendment is not required as some observers have suggested."

It should be noted also that the American Law Division of the Library of Congress also reached the same conclusion, stating: "There can be no denying that the proposed legislation would be a permissible exercise by Congress of its power to regulate interstate commerce."

We believe that this is an urgent situation and that confusion will be compounded by failure to promptly enact stabilizing measures at this time. We respectfully submit that delay will make the situation more difficult to handle as times passes and the various States crystallize plans for implementation of the Supreme Court decision.

We concur with the Senate Select Committee on Small Business that probably the best alternative to meet this problem is the enactment of a legal definition as to what constitutes "doing business" for purposes of establishing the basis of authority to tax out-of-State business. This is the approach of the several bills before this committee.

It might be noted that such a provision was added to the District of Columbia Code by Public Law 500, passed during the 2d Session of the 80th Congress.[4] This provision of the District of Columbia Code, enacted over 10 years ago, is a clear precedent for establishment of a legislative definition of the conditions under which the operations of a business establishment within the District become subject to the District of Columbia income tax.

There may be need for further study of the various facets of this problem, but we believe that the establishment now of a practical "doing business" definition will effectively deal with the more urgent aspects of the situation and at the same time offer no impediment to such further study and action as may be required.

We greatly appreciate the opportunity to appear before this distinguished committee.

The CHAIRMAN. The committee will adjourn.

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

THE W. T. RAWLEIGH CO.,
Freeport, Ill., July 24, 1959.

Re legislation to limit taxing power of States with respect to income taxes on receipts from interstate commerce.

Senator HARRY FLOOD BYRD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BYRD: Although our company has its main office and factory in Freeport, Ill., we are taking the liberty of expressing to you our views re the above subject matter in view of the fact that a branch of our company is located in Richmond, Va., and we know that you will be interested in our problems.

[4] D.C. Code, sec. 47–1551c(h)(1).

We would appreciate your reviewing the information contained herein with fellow Senators on the Senate Finance Committee, which we understand to be currently considering legislation re this matter.

We respectfully submit that taxation of foreign corporations should not be permitted where there is very little, if any, "tie" or "link," commonly referred to as "nexus," with the taxing State. Accordingly, we wish to advise you that we favor provision prohibiting States from imposing new income tax on income derived exclusively from interstate commerce where no stock of goods, plant, office, warehouse, or other place of business is maintained within the State.

We respectfully submit that the present situation makes possible taxation of more than 100 percent of income and that compliance by companies with multistate operations will increasingly become a terrific burden, both from the standpoint of payment of taxes and from the standpoint of cost of bookkeeping, accounting, and auditing procedures made necessary by recent developments.

We further submit that payments to the States, being deductible from Federal income taxes, will deprive the Federal Government of necessary revenue to support the Federal Government, which eventually will, no doubt, lead to increased Federal taxation of corporations, when the tax burden is already considerable.

We further submit that although the United States has to this point constituted one market, it now develops, because of recent conditions, there will ensue instead of one market a clutter of markets within the United States, which we believe has never been intended by our forefathers.

We would appreciate your serious consideration, as well as the serious consideration of your colleagues on the subcommittee of the Senate Finance Committee, of our thoughts re this legislation.

Very truly yours,

J. A. RESH, *Secretary.*

STATE OF NEW HAMPSHIRE,
Concord, July 23, 1959.

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

DEAR SENATOR BYRD: It is my understanding that Senate bills 2213 and 2281 are presently under consideration as measures which would correct certain injustices likely to result from recent Supreme Court decisions which would seem to confer upon State governments the ability to levy taxes upon foreign corporations, and specifically upon the income of these corporations derived from interstate commerce.

We are much aware of the injustices heaped upon the citizenry of our State by the imposition of nonresident income taxes by jurisdictions like Massachusetts and Vermont. We are much aware also of the serious difficulties presently faced in our effort toward industrial expansion. As Governor of New Hampshire, I wish to express the sentiment of our State against taxation of nonresident corporations and express the hope that legislation to correct the potential injustices of the Supreme Court decisions will be accomplished at this session of the Congress.

A copy of this communication is going forward to each member of the New Hampshire delegation, and it is my respectful request that one of the communications be included in the official records of the committee on this issue.

With best wishes.

Sincerely yours,

WESLEY POWELL, *Governor.*

STATEMENT OF JOHN M. SNOW, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF FURNITURE MANUFACTURERS

On behalf of a majority of the 3,000 and more household furniture manufacturers throughout America we wish to go on record in support of proposed legislation which would limit and define the powers of the individual States in the matter of taxing interstate commerce.

The furniture manufacturing industry produced over $2,300 million worth of goods in 1958 according to an estimate of the National Association of Furniture Manufacturers. It ranks second among the Nation's durable consumer goods industries with automobile manufacturing ranked as first. Retail value of 1958 furniture production was estimated to be in excess of $4 billion.

That the average furniture manufacturer is a typical small businessman is shown by the Department of Commerce—Facts for Industry series—which, according to its latest available report, 546 manufacturers did an annual business of $1 million or more, with almost 2,500 manufacturers doing less than $400,000 per year, and about 1,500 of these doing less than $200,000 per year.

Number of manufacturers by sales volume size, 1953[1]	*Total household furniture*
$1,000,000 and over	546
$400,000-$999,000	513
$200,000-$399,000	477
Less than $200,000	1,479
Total	3,015

[1] Source: "Household Furnishings and Bedding Products"—Facts for Industry, Department of Commerce, 1953.

In 1954, 1,721 manufacturers employed over 21 workers per company and approximately 1,300 companies employed less than 21 workers per company.

The furniture industry is recognized as a widely dispersed group of relatively small manufacturers usually located in small towns or cities. Following is a geographic breakdown of the 5,202 household furniture establishments in 1954. Establishments are separate manufacturing units regardless of company affiliation. Number of actual companies in household furniture industry is estimated by NAFM at approximately 3,000. This data is contained in Census of Manufacturers' Statistics published by the Department of Commerce.

	1954
New England	424
Middle Atlantic	1,411
East North Central	966
West North Central	192
South Atlantic	788
East North Central	256
West North Central	233
Mountain	94
Pacific	838
U.S. total	5,202

HOUSEHOLD FURNITURE PRODUCTION DATA

Source: Census of Manufacturers and Facts for Industry.

All areas of the country look to the furniture industry for employment and the development of business stability.

Production by geographic area,[1] 1956

New England	$129,882,000
Middle Atlantic	345,078,000
East North Central	543,800,000
West North Central	54,720,000
South Atlantic	507,027,000
East South Central	162,638,000
West South Central	96,240,000
Mountain	16,578,000
Pacific	170,991,000
Total above	2,086,963,000
Grand total, all furniture	2,506,814,000

[1] Geographic data available for major items only. Represents 80 percent of total production.

We feel that the furniture manufacturers' narrow margin of profit (2.8 percent in 1958) and limited number of employees and relatively low volume of business show convincingly that the problem of numerous and varied State taxes on interstate commerce would work an undue hardship on him, a hardship that would involve costly, complex, and extensive recordkeeping in order to keep up

to date and comply with the laws. In addition, the taxes would serve to throttle his capacity to complete and distribute over a reasonably wide area.

In the Supreme Court decision (*Stockham Valves* and *Northwest States Portland Cement* cases) they ruled that a State has the power to tax interstate commerce. They also noted, however, that this was due to a gap in existing law and that it was clearly within the responsibility of Congress to enact legislation which would prevent this situation from creating complete chaos. Action is needed now during the present session so as to clarify the picture before numerous other States start to initiate new tax laws.

In developing the urgently needed legislation there are several phases of activity in the furniture industry that are worthy of special consideration.

1. The retroactive aspects developed in the *Northwestern Cement* case, where taxes were collected for all the back years of its present income tax law, could very seriously jeopardize the future of quite a large number of the smaller furniture manufacturers. They have neither the reserves nor the profit possibilities to absorb such a burden. We strongly urge that all phases of the retroactivity problem be studied and recommended the provisions contained in S. 2281.

2. Due to the bulky nature of the product, the high cost of railroad transportation and the susceptibility to damage, many manufacturers have been forced to deliver a sizable part of the furniture they produce on their own trucks.

We recommend that the final legislation clearly exempt the method of delivery as one of the qualifying aspects of State taxation of interstate commerce. All of the same processes of selling are followed by manufacturers in this category and it would place them at a competitive disadvantage if their method of delivery was the only added factor that made them liable for taxation.

The same is true of certain manufacturers who place a supply of furniture in a rented warehouse in order to provide better service to the dealer and consumer. This should not serve as a qualifying aspect for taxation.

3. Furniture markets and market showrooms are a unique and specialized phase of this industry's business and should be specifically exempted from the qualifying areas of taxation. Market showrooms are rented and do not serve the function of a regional sales office in any usual sense of the term. They are primarily a display burden brought about by the bulky nature of the product and the inability of the salesmen to carry and show samples of the new designs.

The market showroom serves fundamentally as a display adjunct for the manufacturers' salesmen, and it is used for a very limited period of time each year.

To a very large degree the sales are finally developed when the salesman actually visits the store, checks the inventory, and the formal order is written up and sent to the manufacturer for his acceptance based on credit, availability of product, and the distribution policy of the company.

These are all a part of the inherited traditions of our industry's method of distribution. We recommend that the proposed legislation be expanded to allow for their continuance without the burden of additional State taxes.

We wholeheartedly approve the broad concepts of the bills now under consideration by your committee with the modifications or improvements outlined above.

MACHINERY AND ALLIED PRODUCTS INSTITUTE,
Washington, D.C., July 27, 1959.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: We appreciate this opportunity to present our views to be incorporated in the record of hearings on proposed legislation before the Committee on Finance to establish certain standards with respect to State taxation of business activity conducted in interstate commerce.

The Machinery and Allied Products Institute and its affiliate, the Council for Technological Advancement, represent the capital goods and allied product industries. The majority of our member companies fall in the categories of medium-sized or small business. These companies in particular have expressed serious concern over problems raised by the recent U.S. Supreme Court decision upholding the constitutionality of State taxes levied on the net income of a foreign corporation, even though such income is derived from business conducted in interstate commerce.

We wish to commend the Senate Finance Committee for giving prompt attention to this vitally important matter and to offer certain observations with respect to those measures now before your committee for consideration, namely, Senate Joint Resolution 113, S. 2213, and S. 2281. Through the facilities of the institute we are conducting certain staff studies which may develop additional information and suggestions.

The dangers inherent for business in the Supreme Court's decision—multiplicity of taxation, the cost and the difficulties of compliance with a wide variety of State apportionment statutes, and the consquent threat to the competitive position of many businesses—have been amply documented by others who have testified before this committee and in hearings before the Senate Small Business Committee. In fact, they were forcefully and succinctly put forth in minority opinions in the Supreme Court decision on February 24, 1959, excerpts from Justice Frankfurter's opinion being attached to this letter.

We would add but one point as to impact. It is well recognized that high levels of productivity are essential to maintain and increase the standard of living. But it frequently is overlooked that a further necessary condition is a mass market, for many of the techniques U.S. industry has developed are suitable only for a large market. It seems incongruous that at a time when Western Europe has not only recognized but is implementing this fact of life—first, through the Common Market, and second, the "little free trade area"—the United States would open the floodgates to the potential inundation of commerce by regional and patternless taxation with its inevitable concomitant of restricted trade.

Beyond this we do not wish to burden the committee with a repetition of evidence, but propose to address ourselves briefly to two major points which we hope the committee will consider:

1. The need for a standard definite enough to determine what income is in fact subject to State taxation; and
2. The need for immediate legislation to create minimum standards.

The need for a standard.—First, the Supreme Court decision has produced vast uncertainty with respect to the taxability of net income earned within a State by a corporation located in another State. In other words, the decision, having eliminated the distinction between interstate and intrastate commerce as a standard for determining State taxability, fails to provide an alternative standard. In addition to the serious handicaps noted above, the hardships resulting from such uncertainty for all businesses, and particularly the smaller ones, are obvious. Companies with extensive interstate operations, many of which have emerged from the recent business recession with expansion programs or are still fighting their way out of the recession, have been hampered in the making of normal management decisions with respect to out-of-State business locations because of the uncertainties involving their State tax liabilities.

While the proposals before the Finance Committee differ in certain respects, all of them contain a similar provision designed to exclude from State taxation that income earned solely through the solicitation of orders within a State by a foreign corporation, which does not maintain a stock of goods, plant, office, warehouse or other place of business within the taxing State. Based on our consideration of the matter within the time available, the institute regards this proposed standard as both logical and workable and believes that it would restore minimum certainty to an area where virtually none now exists. There may be a more workable standard but the need for a standard is clear and, as we point out below, some action toward creating a guideline is crucial.

The need for legislation.—Secondly, it has been suggested by several witnesses before this committee that no action should be taken by Congress until the whole complex problem of State taxation has been carefully studied, either by a congressional committee or by a Presidential commission of the sort proposed by S.J. Res. 113. The institute recognizes the complexity of the problems connected with State taxation and agrees that a full-scale study of issues related to the one now before this committee would no doubt be profitable. We are convinced, however, of the urgent need for immediate legislation which would prohibit State taxation of income derived from that kind of activity hitherto regarded as exempted from such taxation by reason of the interstate commerce clause of the Constitution. At least limited action should be taken now.

It is true that a few States are presently taxing income generated by mere solicitation of orders within the State. However, the great majority of those States which levy any net income tax on corporations have not yet proceeded

this far. Considering the pressing needs of the States for increased revenue, it is reasonable to expect more States in the near future to adopt the course implicit in the Supreme Court's decision. If legislation is postponed until the completion of a study, remedial legislation at that time may be more difficult because of the development of a pattern of State tax action which would defy retroactive correction. Moreover, the normal process of commercial decisions affecting interstate business might proceed without the present uncertainty and confusion.

On the other hand, enactment of legislation now will do little more than preserve the status quo, for the most part. Any unforeseen difficulties which might arise as a result of such legislation could be handled by corrective amendments. In the meantime the proposed study group can proceed with its work, without the pressure of a definite reporting date, until the entire subject has been thoroughly canvassed and an equitable overall solution reached.

In conclusion, we should like to emphasize that the views expressed herein are not intended to reflect in any sense a negative attitude with respect to the transfer of Federal responsibilities to the States. On the contrary, the institute has consistently encouraged proposals looking toward assumption by the States of many functions now assigned to the Federal Government and financed through Federal taxes. We are fully aware that the success of these proposals will require the States to look for new sources of income. Our interest in the issue now before the committee is dictated solely by our conviction that prolonged confusion in this area of State tax liability will in the long run benefit neither industry, the States, nor the Federal Government.

Respectfully,

CHARLES W. STEWART, *President.*

NORTHWESTERN STATES PORTLAND CEMENT CO. v. MINNESOTA; WILLIAMS v. STOCKHAM VALVES AND FITTINGS, INC., 358 U.S. 450, FEBRUARY 24, 1959

(Excerpt from Justice Frankfurter's dissenting opinion)

I think that interstate commerce will not be merely argumentatively but actively burdened for two reasons:

First. It will not, I believe, be gainsaid that there are thousands of relatively small or moderate size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the divers and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining "net income," and, different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States.

Second. The extensive litigation in this Court which has challenged formulas of apportionment in the case of railroads and express companies—challenges addressed to the natural temptation of the States to absorb more than their fair share of interstate revenue—will be multiplied many times when such formulas are applied to the infinitely larger number of other businesses which are engaged in exclusively interstate commerce. The division in this Court on these railroad apportionment cases is a good index of what might reasonably be expected when cases involving the more numerous nontransportation industries come before the Court * * * the necessity for litigation based on these elusive and essentially nonlegal questions casts a burden on businesses, and consequently on interstate commerce itself, which should not be imposed.

WHITE STAG MANUFACTURING CO.,
Portland, Oreg., July 23, 1959.

Senator WAYNE MORSE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MORSE: A State income tax situation in the various States of the Union has arisen in recent months the potentialities of which open up some alarming possibilities that, if prudent action is not taken, a ridiculous financial

burden could be placed on all firms in interstate commerce, regardless of where their home State is.

Our company, and every other company in interstate commerce, is legally subject to State income taxes in many different States, even though our sales representatives merely solicit orders there and even though we maintain no office or warehouse there.

That's the effect of recent decisions of the U.S. Supreme Court, upholding the power of the States to tax out-of-State corporations for the business activity they conduct in the taxing State, despite that such activity may be exclusively interstate commerce. If this situation is left unchanged, the consequences will be punitive for most firms in the country, large or small.

On February 24, 1959, the Supreme Court ruled in two cases that the power to regulate interstate commerce granted by the Constitution to the Federal Government does not preclude the States from taxing the net income which an out-of-State corporation derives from sales within the taxing State, even though such transactions are exclusively interstate commerce. One case involved taxes imposed by Georgia, and another was an appeal by the corporate taxpayer from a similar Minnesota tax law.

In both cases the firms' activities were devoted solely to the solicitation of orders which were sent by mail outside the State to their home office for acceptance. In both cases the taxes were levied on the portion of net income of the corporation presumed under a statutory formula to have been derived from activities in the taxing State.

In Georgia, the words of the statute are worth noting for their breadth of coverage: "Every such corporation shall be deemed to be doing business within this State if it engages within this State in any activities * * * for the purpose of financial profit * * * whether or not it maintains an office * * * within this State and whether or not such activity * * * is connected with interstate * * * commerce." (the cases are *T. W. Williams* v. *Stockham Vales & Fittings, Inc.* and *Northwestern States Portland Cement Company* v. *Minnesota.*)

When Louisiana, which has a similar statute, insisted on collecting taxes from Brown-Forman Distilling Co., which maintained no office in Louisiana and whose sales representatives in that State merely promoted and encouraged the purchase of the company's products without actually soliciting orders, the company appealed to the Supreme Court. In March, following the *Stockham* and *Northwestern State* cases, the Supreme Court refused to consider this Louisiana case, thus leaving the State court decision against the taxpayer undisturbed.

Refusal of the Supreme Court to review a lower court holding need not necessarily be construed as complete agreement in all respects with the decision of the court below. Nevertheless, the practical consequences of these denials as they now stand have been to strengthen immeasurably the hand of the State tax collector and encourage an extension of his reach.

Tax proceedings have already been commenced against firms whose activities within the taxing State consist of no more than the solicitation of orders by a traveling salesman or local sales representative.

Under present circumstances, thousands of companies which have never considered themselves subject to such State taxes will now be under an indeterminable burden. Not only will they be expected to file returns and pay taxes in numerous States, but having failed to do so up to now, they also face the danger of being charged with tax arrears for previous years plus interest and penalties.

I understand that the U.S. Senate Committee on Small Business will hold hearings on the subject. What form relief should take is not altogether clear. Some legal doubt has been voiced as to whether Congress has the constitutional right to step into this field and limit the tax power of the States, particularly after the Supreme Court has declared these States constitutionally unrestricted in imposing such levies.

Several bills have been introduced which would have the effect of relieving firms from liability for such State taxes where their only activity within the taxing State consists of sales solicitation and where the taxpayer maintains no office, or warehouse, and where no stock of goods is carried.

One such bill has been introduced by Senator Sparkman (S.J. Res. 113) in which he has been joined by Senators Humphrey, Saltonstall, Williams, and others. Other such measures have been introduced into the House by Congressmen McCulloch of Ohio (H.R. 7757), Miller of New York (H.J. Res. 431).

On behalf of our company, an Oregon corporation, we are asking that immediate action be taken against these "multi-State taxes."

Sincerely yours,

HAROLD S. HIRSCH, *President.*

P.S.—The State of Oregon could possibly lose more income than it would gain because of our small consumption of outside goods. Let's not forget that if White Stag, for example, an Oregon corporation, pays income taxes to other States, this would clearly be an offset against the taxes it pays to its home State. We sell goods in every State in the Union, and some in greater volume than our sales in Oregon. With such huge deductions from our Oregon State income tax, Oregon would receive very little from us and other States in the Union more, and I doubt if Oregon's small consumption will enable it to tax out-of-State manufacturers for enough to make up for losses in tax income it now gets from Oregon manufacturers in interstate commerce.

H. S. H.

NATIONAL FOOD BROKERS ASSOCIATION,
Washington, D.C., July 27, 1959.

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

DEAR SENATOR BYRD: It has long been a matter of pride in this country that our people have had a wealth of food products to pick from when they shop in their grocery stores. This freedom of choice is now being threatened by multiple taxation by the States on sales made in interstate commerce. We, therefore, plead with you to take prompt action in favor of S. 2281, one of the three bills your committee is now considering as a solution to the serious problem facing not just the American businessman but the American consumer as well.

The seriousness of the situation is particularly apparent to the members of the National Food Brokers Association as they handle a large part of the sales of processed food and grocery products in this country. Local sales agents, our members have long facilitated the flow of food and grocery products to the stores in their own local areas. The threat to a free flow of interstate commerce which was raised by recent Supreme Court decisions is of great concern to the manufacturers our members represent.

Unless the situation is promptly corrected, there is a great danger that many manufacturers will greatly reduce their areas of distribution, rather than subject themselves to burdensome State income taxes. These manufacturers do not maintain a place of business in these States. They achieve their distribution through sales made by their independent resident sales representatives, the food brokers.

The result would be felt by the American consumer in several ways. First, their present large freedom of choice would be seriously curtailed. There would be fewer products on their grocery store shelves from which to pick. Many of their favorite brands would disappear from many areas. Second, the American consumer would lose because there would be a lessening of competition in such areas. Strong competition has always been one of the great strengths of our industry. With competing brands out of the market the remaining products may cease to try to be competitive.

The American processor would likewise feel this loss. Much of his volume is made up of widespread distribution consisting of small orders in many States. In many of these States the volume is not sufficient to warrant extra tax burdens and the extra bookkeeping and recordkeeping that would be called for. Instead of paying these taxes and losing money on such sales, they will cease selling in such areas. It would necessitate the reduction of production facilities for many.

Our members, too, would suffer. Many of the products they now sell would be kept out of their local market. As they operate in their own areas, it would mean that the variety of products which they can handle would be reduced.

Of the bills now under consideration by your committee, S. 2281 is in our opinion the one that should be recommended by your committee. This bill effects a solution that would insure fair and equitable treatment for manufacturers who now sell in interstate commerce and would insure the maintenance of a free flow of products to every State in the Nation.

S. 2281 is in line with the legislation which Congress itself passed in the Revenue Code for the District of Columbia. This legislation has proven to be effective in the many years since it has been enacted.

We feel that the bill, S. 2281, more than any of the other measures you are considering, will correct the problem now facing us. We sincerely urge your prompt and favorable reporting of S. 2281 to insure a continuation of a free,

unimpeded flow of the wealth of the Nation's food and grocery products to every State in the Nation.

Sincerely yours,

WATSON ROGERS, *President.*

PHARMACEUTICAL MANUFACTURERS ASSOCIATION,
Washington, D.C., July 22, 1959.

Senator HARRY F. BYRD,
Chairman, Senate Committee on Finance, Senate Office Building,
Washington, D.C.

DEAR SENATOR BYRD: We understand that hearings commenced yesterday before your committee concerning the number of bills previously introduced and relating to the problem of State taxation of interstate commerce.

The Pharmaceutical Manufacturers Association is a nonprofit membership association incorporated under the laws of the State of Delaware, with its principal office in the city of Washington, D.C. This association is the result of a combination accomplished in 1958 of the American Drug Manufacturers Association and the American Pharmaceutical Manufacturers' Association. At the present time there are about 140 member companies in the Pharmaceutical Manufacturers Association, which comprises practically all companies engaged in the manufacture of ethical pharmaceuticals and prescription drug products, and the great majority of which may be characterized as small- or moderate-sized businesses.

As you know, the proposed legislation and the problems to be solved therefor have arisen as a result of the decision of the U.S. Supreme Court in the cases of *Northwestern States Portland Cement Company* v. *Minnesota* and *Williams* v. *Stockham Valves and Fittings, Inc.* (358 U.S. 450, Feb. 24, 1959).

The plight of small business is described by Justice Frankfurter in his dissenting opinion in those cases as follows:

"It will not, I believe, be gainsaid that there are thousands of relatively small- or moderate-size corporations doing exclusively interstate business spread over several States. To subject these corporations to a separate income tax in each of these States means that they will have to keep books, make returns, store records, and engage legal counsel, all to meet the diverse and variegated tax laws of 49 States, with their different times for filing returns, different tax structures, different modes for determining net income, and, different, often conflicting, formulas of apportionment. This will involve large increases in bookkeeping, accounting, and legal paraphernalia to meet these new demands. The cost of such a farflung scheme for complying with the taxing requirements of the different States may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States."

Small- and moderate-size business firms have already been put to considerable expense in endeavoring to determine their tax liabilities in the more than one-half of the States that already have taxes adequate to take advantage of this decision, but many of which States have not been enforcing them due to prior uncertainty as to their authority.

The economic impact and cumulative burdens imposed by States on interstate commerce activities in taxing the earnings derived from such business should also be of concern to the Federal Treasury. In addition to the State income taxes themselves, all of these items of administrative cost and overhead, which may far exceed the amount of the taxes paid in some instances, will become proper deductions for Federal income tax purposes.

The States likewise have become interested in this phase of the problem, as the following statement of Commissioner Joseph H. Murphy, commissioner of taxation, State of New York, in his presentation to the Senate Select Committee on Small Business indicates:

"How much justice have we achieved for the business community in general if the taxpayer's costs of complying with the tax law (maintaining detailed accounting records, legal expense of preparing returns, etc.) far exceed the amount of tax liability? Furthermore, from the public standpoint we would be saddling the State government with additional administrative expenses to collect a pittance from the overwhelming majority of these new taxpayers."

Another point is practically overlooked, i.e., the multiple administrative and tax burdens for the small- and moderate-size business firms tend to make them less competitive with large national firms who are already forced to maintain

warehouses and offices throughout the country. These large businesses can obtain legal assistance and administer their respective taxes more economically than the small firm.

The several bills pending before your committee will clarify the jurisdiction of States to tax. They would exclude from taxation by a State or political subdivision thereof those earnings derived from interstate commerce sales where there is no business establishment in the State. On the other hand, the States would not be deprived of needed revenues in that there is a recognition of a right to tax certain local activities that produce income and yet there is an acknowledgement of an area of unhampered trade among the several States and the removal of undue burdens on interstate commerce. We acknowledge that interstate businesses, large or small, should pay a fair and nondiscriminatory share of the cost of government in the States in which they do business; but the cost of compliance should not itself constitute such a burden on interstate business that it interferes with the free development of a national economy.

We earnestly believe that legislation of the type now being considered by this committee should be enacted by the Congress of the United States at this session.

Respectfully yours,

JOHN K. WORLEY,
General Counsel.

NATIONAL WOODEN BOX ASSOCIATION,
Washington, D.C., July 30, 1959.

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

DEAR SENATOR BYRD: With your permission, I would like to amplify somewhat the statement made by letter dated July 20 to your committee outlining the position of this industry on the matter of State taxation of income from interstate commerce, and on the proposed legislation on which your committee held hearings on July 21 and 22, including Senate Joint Resolution 113, S. 2213, and S. 2281.

In their testimony on July 22, Mr. R. L. Roland and Mr. F. L. Cox, describing the laws of Louisiana and Georgia, clearly outlined the situation which is so disturbing to business. In each case, the State laws provide for taxation of corporate income where there is any activity within the State resulting in profit to the corporation. By regulation, the tax is levied only when this activity is on a regular and systematic basis. Neither State representative could describe exactly what is considered to be a "regular and systematic" activity within his own jurisdiction.

Mr. Cox, particularly, indicated that the normal procedure would be for the State taxing authorities to write to a foreign corporation believed to have engaged in a taxable activity, informing that business of its obligation to file a tax return. Evidently, until receipt of this letter, the organization has no definite rule by which it can determine when its occasional or isolated (and nontaxable) activity becomes "regular and systematic," thereby rendering that corporation subject to Georgia's tax laws. In view of Mr. Cox's inability to clearly define the point at which this obligation would arise, it is easy to understand how any foreign corporation shipping into Georgia might be highly concerned about the possible liability for taxes for both current and past years, together with penalties and interest.

Mr. Roland estimated that there are approximately 100 foreign corporations now paying taxes in the State of Louisiana who would be relieved of this obligation by the adoption of the legislation under consideration. There are obviously hundreds of foreign corporations soliciting business in Louisiana, many of them on a "regular and systematic" basis, who are not included in this group. This is because present tax liability does not warrant the cost to the State of Louisiana of attempting to make a collection in these cases. Many of these firms are undoubtedly unaware of any possible obligation to file Louisiana returns, and others undoubtedly find it impossible to determine whether or not this obligation exists in view of the lack of definition. If these corporations progressively develop their Louisiana business they may become vulnerable to a crippling levy for taxes and penalties when the State finally decides that the possible tax obligation is great enough to warrant the effort to collect.

Both Mr. Cox and Mr. Roland pleaded for congressional study before the enactment of any limiting legislation. Their reasoning was that the States

would be denied appreciable revenue, an estimated $1 million in the case of Georgia, and $750,000 in the case of Louisiana, by the immediate limitation of State taxing powers to those corporations maintaining an office or place of business within the State. This would admittedly be somewhat of a blow to State efforts at covering revenue requirements, but it would probably be only a temporary situation, and in any case would not jeopardize the existence of any State government. On the other hand, a big obligation for back income taxes, penalties and interest, or the heavy legal and administrative expenses of determining in the courts whether such an obligation exists, might well spell bankruptcy for many of our small businesses which must rely to a great extent on interstate commerce. This permanent damage to possible revenue sources for all States be much more serious than the temporary disadvantage of the proposed immediate limitation to these few States.

Our own Virginia State tax commissioner, Mr. C. H. Morrissett, was kind enough to make available to me a copy of his letter of July 20 directed to you. This certainly demonstrates the possible future consequences if the effect of the Supreme Court decision is not limited by congressional action. Mr. Morrissett points out that Virginia does not now feel the need to levy an income tax on a foreign corporation which does not maintain an office within the State of Virginia. He does say, however, that the Virginia Advisory Legislative Council is recommending the amendment of Virginia laws, presumably along the lines of the Georgia, Louisiana, and Minnesota statutes, largely to retaliate for taxation of Virginia corporations by these other States. This same action will certainly be taken by most, if not all, of our 50 States.

I understand that Mr. Morrissett wrote to you again on July 23, and sent to you his proposed redraft of the legislation. While I do not have a copy of his suggestion, I understand that he would exempt from State taxation the foreign corporation whose only activity is the "solicitation of orders" for filling by direct shipment into the State of delivery from outside its borders, this being coupled with a clear definition of the term "solicitation of orders." It may well be that this approach would give adequate protection from undue interference with interstate commerce by State tax legislation, and still provide sufficient leeway to the States to allow them to reach those foreign corporations doing an appreciable interstate business. At any rate, I wish to express my gratification as a Virginian in having a State tax official who evidently understands this threat to the business community and to the proper development of interstate commerce throughout the country.

I realize that many members of the Senate Finance Committee are aware of the urgency of the situation, but I would like to plead again for prompt action in presenting a workable bill to Congress for its consideration in this session.

Very truly yours,

H. R. HUDSON.
Executive Vice President.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, July 21, 1959.

HON. HARRY F. BYRD,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the Department's views on S. 2213, to limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce, S. 2281, to prescribe limitations on the power of the States to impose income taxes on business entities engaged in interstate commerce; and Senate Joint Resolution 113, to bring about greater uniformity in State taxation of business income derived from interstate commerce, to establish a Commission on Taxation of Interstate Commerce, and for other purposes.

BACKGROUND OF THE PROPOSED LEGISLATION

Although the subject bills were precipitated by the recent 6-to-3 decision of the U.S. Supreme Court in the *Portland Cement* and *Stockham Valves* cases,[1] they concern an old problem, one nearly as old as State income taxation itself.

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[1] *Northwestern States Portland Cement Company* v. *State of Minnesota; T. V. Williams, as State Tax Commissioner* v. *Stockham Valves and Fittings, Inc.*, 358 U.S. (1959). 79 Sup. Ct. 357 (1959).

State taxation of income originating in interstate activity was bound to raise jurisdictional issues in a Federal system under which a multiplicity of taxing authorities are free to pursue separate policies and practices with respect to most aspects of income taxation, indeed, even with respect to the exercise of the power to tax net income. About three-fourths of the States and a number of cities currently tax the net income of corporations.

Under the early income taxes, States based their taxing jurisdiction over the income of an out-of-State corporation on the presence of some permanent establishment within their borders, such as a manufacturing facility or a warehouse with inventories. However, as the relative importance of interstate business increased and the need for additional revenue to finance record increases in governmental expenditures became more pressing, State legislatures and tax administrators reached progressively deeper and deeper into income from interstate activities to augment their tax bases. In this process, questions concerning State taxing jurisdiction over net income originating in interstate commerce became more numerous and complex.

Spokesmen for the States have tried, to be sure, to preserve some semblance of order in this maze of taxing activity by urging the uniform statute approach, urging the States to adopt voluntarily substantially identical rules of taxing jurisdiction. Organizations of Governors, tax administrators, tax practitioners, and scholars have been considering some aspects of this problem almost continually for over a quarter of a century. Their failure to find an answer acceptable to all or even a majority of the States, despite repeated efforts, is probably explained by the fact that the States' divergent economies prescribe conflicting viewpoints and remedies. The manufacturing States logically support rules of taxing jurisdiction based on the situs of property and employment; the nonindustrial States would rely heavily on the sales transaction as the criterion of taxability.

On occasions in the past proposals have been made for Federal legislation in this area. However, such legislation has not been enacted. Mr. Justice Clark, speaking for the majority of the Court in the *Portland Cement* and *Stockham Valves* cases described the situation graphically:

"Commerce between the States having grown up like Topsy, the Congress meanwhile not having undertaken to regulate taxation of it, and the States having understandably persisted in their efforts to get some return for the substantial benefits they have afforded it, there is little wonder that there has been no end of cases testing out State tax levies."

In this way, the task of laying down rules to govern State taxing jurisdiction over interstate income has fallen largely on the courts. This process has now culminated in the *Portland Cement* and *Stockham Valves* cases decided on February 24, 1959. In these cases the majority of the Court held that where a foreign corporation comes into a State solely to solicit sales, that State may tax its income "provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming a sufficient nexus to support the same."

While the decision is far-reaching, its full import is unclear and will doubtless occasion debate for some time. Clearly, it has not disposed of the problem. The Court sanctioned taxation in the two specific cases before it, but provided no general guidelines as to how much farther, if at all, the States might reach. Moreover, the fairness of the formulas used by the two States for apportioning income to the taxing States was not tested.

The decision, as you know, has caused considerable consternation in the business community, particularly among small and medium-sized corporations. Some envision an intensification of multiple State taxation of corporate income. Others, on the other hand, believe that by requiring a tax from the large interstate corporations, the decision will tend to reduce the present discrimination against the small intrastate corporation which in the past could not use the cloak of interstate commerce to escape taxation. Fears have been expressed that the remaining quarter of the States will now be impelled to adopt corporate income taxes; that the "marketing" States will now seek to assign greater weight to sales in their apportionment formulas; and that this will increase the likelihood of a corporation being taxed on more than 100 percent of its income. While there is some indication that some States plan to move deeper into the taxation of income from interstate commerce, others have publicly declared that the decision will have no material effect on them.

The small and medium sized businesses are concerned also with the expense of complying with the reporting requirements of an increasingly larger number of States. They hold that the decision weakens their relative competitive position with the nationwide corporations which have long been accustomed to paying taxes in many States and whose large tax liability renders cost of compliance relatively small.

Some concern has been expressed also for the impact of the decisions on Federal revenues, since all increases in taxpayments to the States and expenses of complying with the State tax laws are deductible for Federal income tax purposes.

These initial reactions to the Court decision may overstate their impact. More intensive taxation of income from interstate trade and commerce would doubtless handicap some transactions even if it did not visibly interfere with the flow of trade. The decision has certainly focused widespread attention on State taxation of income from interstate commerce.

The immediate issue raised by this development in general and by the pending bills in particular, is whether Federal legislation is now indispensable and desirable. An affirmative finding in turn would raise the question of what such legislation should provide.

DESCRIPTION OF THE BILLS

The subject bills would define the limits of State taxing jurisdiction by enumerating the kinds of business activities which constitute a "sufficient nexus" to bring a company under the taxing jurisdiction of a State.

S. 2281 would prohibit a State from taxing the income derived from a trade or business by a person engaged in interstate commerce within its borders where such person does not have or maintain an office, warehouse, or other place of business within the State and does not have an officer, agent, or representative in the taxing State who has an office or other place of business there. It would define the terms "agent" and "representative" to exclude an independent broker or contractor engaged independently in soliciting orders in the State for more than one seller and who holds himself out as such.

S. 2281 would further provide that after its enactment a State may not assess or collect any income tax or make any levy with respect to such a tax if the imposition of such a tax would have been prohibited under the provisions of the bill because the minimum activities required by it were absent.

S. 2213 and Senate Joint Resolution 113 contain a somewhat similar minimum activity limitation on State taxing power. They would deny the power to tax net income derived exclusively from the conduct of interstate commerce solely by reason of the solicitation of orders in the State if a stock of goods, plant, office, warehouse, or other place of business were not maintained within the State.

Under Senate Joint Resolution 113 this limitation would have only temporary application for taxable years ending after 1958 and beginning before 1961.

Senate Joint Resolution 113 would provide also for the creation of a Commission composed of five individuals from private life to be appointed by the President by and with the advice and consent of the Senate for the purpose of formulating legislative recommendations. The Commission would be directed "to formulate and recommend to the Congress a concrete proposal for legislation providing for the establishment of uniform standards which the States would be required to observe in imposing income taxes upon businesses engaged in interstate commerce."

PROS AND CONS OF THE FEDERAL LEGISLATION

The taxing activities of State governments admittedly concern the Federal Government. It is established Federal policy, supported both in the executive and legislative branches, to facilitate the States' tax efforts. The Executive in recommending tax legislation and the Congress in enacting it, give careful consideration to State and local interests in the particular tax areas. The Congress has authorized the Internal Revenue Service to provide various kinds of assistance to State and local governments in the administration of their tax laws. On occasions special legislation has been enacted for the specific purpose of relieving tax competition between States. Measures and policies which contribute to the effectiveness of State tax measures contribute to the solution of national problems by relieving the burden on the Federal Government.

Tax conflicts between States are detrimental to business, interfere with the development of national commerce, encourage unnatural business methods, and in these ways handicap national economic growth.

These considerations support the case for Federal legislation to bring order into State taxation of income derived from interstate commerce. In a sense, the opinion of the Court in the *Portland Cement* and *Stockham Valves* cases constitutes an invitation to the Congress to move in this direction. Mr. Justice Frankfurter was explicit on the need for legislation in his dissenting opinion:

"The problem calls for solution by devising a congressional policy. Congress alone can provide for a full and thorough canvassing of the multitudinous and intricate factors which compose the problem of the taxing freedom of the States and the needed limits on such State taxing power. Congressional committees can make studies and give the claims of the individual States adequate hearing before the ultimate legislative formulation of policy is made by the representatives of all the States. The solution to these problems ought not to rest on the self-serving determination of the States of what they are entitled to out of the Nation's resources. Congress alone can formulate policies founded upon economic realities, perhaps to be applied to the myriad situation involved by a properly constituted and duly informed administrative agency."

On the other hand, however, both the Congress and the Executive have a traditional bias against interfering in State affairs. Their historical inclination is to let the States resolve their problems in their own ways, through the exercise of their taxing sovereignty within the framework of the limitations prescribed by the Constitution. This consideration argues against Federal legislation to limit the taxing power of States.

The issue whether Federal legislation is now necessary is beclouded by the lack of unanimity among the States themselves. While most States would welcome the establishment of order in the rules governing their taxing jurisdiction over income originating in interstate commerce, they would have difficulty in agreeing on the form those rules should take. The trading and consuming States are likely to consider the minimum activity limitations on taxing jurisdictions contained in the three subject bills unduly restrictive of their taxing powers. The large manufacturing States are likely to voice the contrary view.

These minimum activity limitations would effectively prevent the taxation of a corporation's income in a State in which it did not have the kind of permanent establishment specified. Their adequacy and fairness will doubtless be debated in testimony before your committee. Since the proposed legislation contains no provision relating to the apportionment of income between States, its enactment would not in itself prevent a corporation from being taxed on more than 100 percent of its income. These considerations suggest that the proposed legislation is likely to prove to be controversial. An evaluation of the scope and import of the controversy will necessarily have to await a crystallization of the States' views and arguments.

POSITION OF THE TREASURY DEPARTMENT

The Department does not support enactment at this time of legislation to prescribe State tax jurisdiction over income derived from interstate commerce. It reserves its position on the need for such legislation and on its content to afford the States adequate opportunity to reexamine the problem in light of the recent court decision and to consider the possibility of developing a solution for it without congressional assistance. While the Department would interpose no objection to the creation of a temporary Commission on State Taxation of Interstate Commerce along the lines provided by title II of Senate Joint Resolution 113, it believes that this problem can be resolved without the creation of a Presidential Commission for this specific purpose.

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

Sincerely yours,

DAVID A. LINDSAY,
Assistant to the Secretary.

ASSOCIATED INDUSTRIES OF NEW YORK STATE, INC.,
Albany, N.Y., July 30, 1959.

CLERK, FINANCE COMMITTEE,
U.S. Senate, Washington, D.C.

DEAR SIR: On June 19 this association filed with the U.S. Senate Select Committee on Small Business the attached memorandum in connection with State taxation of interstate commerce. At a meeting of our board of directors on July 21, we petitioned Congress to exercise its constitutional power immediately.

It would be appreciated if you would enter this material in the Senate Finance Committee's record, inasmuch as we were unable to be represented during the Senate Finance Committee's hearings.

Extra copies are enclosed.

Sincerely,

GWYN THOMAS,
Director of Governmental Affairs.

MEMORANDUM RE STATE TAXATION OF INTERSTATE COMMERCE BY ASSOCIATED INDUSTRIES OF NEW YORK STATE, INC.

This memorandum is filed on behalf of Associated Industries of New York State, Inc., which represents in excess of 1,500 employers in New York State principally engaged in manufacturing. The great majority of these are small businesses.

The recent decisions of the Supreme Court in the *Stockham Valves* case, the *Northwestern States Portland Cement* case, and *Brown-Forman Distillers Corporation* case, which permit the States constitutionally to tax income generated within the State even though arising from interstate commerce, is of serious consequence to most of our members. These decisions open the door to a multitude of State taxes and administrative burdens against which our members are powerless to protect themselves except by contracting their operations to the confines of New York State.

Any thoughtful observer who is at all conversant with the problems and limitations of small business will appreciate the practical impossibility of keeping abreast of the tax laws in 50 States and with the amendments which are made annually to those laws. The problem of keeping books and records and making returns in all of these States, the expense of engaging local counsel and accountancy services, the burdens incident to the audit by innumerable tax jurisdictions, make interstate commerce untenable for most small businesses. One need only refer to the numerous State laws requiring a corporation subject to taxation within a State to present its books for audit on demand of the revenue authorities or, in the alternative, to permit an audit at its home office by State auditors who will travel there at the taxpayer's expense to realize the absurdity of the consequences of the Supreme Court's decisions. Theoretically a small business might be subjected to audits by the taxing authorities of 50 States whose auditors would travel to its home office at the corporation's expense. The Supreme Court has opened the doors not only to restraints on interstate commerce but to prohibitions against engaging in such commerce at all.

It appears to us that the Supreme Court's decisions have created a situation requiring Congress to exercise its constitutional power over commerce among the States. We would hope that in exercising this power Congress would take into account the practical considerations so well illuminated by the dissenting opinion of Mr. Justice Frankfurter. It is not enough to deal in high-sounding phrases, such as interstate commerce must pay its own way. It is quite another thing to square such slogans with the realities of our complex economy.

We seriously doubt that the revenue which would be produced by universal application of the principles laid down in these Supreme Court cases would substantially exceed the administrative costs of the States in pursuing thousands of small taxpayers, most of whom would not owe more than a few dollars in tax each year, plus the aggregate administrative burden which will have to be borne by thousands of independent taxpayers.

We hope that Congress will elect to exercise its power over interstate commerce to prohibit taxation by the States of the proceeds from interstate commerce except in those cases where the corporation of its own volition is present in the State through the situs of plant or inventory.

Representation within a State only by sales personnel or the mere shipment of goods to customers within a State should not be permitted as a factor to create tax liability. These functions are entirely related to interstate commerce—how else can interstate commerce exist.

At the very least Congress should require the use of a uniform allocation formula to prevent the taxation of the same income by two or more jurisdictions. Voluntary efforts over the years to produce such a formula have proved fruitless because of the tendency of manufacturing States to slant their formulas most heavily against manufacturing and on the part of agricultural States to slant their formulas against sales. If irreparable harm is not to be done to the economy, it is our view that Congress must move promptly to alleviate the chaotic situation which the Supreme Court has created.

(Whereupon, at 1:20 p.m., the committee adjourned.)

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