REVENUE ACT OF 1934

HEARINGS

BEFORE

THE COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7835

AN ACT TO PROVIDE REVENUE, EQUALIZE TAXATION, AND FOR OTHER PURPOSES

MARCH 12 TO 15, 1934

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REVENUE ACT OF 1934

MONDAY, MARCH 12, 1934

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

The committee met, pursuant to call, at 10 a.m., in room 312, Senate Office Building, Senator Pat Harrison presiding.

Present: Senators Harrison (chairman), George, Walsh, Barkley, Connally, Gore, Costigan, Bailey, Clark, McAdoo, Byrd, Lonergan, Reed, Couzens, Keyes, Metcalf, La Follette, and Walcott.

The committee had under consideration H.R. 7835.

The CHAIRMAN. The committee will come to order. I would like to state to those who appear before the committee that we are going to have three mornings of hearings. There are many witnesses, consequently everyone must be very brief. If you have a brief to file, with a short statement, we will appreciate it.

We have copies of the hearings that were conducted before the Ways and Means Committee. We are going back into executive session, your briefs will receive consideration, and I hope the witnesses will cooperate with the committee and make their explanation as short as possible. If there is anyone in the audience now who merely wants to file a brief, you may do that, thus saving your time and the committee's time.

GENERAL STATEMENTS

Mr. David A. Gaskill, Cleveland, Ohio, representing the Cleveland Chamber of Commerce.

STATEMENT OF DAVID A. GASKILL, CLEVELAND, OHIO, REPRESENTING THE CLEVELAND CHAMBER OF COMMERCE

Mr. GASKILL. First, as to taxation of gains and losses, sections 117 and 23 (j). The bill as it passed the House contains provisions to the effect that losses may be deducted only to the extent of gains. That, as a revenue producer, should be efficacious, because unquestionably large amounts of losses are deducted, with the resulting decrease in the tax. It is noted, however, that in a case of a sale that is made in December at a loss there may be no benefit from that loss; yet a gain may be realized from the sale in January of the next year, with the result that that gain would be subject to taxation. We make the suggestion that the excess of losses over gains be carried forward to offset gains, if any, in the succeeding years. That would not reduce the income that is applicable to the year 1934. It would affect the income from tax returns filed covering the year 1935.

There is also a plan in the bill to tax the amount of gain, or to determine the amount of the gain, by reference to the period during which the property was held. In the case of property that is held 2 years or more, they would tax 60 percent of the gain and allow 60 percent of the loss. Our organization takes the position that that would unduly tax property held just over 2 years and would serve to prevent sales, thereby permitting security prices. We feel that the present plan of making the dividing date 2 years, 12½ percent of the gain, when the property is held more than that, is preferable to the plan as contained in the bill as it passed the House.

Senator REED. You realize that the present plan gives no relief to the smaller taxpayer, do you not?

Mr. GASKILL. No; I don't understand that it gives no relief to him. He gets a benefit from his gain. It is true he does not get as much relief as the more wealthy taxpayer.

Second. Personal holding companies, section 102. The bill, as passed by the House, contains a provision to tax the undistributed, adjusted net income of personal holding companies.

The CHAIRMAN. I hope the experts will make a note of these objections, so the committee can get the benefit of them. Then we can give them consideration.

Senator REED. As to personal holdings?

Mr. GASKILL. As to personal holding; yes, sir.

Senator REED. What is your point about that?

Mr. GASKILL. That while in its endeavor the plan is all right, if personal holding companies are used to escape taxation, some reasonable measure to prevent it is satisfactory, but the provision as passed by the House would seem to place a burden upon companies that I do not think the House ever intended to punish. For example, if a coal-mining company which had leased its property, and therefore had its income from royalties of debts, or a bond issue, it might be subjected to that penalty.

The CHAIRMAN. You would not apply that to future loans, would you, but just on past-due obligations?

Mr. GASKILL. I think it should be made to apply to past loans, sir.

The CHAIRMAN. To past loans?

Mr. GASKILL. Yes. An office building which was required to rehabilitate its building, to use earnings for capital repairs or replacements, might be subjected to the provisions of it. A number of companies, I understand, in these times, have debenture issues outstanding, or bond issues, which deprives them of the right to pay out dividends until they have paid their debts. It would make those companies subject to this provision.

The CHAIRMAN. I may say to you that the committee is giving that consideration. Those suggestions have already been made.

Mr. GASKILL. Thank you, sir.

The next, as to exchanges and reorganizations: The bill, as passed by the House, took out the so-called "parenthetical clause", and limits the definition to statutory mergers and consolidations. We take the position that with that eliminated, the bill is now indefinite.

and a substantial amount of litigation will be necessary in order to find out just what is and what is not a statutory consolidation or merger.

The CHAIRMAN. You do not think this simplifies any proportion of reorganization?

Mr. GASKILL. I do not, sir. If the present provision is objectionable—and I do not think it is; but if it is—I think they should attempt to substitute the omission. When you are planning a reorganization—and reorganizations are quite necessary in these days—it is necessary, as far as possible, to know in advance what your tax liability is going to be, and I am afraid that lawyers and accountants and business men will have great difficulty in finding out whether their reorganization is going to be taxable or nontaxable, under the bill as drawn.

Second, the House has taken out the provision permitting a tax-free distribution of stock in connection with a reorganization. That may be necessary and feasible in a few instances to prevent tax avoidance, and that is the reason it was taken out. However, it will unduly interfere in a great number of legitimate business transactions. For example, it is sometimes necessary to split off a branch of the business into a separate corporation and to give the stock of the new corporation to the stockholders of the old corporation. That is what that provision was in there for. It is quite often necessary to employ just such a reorganization. Clearly, in such a case as that, that is, the ordinary instance—there is no element of tax avoidance. There should be no tax upon the stockholders because of the receipt of their stock, as they get no cash out of which they may pay a tax.

We also question whether there has been as much avoidance, by virtue of the provision, as is claimed in the report of the Ways and Means Committee. The report that was submitted by the Subcommittee of the Ways and Means Committee contains certain examples. There are three of them, and they relate to those. Example no. 7 on this, in our opinion, is not correct. It states that there is no tax in that case. We think that there is a tax in that case. The other two are cases where we do not think there should be any tax anyway—simply paper profits, where you have no money with which to pay a tax; and we take the position in that case, no tax should be paid. The brief that I will leave with the committee discusses that at greater length.

Next, "Consolidated returns." Our organization takes the position that the additional 1-percent premium for filing consolidated returns is not justified.

The CHAIRMAN. They would rather have that than the prevention of consolidated returns, though, would they not?

Mr. GASKILL. Well, we haven't regarded it as a trading proposition.

The CHAIRMAN. If the two propositions were put up to you, as to whether you were going to accept that provision and were willing to carry out that provision, or one abolishing consolidated returns, which do you think would be preferable?

Mr. GASKILL. We should rather have it as it is now, sir. But at the same time we feel that the provision to abolish consolidated returns would not be fair either to the Government or to the taxpayer.

Distributions in liquidation, section 115 (c). The bill, as passed by the House, provides that distributions in liquidations, if they result in a gain, shall be taxed at the full normal and surtax rate without regard to the time when the stock is held. Our organization takes the position that in a distribution in liquidation you have the essential equivalent of an exchange. It resembles that more than anything else, and we feel that there is no justification for taxing it at the full rates. However, the bill provides that in case a loss is realized upon a reorganization, that is subject to the percentage arrangements, as in the case of gains. In other words, if a man held stocks in 2 corporations for 5 years, and he had a gain on one and a loss on the other, in his same return and for the same year he would be required to pay 100 percent on the one—that is, the full tax—and the other he could only deduct from that gain 40 percent of it. That, I think, is obviously unfair, and if you are going to treat gains from realizations from liquidations in one way, losses from realizations from liquidations should be treated the same..

The bill as passed by the House extends the statute of limitations on assessments from 2 years to 3. Our organization takes the position it should be 2 years; that the uncertainties of tax liabilities are difficult and a regretable incident of our income-tax laws, and that they should not be further extended. They seem to be auditing returns and getting along very well on the 2 years. They are caught up with them after a fashion. There is some delay, of course, but we think that after a year it would be all just the same as if it were 2 years. If it is true that sometimes it is necessary to execute a waiver and extend a case beyond the 2-year period, that is not a hardship upon the taxpayer or the Government in particular cases. I think that it takes care of that situation very nicely.

The same is true of refunds. We agree with the provision that the period of limitations upon refunds should be the same as limitations upon additional assessments. We would make this suggestion, however, that that same principle be extended further and that a taxpayer be given the right to file a claim for a refund during the period where the Government has an additional period in which to make additional assessments; for example, where it is necessary to give a waiver—and I think those waivers are more often really at the suggestion of the Treasury, rather than at the suggestion of the taxpayer—but during the period where the statute of limitations is still in force, by reason of a waiver, we think a taxpayer should have a right during that period to file a claim for refund. The same thing is true during the period that follows the issuance of a 60-day letter, where the Treasury has an additional 60 days within which to make an assessment. During that period the Treasury could send out a letter at the last moment, just before the statute of limitations expired, and during that period could make an additional assessment, and the taxpayer could not obtain a refund of these though he filed a petition with the board, because the filing of the petition under the new bill would be after the date when he might claim a refund.

On the tax-rate structure we take the position that the new plan of decreasing the normal tax and increasing the surtax, or, rather, extending it to the lower brackets, is unjustified. Admittedly, it will

produce more revenue. We think that the income, having once been taxed to the corporation, is deserving of a higher exemption than 4 percent when again taxed in the hands of the shareholders.

Interest on money borrowed to purchase tax-exempt securities, section 23 (b). That affects banking institutions and denies them the right to deduct interest paid on deposits when the deposits are used in carrying tax-free securities. We draw attention to the fact that it is difficult or impossible to ascertain whether particular moneys are used, whether it is the capital of the bank, or whether it is the deposits that are used for the purchase of these taxable securities.

Senator WALSH. Hasn't that subject been dealt with by the committee?

The CHAIRMAN. The committee has not finally passed on it, but that matter has been presented, and we are giving it consideration. We will be glad to get your brief on that Mr. Gaskill.

Mr. GASKILL. This allowance of losses between members of a family: We think that the definition of a "family", as contained in the bill passed by the House, is too broad. It would interfere with legitimate transactions between members of the same family, at most I think it should be limited to a man and his wife, or perhaps to a man and his son or daughter, but not to brothers and sisters, ancestors and lineal descendants, as covered by the bill which passed the House.

I have other points, but I will make only one more. The rest will be covered in the brief, because I do not want to encroach upon the time of the others here. "Federal estate taxes, prior taxed property." That is an extremely technical point. The bill contains an entirely worthy endeavor to prevent the exemption of property from taxation where the death of one decedent occurs more than 5 years after another. It has been the plan of estate tax laws to exempt from taxation a property which would otherwise be taxed in the estates of two decedents within a period of 5 years. In the way the present law is drawn it is possible for one decedent to die, then another decedent, and the third decedent might die 9 years after the first, and yet his property would be exempt from taxation. It is entirely proper to prevent that, and to limit it to 5 years. However, the way the bill is drawn, as it passed the House, it is possible for the third decedent to die within, say 3 years or even 2 years from the time of the death of the first one, and you would tax it again. It is a matter of draftsmanship.

Senator CONNALLY. It would be inherited again, would it not? Someone else would get it, wouldn't he?

Mr. GASKILL. Yes, sir; but the property would be taxed more than once.

Senator CONNALLY. We are not taxing the property. We are taxing the person that gets it.

Mr. GASKILL. You levy a tax on the decedent's estate.

Senator CONNALLY. Surely. He takes it, charged with that.

Mr. GASKILL. But the point I am making is that under certain conditions, the way it is now, it is possible for the same property to be taxed, or the tax computed upon the same property more than once within 5 years.

Senator CONNALLY. Why not? If there is more than one death in 5 years, why should we not tax it more than once?

Mr. GASKILL. That, of course, would represent practical confiscation of property.

Senator CONNALLY. We are not dealing with confiscation.

Senator CLARK. We are taking the property inherited.

Senator CONNALLY. That is the trouble with a lot of you tax fellows. You look on a dollar as the only thing in the bill. We are taxing the man's right to inherit it or to transmit it, which is a privilege. If it vests 2 or 3 times, we should tax it 2 or 3 different times.

Senator REED. It is a very unusual case, is it not, when two successive inheritances occur within the 5-year period.

Mr. GASKILL. I do not think it is, sir. For instance, there may be an elderly couple. The man dies, then the wife; and when the wife dies, it would be inherited by the son. Then, if the son should die, there would be a double imposition of the Federal estate tax within a period of a few years. It is not often, but our organization thought that the bill, as it passed the House, had no intention of assessing two taxes in the event of the contingency stated.

Senator REED. The committee hasn't reached that, however, in its study of the bill. In fact, what the House does is to permit only one tax-free inheritance; isn't that so?

Mr. GASKILL. Within 5 years.

Senator REED. Within 5 years?

Mr. GASKILL. That is right, sir. I have a report of our committee which I desire to present at this time for the record.

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

(The report referred to is as follows:)

To the Board of Directors the Cleveland Chamber of Commerce:

GENTLEMEN: Your committee on Federal taxation has given consideration to the revenue bill of 1934, H.R. 7835, as passed by the House of Representatives on February 21, 1934.

The report of the Committee on Ways and Means accompanying H.R. 7835, states that the "primary purpose of the bill is to increase revenue by prevention of tax avoidance." Your committee is in favor of any changes in the Federal tax laws which will serve to prevent unjust avoidance of the tax. It is thought, however, that the Committee on Ways and Means, under the guise of preventing "tax avoidance", has endeavored to raise more money from the income tax by means unjust to American taxpayers.

The yield of the income tax necessarily varies with the prosperity of the country and the reduction in this yield comes at a time when the need for Government revenue is the greatest. It is thought, however, that the revenue requirements do not justify an unfair and unjust income-tax burden upon certain taxpayers. The report of the Committee on Ways and Means states that the revenue bill and certain changes in administrative practice will produce additional revenue in the amount of $258,000,000. If it is necessary to raise this additional amount to pay for the activities of Government, Congress should have the courage to provide the money from other sources.

The occasion for the views so stated will be apparent from the comments made below concerning certain of the proposals now contained in the revenue bill of 1934.

1. TAXATION OF GAINS AND LOSSES

The congressional committee has recommended that gains from the sale of property be taxed, but that losses from such sales be allowed only to the extent of gains. This proposal would require a payment of tax if a taxpayer's gains exceed his losses; but if the losses exceeded the gains, the taxpayer would not be allowed to deduct the excess losses from his ordinary income. Thus a taxpayer may be called upon to pay a substantial tax upon his ordinary income without receiving any deduction for genuine losses he has sustained from the sale of property. If Congress has been correct in its assumption that gains

from sales represent income, then losses from sales should represent deductions from income. The one-sided arrangement now proposed by the congressional committee is obviously unfair.

The congressional committee has also recommended a plan to determine the amount of the profit partially by reference to the period during which the asset was held before sale. The percentage of profit to be taxed depends upon the period of time during which the property was held, ranging from 100 percent if the asset has been held for not more than 1 year to 40 percent if the property has been held for more than 5 years. Previous plans based upon the same theory have been rejected by Congress and the present plan likewise should be rejected. If, under this plan, an asset is held more than 2 years before the sale, but not less than 5 years, 60 percent of the profit would be taxable at the full rates of normal and surtax. Considering the present and proposed high rates, such a provision in many cases would prevent the sale. Moreover, it is believed that the plan would tend to complicate preparation of income-tax returns. The present plan of taxing such "capital gains" at a flat rate of 12½ percent, while, perhaps, not perfect, seems preferable to the one proposed.

In the event that the plan for taxing gains as set forth in the revenue bill is adhered to by Congress, provision should be made to the effect that losses in excess of gains, which are disallowed for any year, could be deducted from similar gains realized during 2 or 3 succeeding years. This provision would lend some measure of justice to an otherwise unfair provision of the law.

2. EXCHANGES AND REORGANIZATIONS

In the various revenue acts since 1918 Congress has endeavored to prevent the injustice that would necessarily result if taxpayers were called upon to pay an income tax in cash from theoretical or paper profits resulting from certain specified types of exchanges of property such as a substitution of stock or securities upon the reorganization of a corporation. Provisions to this effect have undergone a constant improvement. These same provisions have prevented the claiming of losses upon such transactions. The theory of the present laws, developed after years of effort, is that the profit or loss is deferred in such cases until there is some actual realization upon which a tax could be equitably based.

The new revenue bill proposes to restrict the definition and scope of so-called "corporate reorganizations" which have heretofore been excluded in determining gain or loss. The questions so presented are extremely technical, and a detailed discussion will be avoided. Your committee has considered these provisions in detail, however, and has reached the conclusion that the proposed change is a backward step. It is thought that the provisions of the present law do not permit tax avoidance to any considerable extent, and that the Committee on Ways and Means has been misled in conclusions to the contrary. Hypothetical cases set forth in the report of the subcommittee of the Committee on Ways and Means present instances which are not likely to happen and which, moreover, do not present any real injustice to the Government. Hypothetical cases 6 and 8, upon which one of the changes is based, discloses a misunderstanding of the present law and are incorrect.

It is also pointed out that the change proposed in the definition of reorganizations will bring about great confusion in the interpretation of the law, and that the application of the provision to specific instances will result in extensive litigation with the Government.

Generally speaking, the changes proposed will prevent the consummation of transactions which are entirely proper and which in fact are necessary and advisable during a period of reconstruction. The prevention of such transactions does not produce any revenue for the Government and creates unreasonable interference with the proper transaction of legitimate business. If it is true that present provisions have permitted "avoidance" of tax in rare instances, there is still not occasion to punish the great majority of innocent taxpayers who have dealt fairly with their Government.

3. TAX-RATE STRUCTURE

The bill proposes to increase the surtax and to lower the normal tax. No saving in tax, however, is intended for any class of taxpayers, except that an earned-income credit is provided. Changes in the rate structure are intended to increase the tax rate applicable to dividends subject only to surtaxes. This

is done by a rather ingenious extension of the surtax rates which apply not only to dividends but to other income. The increase in the surtax is intended to counterbalance the reduction of the normal tax rate, with the result that a salaried man and a taxpayer receiving ordinary income will pay substantially the same amount of tax as under the present law.

Dividends have been exempted from the normal tax on the theory that the corporation has already paid one tax, and that double taxation is avoided to some extent by exempting the dividends from normal tax. There is an injustice even under the present law, since the corporation rate is 13¾ percent and the highest bracket of normal tax is 8 percent. The proposed change would reduce this saving to 4 percent by prescribing a flat 4 percent normal tax rate. The difference between this and the corporation rate is 9¾ percent. Your committee sees no reason for discriminating to this extent against incorporated business. Taxpayers who transact business in the corporate form should not have this unjust additional burden thrust upon them.

4. CONSOLIDATED RETURNS

The bill proposes to require an additional income tax of 2 percent for the "privilege" of filing consolidated returns. Your committee sees no justification for this proposal. Consolidated returns are necessary in many cases to reflect properly the net income of a consolidated group of corporations. In view of the complex structure of our State laws, it is now necessary for many incorporated businesses to have branch or subsidiary corporations. There appears to be no justification for the increase thus proposed.

It should be noted that in the act of 1932 an additional tax of three fourths of 1 percent was imposed upon consolidated net income, and this additional tax was increased to 1 percent by the National Recovery Act. Your committee, accordingly, is opposed to the provisions contained in the present law and believes that, in no event, should the tax on consolidated returns be increased.

5. PERSONAL HOLDING COMPANIES

The revenue bill proposes a tax of 35 percent upon the "undistributed net income" of "personal holding companies."

The report of the Committee on Ways and Means upon which this provision is based, appears to assume that personal holding companies are utilized for the prevention of surtaxes on the shareholders. If such is the case, a reasonable measure to prevent the practice is justified, although it is thought that penalties in the present laws for the most part have been effective in discouraging it. It is thought that the proposal made by the congressional committee to cure the alleged evil, while perhaps efficacious for that purpose, if the evil exists, by its terms will serve to impose a severe hardship upon corporations for outside the class of those sought to be penalized. For example, if a coal mining company having five stockholders had leased its property to others and was required to use its lease income for payment of debts or a bond issue, previously contracted, the corporation would be subject to a 35 percent tax upon the greater part of the income applied to the payment of debts. A mortgage company whose income consisted almost entirely of "interest" and which was required to make capital expenditures upon properties acquired at foreclosure or which had found it necessary to pay off prior indebtedness against property, might be required to pay to the Government a tax of 35 percent upon such capital expenditures. A corporation owning and operating an office building or apartment houses, which derived its income from "rents", might be required to pay to the Government 35 percent of expenditures made by it for necessary capital improvements and for debt payments. It has been stated that certain corporations which would fit the definition of "personal holding companies" have been required by creditors or are required by provisions of bond issues to pay off debts before any dividends can be paid to stockholders. This provision of the proposed bill might well bankrupt such corporations. Certain holding companies find it necessary to make advances to their operating subsidiaries out of dividends received from other subsidiaries or from investment earnings, and the proposed provision, in effect, would require a heavy tax upon such advances. A patent licensing corporation, deriving its income from "royalties", might be effectively prevented from making capital expenditures which were vitally

necessary for its business and for the business of its licensees. Examples of absurd results might be mentioned. In fact, it is probably impossible to determine by legislative enactment just who is and who is not obtaining a tax advantage from a holding company. A definition in the law which would probably penalize one personal holding company for tax avoidance, might well apply to another corporation which the legislators have no thought of reaching. It is thought that no intrinsically accurate or just rule can be provided to fit all cases which would be an improvement upon that contained in the present revenue laws.

The present law provides a severe penalty for an unreasonable accumulation of profits to avoid surtaxes. It would seem that we have adequate tribunals to determine whether the accumulation has been unreasonable and as to whether surtaxes have been avoided in particular cases. If the Treasury Department is experiencing difficulty in applying the present penalty of 50 percent, it is not necessarily alarming, and may indicate that the situation does not require drastic steps. On the whole, it is thought that the present system, or some reasonable modification thereof, is adequate and that there is no occasion for placing a provision in the law which would approach confiscation of the property of many legitimate business enterprises.

6. INTEREST ON MONEY BORROWED TO PURCHASE TAX-EXEMPT SECURITIES

The bill provides that a taxpayer carrying on a banking business should not be permitted to deduct interest paid on deposits where such deposits are invested in tax-exempt securities. It is pointed out that it would be difficult, if not impossible, to determine whether a bank's capital or its depositors' money is used in the purchase of such securities. Aside from that, however, your committee considers that the proposal is economically unwise. Banks are large purchasers of Government securities. It is desirable to encourage such purchases by banks, not only to provide a market for Government bonds but to encourage liquidity of banks. In the interest of raising more money, the congressional committee has undertaken to tamper with an important phase of our economic situation.

7. DEDUCTION OF GIFT TAXES FROM NET INCOME

The bill provides that no deduction be allowed for the payment of gift taxes. Your committee considers it entirely proper to permit a deduction for gift taxes in computing net income. In such cases the one making a gift is required to pay out money to the Government for which he receives no benefit, and the net income is reduced to that extent.

8. DISALLOWANCE OF LOSSES AS BETWEEN MEMBERS OF FAMILY

The bill proposes to deny losses taken in case of sales or exchanges of property between members of a family or between a shareholder and a corporation in which the shareholder owns a majority of the voting stock. The term "family" is defined to include brothers and sisters, spouse, ancestors, and lineal descendants. It may be argued that there is little or no difference between a loss that arises from a transaction between a taxpayer and a member of his family and any other loss. It is thought, however, that in any event the definition of the word "family" is so broad as to discriminate unfairly against bona fide transactions between relatives.

9. ACCRUED INCOME AND ACCRUED DEDUCTIONS OF DECEDENT

The bill contains a provision requiring the income-tax return of a decedent to include amounts of income accrued up to the time of his death regardless of the fact that the income was not received at the time of death. The bill would likewise allow the accrual of deductions from income. It should be noted that in such cases the decedent necessarily had no opportunity to spend the income, and the amount so accrued is subject to death taxes. In view of these conditions, your committee sees no reason for placing additional burdens upon estates of deceased persons.

10. CASUAL SALE ON INSTALLMENT BASIS

The bill provides that the installment method of reporting income be limited to cases where the initial payments do not exceed 30 percent of the selling price. It is thought that the present limit of 40 percent is not too high. In all installment sales the taxpayer pays his tax, ratably, over the period when the cash is received, and in proportion to the amount of cash received. There is no "unreasonable postponement of tax" in such cases as the Ways and Means Committee suggests. On the contrary, the suggestion of the committee is obviously "unreasonable" in requiring the payment of tax on the full paper profit when only 30 percent of the purchase price is received during the year in which the sale is made.

11. DISTRIBUTION IN LIQUIDATION

Under all of the revenue acts, except the Revenue Act of 1921, the liquidation of a corporation has been treated as a sale of the stock. This, in the opinion of your committee, is the logical way of treating such transactions for, in practical effect, the stockholder has disposed of his stock and has received in place thereof the assets of the corporation.

The new revenue bill proposes to continue this principle, but provides that such gains should be taxed at the full rate of normal and surtax, rather than a capital gain, regardless of how long the stock has been held.

Your committee considers that the proposal is so made entirely unjust and unwarranted. The fact that the surplus of a corporation, if distributed as an ordinary dividend, might subject the stockholder to the higher surtax rates applicable to ordinary income is no indication that tax has been avoided. The transaction is essentially an exchange or a sale and the profit thereon does not escape taxation.

A still further injustice is presented in the proposal to consider losses arising from the liquidation of a corporation as capital losses, which would require a deduction of the amount of the loss according to the length of the period during which the stock was held. If a man held stock in two corporations which he had owned for over 5 years and liquidated both corporations, he would be taxed on the full gain from one transaction, but would be permitted to deduct from that gain only 40 percent of the loss sustained on the other transaction. This proposal is so obviously unfair that it requires no further comment.

12. STATUTE OF LIMITATIONS—ASSESSMENTS

The bill proposes to extend the statute of limitations from 2 years to 3 years. There is no conceivable justification for this measure. The expense and uncertainty of tax liability is a regrettable incident of our income-tax law, particularly since our Treasury Department contests so many unfounded cases. The Department should be required to make assessments of additional taxes within the shortest possible period. The present period of 2 years is adequate.

13. UNDERSTATEMENT OF GROSS INCOME

The bill proposes that the statute of limitations should not apply to cases where the taxpayer has understated his gross income on his return to the extent of 25 percent, even though there is no fraud with intent to evade the tax. The income tax is complicated and technical, and even our courts disagree upon questions as to what constitutes "gross income." Under the measure proposed, a taxpayer might be required to decide a doubtful question against himself or waive the benefits of the statute of limitations. The Government has an opportunity to check returns and if they are unable to discover such a sizeable omission during that period there is no good reason why they should be given until the end of time to assess the tax. If the return is honest, your committees sees no occasion whatsoever for extending the period of controversy.

14. STATUTE OF LIMITATIONS—REFUNDS

The bill proposes to limit the period of limitations applicable to claims for refund to the same period that is permitted the Government for assessing additional taxes. Your committee is generally favorable to the proposal except that, as stated above, the period should be 2 years and not 3 years.

It is thought, however, that this same principle should be further extended. The Ways and Means Committee has not given consideration to injustices in this respect which now exist against the taxpayer and which would continue under the limited proposal now made. In cases where a waiver is executed by the taxpayer and the Commissioner extending the period of limitations within which the Government may assess the tax, the taxpayer should have the right to file a claim for refund within the period as extended by the waiver. The right to file a claim for refund should also be extended to cover the period during which the statute of limitations is suspended by the issuance of a deficiency letter.

15. FEDERAL ESTATE TAX—PRIOR TAX PROPERTY

It has been the policy of the Federal estate tax law to avoid the taxation of property more than once in 5 years. Accordingly provisions have been included in the law to the effect that property taxed within that period shall be deducted from the gross estate of the second decedent. It has been discovered that due to the technical wording of the law, the same property might be deducted from the gross estate of the third decedent, even though the third decedent died more than 5 years after the date of death of the first decedent. A provision has been included in the new bill to prevent the last exemption in such cases, and your committee sees no objection to the principle of the change thus proposed. The change has not been carefully prepared and as presently drawn, the estate of the third decedent would be required to pay the tax upon such property even though the death occurred within 5 years from the date of death of the first decedent. Doubtless this was not intended, and the Senate should correct this mistake in order that the same property may not be taxed, under any contingency, more than once in 5 years.

The change thus suggested will become important in practical operation, as is apparent from the following example. If a man died and left his estate to his wife, an estate tax would be assessed against his estate. If in the next year the wife died and left the property to a son, the property would not be subject to tax under the present law, or under the amendment now proposed, for the reason that it had already been taxed within 5 years. If, however, the son died the next year, the son's estate would be called upon to pay a tax upon the property. The rates of the Federal estate tax extend to 45 percent and the taxation of any property twice, within 5 years, in certain cases, would amount to virtual confiscation of property. If any amendment is necessary, provision should be made that in no case will the same property be taxed within a period of 5 years, regardless of the number of deaths that occur.

16. FEDERAL ESTATE TAX OF FOREIGN REAL ESTATE

The bill proposes that the estate of an American citizen be required to pay Federal estate tax on property located abroad. It is pointed out that the country in which the property is located may assess tax upon the same real estate and the proposal would result in double taxation in such instances. The property does not pass it in the foreign country by virtue of any American law. The property is protected by the laws of the foreign Government, and that Government is within its rights in assessing death taxes thereon, just as the United States levies the Federal estate tax upon property located in this country and owned by a citizen and resident of a foreign nation. Your committee considers that the proposal is unwarranted unless credit is given against the tax for death taxes paid to the country in which the property is located.

17. SUGGESTED MEASURES FOR INCLUSION IN THE NEW REVENUE BILL

Your committee considers that certain amendments to the revenue laws are advisable, and suggests the following:

(*a*) *Deduction of charitable contributions by corporations.*—Your committee recommends that corporations be allowed to deduct charitable contributions within the 15-percent limitation now allowed to individuals. It is thought that such an allowance would be helpful in raising money needed for charitable and unemployment work. These payments, like taxes, contribute to the common good, and, at least under present conditions, are a proper charge against income. The law should be changed so as to permit deductions for such contributions by corporations.

(*b*) *Statute of limitations in cases of false and fraudulent returns.*—Your committee would add the suggestion that some period of limitations against assessment of tax be imposed in cases where there is a false and fraudulent return. The period should be longer than that applicable to returns which are not false and fraudulent. A period of 6 years is suggested. After a reasonable period all such cases should be considered and closed. We have limitations against criminal prosecutions and a similar limitation (6 years) should be made to apply to the tax liability on false and fraudulent returns. It is suggested that this provision be made applicable to returns for all prior years.

(*c*) *Transferee liability.*—Your committee recommends that a provision be placed in the law to deny to the Government the right to collect taxes from any single transferee beyond his fair proportion to the tax. A corporation might be dissolved and its property distributed to stockholders under the belief that all Federal taxes had been paid. If the Government should thereafter interpret some transaction as requiring the payment of a tax with the result that the stockholders should pay the tax to the Government, there is no good reason why such contributions should not be made proportionately. Under the present law, if one stockholder is financially responsible and the others are not, the Government could collect the entire tax from him, provided he received property of that value, thus imposing a penalty upon thrift and a hardship occasioned by financial irresponsibility of other persons.

Respectfully submitted.

David A. Gaskill, J. J. Anzalone, Carl H. Braley, M. R. Dickey, A. H. Garry, E. E. Jaynes, C. C. McConkie, Thomas J. Moffett, J. W. Reavus, Lee R. Shannon, Maurice F. Hanning, L. C. Weiss, committee on Federal taxation; by David A. Gaskill, chairman.

FEBRUARY 27, 1934.

Senator CONNALLY. May I ask Mr. Gaskill a question?

The CHAIRMAN. Yes.

Senator CONNALLY. Mr. Gaskill, you say you represent the Chamber of Commerce of Cleveland?

Mr. GASKILL. Yes, sir.

Senator CONNALLY. And you maintain a special tax department?

Mr. GASKILL. We have a committee on taxation; yes, sir.

Senator CONNALLY. And you keep some experts, do you, to figure out how you can keep the Government from taxing some of these favorite industries that belong to your chamber?

Mr. GASKILL. I would not say that, sir.

Senator CONNALLY. Why is it that you have an expert division on taxation, therefore? You were down here last year, weren't you?

Mr. GASKILL. I appeared before your committee when the 1932 act was under consideration.

Senator CONNALLY. What is your particular interest in taxation, or the chamber of commerce? Why should the Chamber of Commerce of Cleveland, or any other chamber of commerce, have any special interest in taxation over other citizens or interests?

Mr. GASKILL. We are trying to do our bit as good citizens, sir.

Senator CONNALLY. And your idea is that you can best do it by giving special attention to Federal taxation?

Mr. GASKILL. We have a committee of Federal taxation consisting——

Senator CONNALLY. Have you one on State taxation?

Mr. GASKILL. Yes, sir.

Senator CONNALLY. City taxation?

Mr. GASKILL. Yes, sir.

Senator COUZENS. Did you ever come down here to propose an increase in taxes?

Mr. GASKILL. I do not recall that we have, sir.
Senator COUZENS. No.
Senator REED. That is scarcely necessary with this Congress, is it?
The CHAIRMAN. Well, we thank you very much, Mr. Gaskill.
Senator CONNALLY. Just a moment. I am not through, Mr. Gaskill. You are not in favor of inheritance taxes at all, are you?
Mr. GASKILL. Yes; I am.
Senator CONNALLY. How is that?
Mr. GASKILL. Yes, sir; I am in favor of inheritance and estate taxes.
Senator CONNALLY. How much and to what extent—your chamber? You say you are representing the chamber of commerce? Do you mean to say the Cleveland Chamber of Commerce is advocating inheritance taxes and estate taxes?
Mr. GASKILL. We take no exception to the inheritance-tax rates.
Senator CONNALLY. I want to know what the views of the Cleveland Chamber of Commerce are. You are representing them. Do you mean to say that they are here advocating inheritance and estate taxes?
Mr. GASKILL. I do not mean to say that they are here advocating such taxes. The report that I have——
Senator CONNALLY. Well, what are they doing? Are they for or against it? Is the chamber of commerce, your client, for inheritance and estate taxes or are they against them?
Mr. GASKILL. I do not know, sir.
Senator CONNALLY. Well, you represent them now. You are here, expressing their views. You don't know? Why did you say a while ago that they were for it?
Mr. GASKILL. You asked me if I was. I said I was, sir; expressing my personal views.
Senator CONNALLY. It looks to me as though you would find out how your clients, whom you represent, stand on that. Now, isn't it a fact they are against them altogether?
Mr. GASKILL. No.
Senator CONNALLY. The Chamber of Commerce of Cleveland?
Mr. GASKILL. We have never gone on record against it, sir, and we have considered it many times.
Senator CONNALLY. Isn't it about time to go on record? You are here now, and I want to know your views. Is the Chamber of Commerce of Cleveland advocating inheritance and estate taxes, or are they opposing them?
Mr. GASKILL. You want to know if the chamber of commerce would be against inheritance taxes?
Senator CONNALLY. I want to know just what I asked you, and that is this: Is the Cleveland Chamber of Commerce in favor of the inheritance and estate taxes, or are they opposed to them?
Mr. GASKILL. They have not gone on record or considered the question, sir; but I would say that they would be in favor of them.
Senator CONNALLY. You would say that without knowing how they stand; is that right?
Mr. GASKILL. What I mean by that is, that they have not taken any exception to such taxes.

Senator CONNALLY. No; what you mean is to straddle the question, if you can. Now, will you please find out and let us know the views of the Cleveland Chamber of Commerce on the general subject of estate and inheritance taxes, whether they are for them or against them?

Senator REED. It is scarcely possible to do that within 24 hours, I should think.

Senator CONNALLY. There are telegraph and long-distance lines that go to Cleveland.

Senator REED. He cannot telegraph all of the members.

Senator CONNALLY. No; but he is representing them—who are you representing, anyway?

Mr. GASKILL. I am representing the Cleveland Chamber of Commerce.

Senator CONNALLY. Well, what is its view on that subject?

Mr. GASKILL. Outside of what I have said, I do not know, sir.

Senator CONNALLY. You do not know? Well, why are you up here representing them, if you do not know their views on taxation?

Mr. GASKILL. We considered the revenue bill, sir, rather carefully. We covered a number of points in our report.

Senator CONNALLY. You covered the matter of inheritance and estate taxes in this matter, because I heard you talking about it.

Mr. GASKILL. Yes, sir; we considered one phase of it.

Senator CONNALLY. And you were here, representing the views of the Cleveland Chamber of Commerce on that subject, and yet you do not know if the chamber is for an inheritance tax or against it?

Mr. GASKILL. No, sir. They have not considered the particular question that you asked in connection with this bill.

Senator CONNALLY. That is all.

Senator BAILEY. Don't you think the taxpayers have a right to be interested in the subject of taxation?

Mr. GASKILL. We do, sir, and that is our idea in coming down here and trying to help you if we can.

Senator BAILEY. Especially in these times, when we are spending money like drunken sailors?

Mr. GASKILL. I beg your pardon?

Senator BAILEY. I say, especially in these times, when we are spending money like drunken sailors. Don't you think the taxpayers might be heard on that?

Mr. GASKILL. I think the taxpayers should be, but I do not think we are spending money like drunken sailors.

Senator BAILEY. I understand why you don't say that. I am saying that.

Senator CONNALLY. I am exactly in the attitude of the Senator from North Carolina. I think the taxpayers ought to be heard, but I think when they send a man here to represent them he at least ought to know what their attitude on the subject is, or, if he does not know, let him find out.

Senator BAILEY. I differ from the Senator from Texas. I think they ought to be heard without being challenged or rebuked for being heard.

The CHAIRMAN. Well, Mr. Gaskill, I understand that your committee took this House bill and these were the salient features about which you desired to give your views to the committee?

Mr. GASKILL. Yes, sir.
The CHAIRMAN. And you have presented them in your brief?
Mr. GASKILL. Yes, sir.
The CHAIRMAN. The committee thanks you.

STATEMENT OF BENJAMIN C. MARSH, REPRESENTING THE PEOPLE'S LOBBY, WASHINGTON, D.C.

Mr. MARSH. I would like as much time as the representative of the Cleveland Chamber of Commerce, for the People's Lobby.

The CHAIRMAN. I hope you will finish it very quickly, and then put your brief in the record.

Mr. MARSH. I will try to. It will be difficult, though, but it is rather important.

May I first read the recent decision of the Supreme Court of the United States, a week ago today, as I recall?

> Neither property nor contract rates are absolute for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work harm. Equally fundamental with the private right, is that of the public to regulate it in the common interests.

That is the statement of Justice Owen J. Roberts in the decision upholding the New York State law fixing the price of milk, concurred in by Justices Hughes, Brandeis, Stone, and Cardoza.

Now, it is not a political issue, because, as I remember, 3 of the judges upholding this decision were appointed by Republican Presidents and 3 by Democrats.

I want to read, as bearing on this revenue bill, an editorial from the Scripps-Howard newspapers of January 27, entitled "Not Enough Taxes", as follows:

> The proposed tax bill is inadequate. The Ways and Means Committee of the House has done some useful tinkering with the law and in taxing unearned income more than earned income has revived a just principle. In ordinary circumstances this might be enough. But with the Government facing a $31,000,000,000 deficit, it is not enough. * * * A substantial and progressive increase all along the line is possible in this country on the basis of the experience of other countries.

And I will read a brief statement and request to put in certain supplementary data.

The tax system can make or break any recovery program.

The Federal Government may soon have to be the taxing agency for all Government units because of the inability or refusal of many city and other local governments to carry their budgets currently and because about 1,500 local government units have defaulted on bonds totaling about $2,000,000,000. This fact makes the national tax policy of extreme importance.

The Federal Government has already accepted major responsibility for maintenance of the unemployed, and it will shortly have to pay large sums for education, for medical care, for maintenance of children, unemployment insurance, and old-age pensions.

All the measures in operation during the past year have failed to effect any change in the consuming power of the masses of the American people.

We can't war on poverty by taxing poverty.

I would say that I do not regard these expenditures of this administration as expenditures of a drunken sailor, but as expenditures by a Government which realizes, as every major government in the world does today, that government has got to cease being the agency of private profit-exploiting interests and care for its people, if government as now constituted is to continue, and I personally hope it will.

It is increasingly clear that the immediately needed jump in purchasing power will have to be brought about by drastic changes in taxes.

Large individual investment of income is not only a calamity, it is almost a crime.

England—and I got these figures I am going to give from the secretary or clerk of the Joint Committee of the Senate and House on Taxation—England, with only about half of our wealth and income in the fiscal year 1932, raised from the individual and corporation income tax, $1,781,500,000, compared with our $1,066,756,697, and in 1933, $1,527,900,000, while we raised less than half as much, only $746,941,404.

Senator REED. Would you be in favor of our taxing small incomes the way England does?

Mr. MARSH. Including my own small income, at least four times as much as I am taxed today, because I am going to be frank. I am going to submit a table, which shows that you cannot get any large—well, not over 5 percent, in my judgment, of the increase in the Budget, if you take most of the incomes—if you merely take most of the incomes over $100,000. I have classified them by all of the classes given by the Commissioner of Internal Revenue. You have to start at even $4,000 pretty heavily, and you have got to get a majority—as far as the income tax is concerned—of the incomes of the total of the personal income tax. I will file that table, which is a detailed table, that has incomes between $5,000 and $100,000.

You cannot get it merely by soaking the rich above $100,000. Of course, while the equity of higher taxation of personal income in the higher brackets lies primarily in the fact that when you come to—I will just cite one figure—of the 20 people who, in 1932, were in receipt of a net income of $1,000,000, and over, derived from property, 99.3 percent of the total income. Those from $500,000 to $1,000,000 derived 93.7 percent from property; from $300,000 to $500,000, derived 92.4 percent.

Congress should repeal at least $1,250,000,000 of consumption taxes, and processing taxes on farm products, paying any bonus that farmers need directly out of the Public Treasury. As far as I know, the farmers are the only property owners whom the Government is trying to bribe into acquiescence, into what I call economic madness that we are going through, by subsidizing them, out of the consumer.

If our friends in Iowa, who ran the farm lands up to $600 or $700 an acre, the land speculators—well, it should come out of the Public Treasury and not out of the poor devils who do not know where their next meal is. And remember that about one sixth, and pretty nearly one fifth of our population are primarily dependent for existence on the Federal Government, and on the States and the localities, which do not appear to be doing very much.

Congress should raise at least $2,000,000,000 more in this revenue bill by increasing normal income-tax rate and surtaxes; $2,500,000,-000 additional, by taxing liquid corporation surpluses; $500,000,000 additional by taxing income from Government bonds; about $150,-000,000 additional by taxing salaries and wages of Government employees; $400,000,000 more by increasing estate- and gift-tax rates, and $900,000,000 additional by taxing land values as an emergency measure—a total of $6,450,000,000. Most of these taxes should be retroactive.

Senator BYRD. How would you tax land values?

Mr. MARSH. I would do it under the emergency powers of the Government. A direct Federal tax of roughly 1 percent in land values would raise about $900,000,000.

Senator BYRD. The Federal Government has no power to tax land.

Mr. MARSH. The Federal Government a year ago did not have any power to get off of the gold standard, but it just assumed the power; so what is sauce for the goose is sauce for the gander.

Senator MCADOO. You know, of course, Mr. Marsh, that any taxes on real estate imposed by the Federal Government would have to be apportioned among the States by population.

Mr. MARSH. Well, Senator McAdoo——

Senator MCADOO. I mean the Constitution as it now is or was.

Mr. MARSH. I refer you to the decision of the Supreme Court of the United States. There is no contract, as far as I can see—there is no written constitution that can be allowed to interfere with the human constitution. When they come in conflict, a wise government recognizes that it is the human constitution that votes and not the written constitution.

Senator MCADOO. But I am talking about the manner of assessing that tax. That would have to be imposed upon the basis of population of the various States.

Mr. MARSH. No; it would not, as an emergency measure, according to the Constitution. According to the Constitution, you have to maintain contracts, but when you cannot do a thing, you do what you can do, if you want to be left to do anything more.

Senator MCADOO. You mean you would scrap the Constitution?

Mr. MARSH. No; I would not scrap the Constitution. You can get around it.

Senator REED. You would keep it as a quaint curiosity?

Mr. MARSH. We would keep the Constitution for what the wise founders, I think, intended it to be—a document which would not constitute a graveyard for the human welfare, but would be adjusted from time to time.

My I answer Senator McAdoo's question specifically? The Federal Government can always levy excise taxes upon the privilege of holding land, based upon the value thereof. That is a way to get around it. There are two alternatives.

Senator MCADOO. I do not care to engage in a legal discussion, because I think you are wrong. You know the Federal Government once imposed a real estate tax apportioned among the States.

Senator BAILEY. We were not under the human constitution then.

Senator McAdoo. That was under the old Constitution. [Laughter.] But as a historical fact, it is a very interesting thing to examine, because it was a hopeless thing, and did not work out.

Mr. Marsh. Well, Senator McAdoo, my professor of history at the Chicago University once told me that I had not quite studied my books, and I said that I was more interested in making history than in studying it, and I think that is the role of the present administration.

Senator McAdoo. I think a little knowledge of history, however, helps you to make history.

Mr. Marsh. And a knowledge of economics helps a lot more, in my judgment.

Senator Connally. You made the statement a while ago that the Constitution said something about the sanctity of contract or preserving contracts.

Mr. Marsh. I think it was the State constitutions.

Senator Connally. There is a lot of confusion about that. There is nothing in the Federal Constitution which prohibits the impairment of a contract. Those clauses are all in the State constitutions, and so there is no inhibition on Congress passing a law that does impair an obligation of a contract.

Senator McAdoo. Of a Federal contract.

Senator Connally. It says "a contract." That is the law. You know that, don't you?

Mr. Marsh. Yes; it was the State constitutions.

Senator Barkley. It is an inhibition in the Federal Constitution against the States doing it.

Mr. Marsh. But no inhibition on the Federal Government itself doing whatever is necessary to have the Nation survive.

Senator Connally. I do not want to get off on that subject. But as to contracts, isn't all that is in there a clause that provides that no State might pass a law impairing the obligation of contract, and that is not a limitation on the Federal Government. There is so much confusion in the public mind about that supposed clause in the Constitution.

Mr. Marsh. On contracts?

Senator Connally. Yes.

Mr. Marsh. Yes, sir.

Senator Connally. You brought it in. I did not raise the point.

Mr. Marsh. I am glad you raised the point.

The Chairman. Proceed.

Mr. Marsh. The Secretary of the Treasury estimates the total receipts this year at $3,260,000,000, expenditures at $9,891,000,000, and deficit at $6,357,000,000. His estimate that expenditures next year will be only $4,487,000,000, resulting in a deficit of only $512,000,000, is over-sanguine. They will probably be nearer $6,000,000,000.

We cannot achieve prosperity by financing the Government through a small tax on large profits.

The idea that we are to keep down the rate of taxation, whether it is on corporation profits, that is, excess profits or ordinary profits, or that we shall keep down the income-tax rate on individuals in the hope or expectation—and they are two very different things—that prices will go up so much that profits will be increased, and the

Government can ever pay back any large proportion of the indebtedness which it now has—the Federal Government—by taking a small part of those high profits which are due to high prices, is utterly contradictory. It cannot be done. I believe we are in for a consumers' strike today, because of the increase in prices. That is my judgment.

After paying all income and surtaxes, the 20 persons who in 1932 had net incomes of over $1,000,000, had left an average of $985,261, the 80 with incomes of $500,000 to $1,000,000 had left $445,879, and the 136 with incomes of $300,000, to $500,000 had left $240,240.

I would like at this point—I am not going to ask to read many figures, but to call your attention to the hearings of the House committee on the pending revenue bill, on page 239, where the clerk of the committee, or the expert of the committee, had prepared a table which is incorporated there, showing how much more are paid on incomes of $1,000, $2,000, $3,000, and up to $1,000,000 in Great Britain, France, and Germany, than in the United States. There is an exception when you get to the higher branches.

It is peculiar that less is paid proportionately in the large incomes in all these countries than on the small incomes with the exception of the United States, where the small incomes—that is, $2,000 and $3,000—are not paying very much.

I would like, Mr. Chairman, to read into the record a letter written me on the 20th of February by Mr. Nathan R. Margold, chairman of the Petroleum Administration Board, on the question of taxing gasoline, together with two photostats showing that gasoline taxes in 1931 amounted to $571,000,000 in round figures, and in 1932 to $549,000,000 in round figures.

The CHAIRMAN. They may be put in the record.

(The letter referred to is as follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,
PETROLEUM ADMINISTRATIVE BOARD,
Washington, February 20, 1934.

Mr. BENJAMIN C. MARSH,
Executive Secretary the People's Lobby,
Washington, D.C.

MY DEAR MR. MARSH: This will acknowledge receipt of your letter of February 8 in which you request this board to send you the figures showing the total amount paid by consumers for gasoline in 1931, 1932, and 1933, the amount of Federal taxes on gasoline for each of the 3 years, and also the State and local taxes.

The Bureau of Public Roads has prepared tables showing most of these figures and we are enclosing tables in considerable detail covering two of the years in question. The Bureau of Mines' figures covering gasoline consumed for the 3 years in question are as follows:

	Barrels
1931 (final)	403,418,000
1932 (final)	373,900,000
1933 (preliminary)	378,143,000

As for 1933, you will note that the Bureau of Mines' figures are preliminary. The Bureau of Public Roads has not yet completed their estimate, but the American Petroleum Institute, whose figures are unofficial, has prepared an estimate on the first 11 months with December omitted. These are tax figures and represent about 97 percent of the total gallonage of gasoline sold in the United States. It will be found that these figures are approximately 3 percent less than those of the Bureau of Mines due largely to the fact that some

gasoline classified as motor fuel is used by cleaning establishments, paint and varnish furnishers and other technical users. You will observe that the Bureau of Mines' figures are in barrels of 42 United States gallons.

The American Petroleum Institute has computed the number of gallons consumed during the first 11 months of 1933, basing their computation on the method followed by the Bureau of Mines with a total of 16,025,730,000 gallons.

On June 21, 1932, a Federal tax of 1 cent per gallon on gasoline (4 cents per gallon on lubricating oil) was put into effect. On January 1, 1933, the Federal gasoline tax was raised to 1½ cents per gallon, at which figure it remained until January 1, 1934, when it was reduced to 1 cent per gallon.

There is no official Government figure on the retail price of gasoline. However, there is a computation by the Oil and Gas Journal, and by the American Petroleum Institute of the average price in 50 representative cities. This average is an arithmetical average of these cities rather than a weighted average. In other words, a large city like New York has no more weight than Peoria, Ill. Below is quoted the average retail price for gasoline as represented by these 50 cities, compiled by the Oil and Gas Journal, and the average State tax for a similar number of cities as compiled by the American Petroleum Institute:

	Average retail price (per gallon)	Average State tax (per gallon)
1931	$0.1309	$0.04
1932	.1330	.0413
1933	.1276	.0416

Theoretically one should be able to figure the total cost to the consumer by multiplying the total gallonage by the average sale-price figure in these 50 representative cities.

It should be remembered that this is not the true figure and would require considerable discounting by reason of the prevalent practice of commercial discounts, cooperative rebates, and tank-car purchases by large consumers. Again, while no official figures are available on the quantity of gasoline moved through these discount channels, it is probably not far from the truth that approximately 65 percent has been discounted at least 2 cents per gallon.

If we can be of any further service to you, please write us again.

Sincerely yours,

NATHAN R. MARGOLD, *Chairman.*

(The two photostats referred to are as follows:)

State gasoline taxes, 1932, earned on motor-vehicle fuel, etc., refunds, disposition of fund, and gallons taxed, during full calendar year 1932

[United States Department of Agriculture, Bureau of Public Roads, from reports and records of State authorities]

State	Gross tax assessed prior to deduction of refund	Exemption refund (deducted from gross tax)	Net tax earning on motor-vehicle fuel [1]	Other receipts under tax law (licenses, etc.)	Grand total earning (tax and other receipts)	Disposition of grand total earning according to law: Collection and administration cost [2]	Construction and maintenance of rural roads: State highway [2]	Construction and maintenance of rural roads: Local roads [2]
Alabama	$7,000,502		$7,000,502	$586	$7,001,088	$17,801	$2,465,037	$3,039,028
Arizona	3,479,597	$579,376	2,900,221	699	2,900,920	(6)	1,892,298	1,008,622
Arkansas	5,709,727	544,751	5,164,976		5,164,976	166,663	600,488	1,048,828
California	40,124,804	3,995,950	36,128,854		36,128,854	18,381	24,051,724	12,026,782
Colorado	6,134,473	665,253	5,469,220		5,469,220	60,923	3,785,808	1,460,240
Connecticut	4,687,912	3,324	4,684,588	47,924	4,732,512	(11)	4,732,512	
Delaware	1,145,986	55,836	1,090,150		1,090,150	(12)	685,471	
Florida	14,508,777		14,508,777	22,930	14,531,707	22,930	6,218,047	
Georgia	11,938,809		11,938,809		11,938,809	4,200	7,956,406	1,898,102
Idaho	2,539,950	262,223	2,277,727	9,568	2,287,295	10,892	1,938,510	
Illinois	29,988,421	1,234,370	28,754,051		28,754,051	182,098	19,047,969	9,523,984
Indiana	17,938,367	1,198,806	16,739,561	43	16,739,604	77,557	12,496,546	3,124,126
Iowa	10,693,343	1,723,206	8,970,137		8,970,137	157,520	3,713,837	3,498,780
Kansas	10,204,096	2,783,601	7,420,495		7,420,495	(19)	5,620,495	1,800,000
Kentucky	8,202,889		8,202,889	3,216	8,206,105	40,858	8,165,247	
Louisiana	8,300,840	118	8,300,722		8,300,722	62,000	3,201,453	
Maine	4,397,400	190,698	4,206,702	[21] 47,674	4,254,376	21,898	2,116,239	2,116,239
Maryland	7,902,161	401,929	7,500,232		7,500,232	12,600	5,930,106	
Massachusetts	16,805,808	286,530	16,519,278		16,519,278	[23] 50,000	15,429,374	
Michigan	21,730,941	1,299,613	20,431,328	29,283	20,460,611	[25] 216,268	12,879,773	4,335,287
Minnesota	11,352,359	1,351,802	10,000,557		10,000,557	(27)	6,667,038	3,333,519
Mississippi	6,071,654	421,493	5,650,161	[28] 193,589	5,843,750	[29] 37,650	2,822,009	2,429,935
Missouri	9,183,199	233,506	8,949,693		8,949,693	57,850	8,891,843	
Montana	3,421,504	731,348	2,690,156		2,690,156	31,601	2,513,150	
Nebraska	7,893,113	83,648	7,809,465		7,809,465	15,000	5,845,849	1,948,616
Nevada	868,091	140,974	727,117		727,117	(32)	727,117	
New Hampshire	2,710,386	71,545	2,638,841		2,638,841	(33)	1,979,131	
New Jersey	20,963,688	4,346,263	16,617,425	[34] 57,246	16,674,671	29,360	7,295,311	
New Mexico	2,362,264	170,011	2,192,253	18,249	2,210,502	32,610	1,007,724	
New York	43,690,844	1,217,157	42,473,687	106,906	42,580,593	[36] 50,000	[37] 9,415,420	5,947,745
North Carolina	14,124,630	220,984	13,903,646	3,731	13,907,377	8,756	2,188,465	4,742,600
North Dakota	2,842,042	1,006,330	1,835,712	1,439	1,837,151	25,000	1,208,101	604,050
Ohio	36,123,658	1,854,479	34,269,179		34,269,179	140,215	19,072,285	8,603,817

Footnotes at end of table.

State gasoline taxes, 1932, earned on motor-vehicle fuel, etc., refunds, disposition of fund, and gallons taxed, during full calendar year, 1932—Con.

[United States Department of Agriculture, Bureau of Public Roads, from reports and records of State authorities]

State	Gross tax assessed prior to deduction of refund	Exemption refund (deducted from gross tax)	Net tax earning on motor-vehicle fuel [1]	Other receipts under tax law (licenses, etc.)	Grand total earning (tax and other receipts)	Disposition of grand total earning according to law: Collection and administration cost [2]	Disposition of grand total earning according to law: Construction and maintenance of rural roads: State highway [3]	Disposition of grand total earning according to law: Construction and maintenance of rural roads: Local roads [3]
Oklahoma	$9,661,097		$9,661,097	$21,345	$9,682,442	$81,609	$7,184,739	$2,394,913
Oregon	6,315,052	$723,877	5,591,175		5,591,175	17,045	3,618,680	
Pennsylvania	30,289,915		30,289,915	511,000	30,800,915	[45] 997,800	21,882,999	5,056,398
Rhode Island	2,020,740	166,715	1,854,025	3,686	1,857,711	(46)	855,995	716,385
South Carolina	6,261,560	36,633	6,224,927		6,224,927	(47)	1,590,469	1,037,488
South Dakota	4,174,644	1,211,296	2,963,348		2,963,348	[49] 41,950	2,921,398	
Tennessee	12,185,360		12,185,360		12,185,360	81,292	3,285,390	3,458,305
Texas	30,071,589	3,007,831	27,063,758		27,063,758	(12)	18,094,642	
Utah	2,174,318	2,406	2,171,912	757	2,172,669	5,317	2,167,352	
Vermont	1,874,648		1,874,648		1,874,648	(33)	1,589,648	
Virginia	11,484,414	674,814	10,809,600		10,809,600	(54)	7,566,720	3,242,880
Washington	12,329,201	1,282,691	11,046,510		11,046,510	(33)	8,837,208	2,209,302
West Virginia	5,184,836	243,045	4,941,791	7,609	4,949,400	15,626	834,106	
Wisconsin	16,346,591	1,398,171	14,948,420		14,948,420	[55] 41,550	7,846,463	3,022,477
Wyoming	1,418,145		1,418,145		1,418,145		951,639	354,506
District of Columbia	2,053,901	18,404	2,035,497	4,181	2,039,678			
Total	548,888,246	35,841,007	513,047,239	1,091,661	514,138,900	2,832,820	301,788,231	94,073,954

State	Disposition of grand total earning according to law—Continued: State and county road bond payment [4]	Disposition of grand total earning according to law—Continued: On city streets	Disposition of grand total earning according to law—Continued: Other than highway purposes	Tax rate, 1932: Cents per gallon: Jan. 1	Tax rate, 1932: Cents per gallon: Dec. 31	Tax rate, 1932: Date of rate change	Gasoline, or other fuel for motor vehicles, taxed: Net gallons taxed	Gasoline, or other fuel for motor vehicles, taxed: Percent change [5]
Alabama	$1,479,222			5	6	Nov. 5	136,421,624	−16.1
Arizona				5	5		58,004,441	−10.4
Arkansas	[7] 3,348,997			6	6		86,082,940	−22.2
California			[9] $31,967	3	3		1,204,295,149	−9.4

Colorado		[10] $162,249		4	4		136,730,489	−12.6
Connecticut				2	2		234,229,379	−.9
Delaware	[13] 404,679			3	3		36,338,331	1.7
Florida	[14] 6,218,047		[15] 2,072,683	7	7		207,288,239	−11.8
Georgia			[16] 1,989,101	6	6		198,980,154	−10.3
Idaho	[17] 328,751		[19] 9,142	5	5		45,554,550	−12.3
Illinois				3	3		958,468,356	−1.1
Indiana		[10] 1,041,375		4	4		418,489,040	−7.2
Iowa	[14] 1,600,000			3	3		299,004,568	−17.9
Kansas				3	3		247,349,852	−8.1
Kentucky				5	5		164,057,785	−6.9
Louisiana	3,377,125		[20] 1,660,144	5	5		166,014,436	−11.7
Maine				4	4		105,167,540	−4.0
Maryland		1,482,526	[22] 75,000	4	4		187,505,794	.9
Massachusetts			[24] 1,039,904	3	3		550,642,607	−1.4
Michigan	3,000,000		[26] 29,283	3	3		681,044,263	−6.4
Minnesota				3	3		333,351,913	−9.7
Mississippi	339,053		[30] 215,103	5½	6	June 1	96,732,445	−16.4
Missouri				2	2		447,484,670	−2.8
Montana	56,134		[31] 89,271	5	5		53,803,120	−10.9
Nebraska				4	4		195,236,623	−14.1
Nevada				4	4		18,177,920	−6.5
New Hampshire	659,710			4	4		65,971,040	−.7
New Jersey	1,260,000	5,000,000	[35] 3,090,000	3	3		553,914,175	−3.0
New Mexico	1,170,168			5	5		43,845,055	−17.7
New York			[38] 27,167,428	2	3	Mar. 1	1,485,127,929	−2.8
North Carolina	[39] 6,738,538		[40] 229,018	6	6		231,727,434	−7.2
North Dakota				3	3		61,190,398	−9.6
Ohio		6,452,862		4	4		856,729,484	−12.9
Oklahoma			[41] 21,181	4	4	Jan. 1 [42]	241,527,434	−4.3
Oregon	[43] 1,955,450			4	4		[44] 140,066,134	−9.7
Pennsylvania	2,863,718			3	3		1,009,663,827	−6.7
Rhode Island	285,331			2	2		92,701,236	−2.0
South Carolina	[46] 3,596,970			6	6		103,748,781	−14.1
South Dakota				4	4		74,083,694	−12.7
Tennessee	[50] 3,631,220		[15] 1,729,153	7	7		174,076,575	−15.8
Texas	[14] 2,203,177		[51] 6,765,939	4	4		676,593,941	−11.3
Utah	(52)			4	4		54,297,788	−10.0
Vermont	285,000			4	4		46,866,212	−4.7
Virginia				5	5		216,191,996	−5.6
Washington				5	5		220,930,195	−9.7
West Virginia	4,099,668			4	4		123,544,775	−8.3
Wisconsin	[14] 1,713,404	[10] 597,360	[56] 1,727,166	4	4		373,710,495	−13.4
Wyoming	112,000			4	4		35,453,612	−10.6
District of Columbia		2,039,678		2	2		101,774,858	17.9
Total	50,726,362	16,776,050	47,941,483	(57)	(57)	(57)	14,250,173,296	−7.5

Footnotes at end of table.

[1] Net gasoline tax earned after deduction of refunds allowed by law.
[2] Many States pay collection cost from other State funds, and such are noted. Administration cost includes balances allocated to reserve funds for administrative purposes, and amounts are noted.
[3] Since this table covers the calendar year earnings, but not the actual collections during the year, these columns are not comparable with similar columns in tables F-1 and F-4, which cover different periods fixed by State and local agencies; also certain funds are allocated to bond payments shown in next column.
[4] For State highway bonds, except as noted.
[5] Shows percent increase or decrease (—) compared to net gallons reported in previous year.
[6] Paid from State highway budget, $16,861.
[7] Includes $1,024,069 payments on county road bonds.
[8] Consists of $17,393 for controller's refund division and $988 to employees' retirement fund; excludes $61,857 held in reserve in 1931 for collection expenses in 1932.
[9] For expenses of transportation tax division of board of equalization.
[10] Expended on streets connecting State highways.
[11] From motor-vehicle department receipts, $30,000.
[12] Paid from State general fund.
[13] Includes $179,653 payment on county road bonds.
[14] Payments on county road bonds.
[15] For State general fund.
[16] To an equalization fund for public schools.
[17] Payments on State highway treasury notes.
[18] Aviation fund collected from aviation gasoline tax.
[19] Paid from State general fund, $15,000.
[20] Consists of $830,072 for State board of education and $830,072 for boards of commissioners of ports of New Orleans and Lake Charles Harbor.
[21] Includes receipts from 1-cent tax on gasoline not used in motor vehicles.
[22] To conservation department for oyster propagation.
[23] Estimated.
[24] For Metropolitan District Commission.
[25] Includes $107,430 special legal costs.
[26] Includes $3,615 from dealer's licenses allocated to State general fund and $25,668 from aviation gasoline tax allocated to aeronautic fund.
[27] Paid by State appropriation, $11,032.
[28] Includes $117,817 receipts for special gasoline tax, levied in 3 counties for sea wall.
[29] Includes $15,000 allocated to gasoline inspection fund.
[30] For sea-wall protection road.
[31] Referendum expenses and experimental equipment.
[32] Paid by State tax commission, which collects the gasoline taxes.
[33] Paid by motor vehicle department.
[34] Includes taxes on 411,404 gallons used by motor boats and taxed 2 cents (rebate of 1 cent on 3-cent tax).
[35] Includes $90,000 for department of commerce and navigation and $3,000,000 for unemployment relief.
[36] Paid to refund reserve; collection cost of $90,780 paid from State general fund.
[37] Portion of appropriation from general funds estimated to have been derived from gasoline taxes.
[38] Includes $11,430,432 for State emergency fund for unemployment relief, $1,486,936 for New York City general fund, and $14,250,059 for State general fund.
[39] Includes $373,424 for county road bonds.
[40] For State revenue department.
[41] Gasoline tax law penalties, allocated to State general fund.
[42] Changed from 5-cent tax of previous year.
[43] Pro rata of gasoline taxes for bond service, balance being from motor-vehicle receipts.
[44] Includes approximately 2,294,022 gallons of "distillate" at 3½-cent tax.
[45] Includes portion of State highway patrol expenses and undistibutable items.
[46] Paid from motor-vehicle fees, $15,760.
[47] Paid from State tax commission appropriation.
[48] Includes $3,532,646 for county road bonds.
[49] Includes $8,841 for expenses of State auditor.
[50] Includes $1,729,153 for county road bonds.
[51] For free school fund.
[52] Payments reported from motor-vehicle receipts, instead of prorating a share from gasoline taxes.
[53] Paid $2,500 from motor-vehicle department appropriation.
[54] Paid from State appropriation, $13,400.
[55] Includes $12,300 held in bad checks.
[56] Allotted to county general fund in lieu of personal property tax on motor vehicles.
[57] Weighed average rate 3.60 cents.

Gasoline taxes, 1931, earned on motor-vehicle fuel, etc., refunds disposition of fund, and gallons taxed, during full calendar year, 1931

[United States Department of Agriculture, Bureau of Public Roads, from reports and records of State authorities]

State	Gross tax assessed prior to deduction of refund	Exemption refund (deducted from gross tax)	New tax earning on motor-vehicle fuel [1]	Other receipts under tax law (licenses, etc.)	Grand total earning (tax and other receipts)	Disposition of grand total earning according to law		
						Collection and administration cost [2]	Construction and maintenance of rural roads	
							State highway [3]	Local roads [3]
Alabama	$7,197,474	----------	$7,197,474	----------	$7,197,474	$16,644	$2,204,117	$3,248,655
Arizona	3,595,902	$391,614	3,204,288	$32	3,204,320	(6)	2,227,256	977,064
Arkansas	6,956,952	508,903	6,448,049	----------	6,448,049	[7] 20,000	[7] 200,000	787,846
California	44,588,156	4,724,519	39,863,637	----------	39,863,637	[10] 124,632	26,467,700	13,233,850
Colorado	7,059,749	805,411	6,254,338	----------	6,254,338	[12] 67,379	4,330,871	1,670,479
Connecticut	4,732,734	[13] 4,741	4,727,993	48,759	4,776,752	(14)	4,776,752	----------
Delaware	1,141,921	69,860	1,072,061	----------	1,072,061	(15)	533,881	----------
Florida	14,986,170	----------	14,986,170	32,050	15,018,220	[17] 32,050	5,781,048	423,555
Georgia	13,313,500	----------	13,313,500	----------	13,313,500	4,200	8,872,867	2,218,217
Idaho	2,953,992	355,626	2,598,366	[21] 11,061	2,609,427	[22] 30,355	2,325,833	----------
Illinois	30,495,596	1,429,911	29,065,685	----------	29,065,685	106,834	19,305,901	9,652,950
Indiana	19,258,819	1,224,266	18,034,553	8,972	18,043,525	66,942	13,482,437	3,370,609
Iowa	12,378,724	1,451,135	10,927,589	----------	10,927,589	62,956	6,372,372	4,492,261
Kansas	11,383,674	3,312,789	8,070,885	----------	8,070,885	(27)	6,270,885	1,800,000
Kentucky	8,810,130	----------	8,810,130	2,864	8,812,994	30,987	8,782,007	----------
Louisiana	9,398,107	324	9,397,783	----------	9,397,783	62,000	4,791,951	----------
Maine	4,609,316	226,588	4,382,728	[29] 56,647	4,439,375	32,772	2,203,302	2,203,301
Maryland	7,796,063	365,061	7,431,002	----------	7,431,002	20,549	5,866,362	----------
Massachusetts	15,573,815	267,439	15,306,376	----------	15,306,376	(31)	12,535,626	902,26
Michigan	23,908,116	2,075,769	21,832,347	[32] 40,293	21,872,640	54,639	14,707,047	4,070,661
Minnesota	12,542,814	1,472,655	11,070,159	----------	11,070,159	(35)	7,380,106	3,690,053
Mississippi	5,882,264	----------	5,882,264	[36] 127,172	6,009,436	[37] 11,281	2,901,625	2,871,310
Missouri	9,475,871	269,307	9,206,564	----------	9,206,564	49,189	9,157,375	----------
Montana	3,801,888	783,734	3,018,154	----------	3,018,154	27,147	2,970,346	----------
Nebraska	9,176,004	79,756	9,096,248	----------	9,096,248	11,250	6,813,749	2,271,249
Nevada	905,533	127,615	777,918	----------	777,918	(40)	777,918	----------
New Hampshire	2,790,395	63,252	2,657,143	----------	2,657,143	(41)	1,992,857	----------
New Jersey	17,141,415	16,783	17,124,632	48,215	17,172,847	18,600	11,636,747	----------
New Mexico	2,664,704	----------	2,664,704	20,873	2,685,577	[43] 60,110	1,686,034	----------
New York	31,422,861	878,800	30,544,061	45,095	30,589,156	[45] 50,000	22,904,367	6,107,831
North Carolina	14,371,270	346,967	14,024,303	----------	14,024,303	9,370	4,379,478	2,639,474
North Dakota	3,149,024	1,118,786	2,030,238	2,217	2,032,455	[49] 33,237	1,332,351	666,175

Footnotes at end of table.

Gasoline taxes, 1931, earned on motor-vehicle fuel, etc., refunds, disposition of fund, and gallons taxed, during full calendar year, 1931—Continued

[United States Department of Agriculture, Bureau of Public Roads, from reports and records of State authorities]

State	Gross tax assessed prior to deduction of refund	Exemption refund (deducted from gross tax)	New tax earning on motor-vehicle fuel [1]	Other receipts under tax law (licenses, etc.)	Grand total earning (tax and other receipts)	Disposition of grand total earning according to law		
						Collection and administration cost [2]	Construction and maintenance of rural roads	
							State highway [3]	Local roads [3]
Ohio	$41,272,028	$1,943,975	$39,328,053		$39,328,053	$107,956	$22,061,305	$9,805,024
Oklahoma	11,674,218	8,786	11,665,432		11,665,432	71,552	7,249,008	2,416,302
Oregon	6,935,821	748,903	6,186,918		6,186,918	18,300	6,168,618	
Pennsylvania	32,929,982	477,305	32,452,677	[54] $735,913	33,188,590	[55] 765,125	23,423,209	5,563,743
Rhode Island	1,963,128	70,493	1,892,635	3,640	1,896,275	([56])	1,422,206	
South Carolina	7,274,440	28,451	7,245,989		7,245,989	([57])	4,796,512	1,207,665
South Dakota	5,157,175	1,762,500	3,394,675		3,394,675	[59] 48,602	3,346,073	
Tennessee	11,461,023		11,461,023		11,461,023	57,305	4,209,658	2,994,786
Texas	33,462,890	2,948,332	30,514,558		30,514,558		22,885,918	
Utah	2,311,734	2,507	2,309,227	451	2,309,678	4,214	2,305,464	
Vermont	1,966,544		1,966,544		1,966,544	([64])	1,562,638	
Virginia	12,210,867	765,652	11,445,215		11,445,215	([66])	8,011,651	2,433,564
Washington	12,313,127	1,280,665	11,032,462		11,032,462	([67])	8,587,166	3,445,296
West Virginia	5,665,218	278,001	5,387,217	8,005	5,395,222	14,777	2,054,573	
Wisconsin	16,471,048	690,867	15,780,181	([68])	15,780,181	20,469	8,830,273	4,514,493
Wyoming	1,587,014		1,587,014		1,587,014	5,894	1,129,841	395,279
District of Columbia	1,740,022	13,726	1,726,296		1,726,296			
Total			536,397,458	1,192,259	537,589,717	2,117,317	354,017,281	100,073,959

State	Disposition of grand total earning according to law—Continued			Tax rate, 1931			Gasoline, or other fuel fo motor vehicles, taxed	
	State and county road bond payment [4]	On city streets	Other than highway purposes	Cents per gallon		Date of rate change	Net gallons taxed	Percent change [5]
				Jan. 1	Dec. 31			
Alabama	$1,728,058			4	5	July 28	162,670,816	−5.7
Arizona				4	5	Jan. 30	64,701,865	−3.1
Arkansas	[8] 5,282,399	$107,804	[9] $50,000	5	6	Feb. 28	110,579,175	−14.0

California			[11] 37,455	3	3		1,328,787,915	14.3
Colorado		185,609		4	4		156,358,455	1.8
Connecticut				2	2		236,399,661	5.9
Delaware	[16] 538,180			3	3		35,735,365	5.8
Florida	[18] 5,781,047		[19] 3,000,520	6	7	Aug. 1	235,057,035	3.5
Georgia			[20] 2,218,216	6	6		221,891,668	−0.6
Idaho	[23] 242,594		[24] 10,645	5	5		[22] 51,967,321	−4.5
Illinois	(26)			3	3		968,856,165	5.8
Indiana		1,123,537		4	4		450,863,830	5.1
Iowa				3	3		364,252,984	3.2
Kansas				3	3		269,029,495	−11.5
Kentucky				5	5		176,202,606	4.7
Louisiana	2,664,276		[28] 1,879,556	5	5		187,955,663	1.7
Maine				4	4		109,568,209	6.6
Maryland		1,467,091	[30] 75,000	4	4		185,775,062	6.3
Massachusetts		1,868,483		2	3	May 1	558,555,950	5.8
Michigan	3,000,000	(33)	[34] 40,293	3	3		727,744,907	.7
Minnesota				3	3		369,005,304	6.9
Mississippi			[36] 225,220	5	5½	Nov. 1	115,640,338	−14.9
Missouri	(39)			2	2		460,328,204	6.6
Montana	20,661			5	5		60,363,076	2.6
Nebraska				4	4		227,406,[illegible]	.4
Nevada				4	4		19,447,944	15.2
New Hampshire	664,286			4	4		66,428,585	6.3
New Jersey	427,500	5,000,000	[42] 90,000	3	3		570,821,076	4.4
New Mexico	928,933		[44] 10,500	5	5		53,294,084	−2.0
New York			[46] 1,526,958	2	2		1,527,203,055	6.2
North Carolina	[47] 6,400,509		[48] 595,472	5	6	Apr. 1	249,609,024	−0.4
North Dakota			[50] 692	3	3		67,674,591	3.1
Ohio		7,353,768		4	4		983,201,323	6.1
Oklahoma			[51] 1,928,570	4	5	Mar. 25	252,483,145	−16.5
Oregon	(52)			4	4		[53] 155,062,787	.05
Pennsylvania	3,436,513			3	3		1,081,755,912	16.5
Rhode Island	474,069			2	2		94,631,763	9.3
South Carolina	[58] 1,241,812			6	6		120,766,492	1.4
South Dakota	(60)			4	4		84,866,877	−3.1
Tennessee	[61] 4,199,274			5	[62] 7	Dec. 19	206,707,098	−3.6
Texas			[63] 7,628,640	4	4		762,863,942	3.3
Utah	(52)			3½	4	May 12	60,362,698	.4
Vermont	278,906		[65] 125,000	4	4		49,163,593	4.6
Virginia				5	5		228,904,309	6.2
Washington				3	5	Apr. 1	244,529,589	1.1
West Virginia	3,325,872			4	4		134,680,421	.5
Wisconsin	[69] 1,797,646	617,300		2	4	Apr. 1	431,504,707	3.8
Wyoming	56,000			4	4		39,675,361	9.7
District of Columbia		1,726,296		2	2		86,314,800	7.9
Total	[70] 42,488,535	19,449,888	19,442,737	(71)	(71)	(71)	15,407,650,452	4.4

Footnotes at end of table.

[1] Net gasoline tax earned after deduction of refunds allowed by law.
[2] Many States pay collection cost from other State funds, and such are noted. Administration cost here includes balances allocated to reserve funds for administrative purposes, and amounts are noted.
[3] Since this table covers the calendar year earnings, but not the actual collections during the year, these columns are not comparable with similar columns in tables F-1 and F-4 which cover different periods fixed by State and local agencies; also certain funds are allocated to bond payments shown in next column.
[4] Payments are for State highway bonds, except as noted.
[5] Shows percent increase (+) or decrease (−) compared to net gallons reported in previous year.
[6] Paid from State highway budget, $16,556.
[7] Estimates reported.
[8] Includes payments on county bonds, $3,395,828.
[9] For expenses of motor vehicle department.
[10] Includes $61,857 for next 6 months' expenses, in reserve.
[11] For expenses of transportation license tax division.
[12] Includes all expenses of State inspector of oils, and special expenses for shale oil investigation in cooperation with U.S. Bureau of Mines.
[13] Excludes tax on 11,254,626 gallons exempted when purchased.
[14] Expenses of $30,000 paid from motor vehicle fees.
[15] Paid from State treasury funds.
[16] Includes $349,355 as payments on county road bonds.
[17] Includes $11,690 gasoline tax reserve fund, assigned to administration.
[18] Payments on county road bonds.
[19] Consists of $200,000 to permanent fund for State buildings of higher learning, $1,917,773 for county schools, and $882,747 to State general revenue fund.
[20] To an equalization fund for public schools.
[21] Includes $10,645 collected on 212,905 gallons sold for airplanes.
[22] Includes $17,007 to reserve for refunds.
[23] To State treasury note redemption fund.
[24] To an aviation fund, being amount of aviation gas tax.
[25] Excludes 212,905 gallons sold to airplanes and taxed.
[26] County bond payments from gasoline tax included in local roads.
[27] Paid from State general fund, $15,000.
[28] Consists of $939,778 for State board of education, and $939,778 for boards of commissioners of ports of New Orleans and Lake Charles Harbor.
[29] Consists of 1 cent tax on all sales of gasoline not used by motor vehicles.
[30] To conservation department for oyster propagation.
[31] Paid from State general fund, $22,500.
[32] Consists of taxes on gas used in aeronautics and aeronautic licenses.
[33] Amount for city streets reported under State highways.
[34] Consists of $38,108 from tax on gas used in aeronautics assigned to State aeronautic fund, and $2,185 collected from licenses to State general fund.
[35] Paid from State general fund, $13,000.
[36] Special taxes collected in two counties for sea-wall financing.
[37] Includes $5,881 to State accounting department for auditing.
[38] For sea-wall protecting road. Derived from extra gas taxes in Harrison County (2 cents) and Hancock County (3 cents) shown in other receipts, $127,172; and the remainder from State highway system share of gas tax receipts.
[39] Amount assignable to sinking fund for bond payments, included in State highway fund column.
[40] Paid by tax commission which collects taxes: Amount not reported.
[41] Paid by motor vehicle department: Amount not reported.
[42] For inland waterways under department of commerce and navigation.
[43] Includes balances in suspense fund and operating fund of $28,318.
[44] Loans to motor vehicle department and public auditing department.
[45] Paid from State general fund, $75,463. Amount shown is for reserve to pay refunds.
[46] To New York City general fund.
[47] Includes $1,381,146 payments on county road bonds.
[48] For State highway patrol and administration expenses of State revenue department.
[49] Includes $8,237 to reserve for refunds.
[50] Dealers' license fees credited to State general fund.
[51] Consists of $1,000,000 special emergency relief for destitute, and remainder for distribution of field and garden seed.
[52] Payments reported from motor vehicle fees, instead of assigning a pro rata share to gasoline taxes.
[53] Includes approximately 3,118,610 gallons of "distillate" taxed at 3½ cents per gallon.
[54] Includes expenses of department of revenues pro rated to gasoline taxes.
[55] Consists of delinquent collections of previous years, penalties and fines.
[56] Paid from motor vehicle fees, $15,737.
[57] Paid from State tax commission appropriation: Amount not reported.
[58] Includes all payments on State highway bonds, as pro rata share not reported in disposition of motor vehicle receipts.
[59] Includes $31,602 to reserve for refunds.
[60] All State highway bonds retired on Jan. 15, 1931, by funds previously accumulated.
[61] Includes county road bond payments $2,069,184.
[62] A tax of 6 cents was effective July 1, 1931, to Dec. 19, 1931.
[63] For free school fund.
[64] Paid from motor vehicle department appropriation, estimated $2,000.
[65] Transfer to motor vehicle department.
[66] Paid by State appropriation, $14,096.
[67] Paid from motor vehicle fund, $10,000.
[68] Dealers' license fees paid into general funds.
[69] Payments on county road bonds.
[70] Includes payments on county road bonds, $27,451,735; on State highway bonds, $14,794,206; and in note fund, $242,594.

Mr. MARSH. I do not know whether you would care to have in the record the school situation in a nutshell, showing schools closed, because it shows that the Federal Government has to subsidize education.

The CHAIRMAN. Let that go into the record.

(The paper referred to is as follows:)

EDUCATORS HIT AT BANK SYSTEM DOOMING SCHOOLS

[By Harvey O'Connor, Federated Press]

WASHINGTON.—Timid educators, at the mercy of chambers of commerce which run local boards of education and State legislatures, are striking out gingerly, in the Cleveland convention of the National Educational Association, against the banker-controlled profit system which is running American schools. But few are willing to say, above a whisper, that the State and local systems of education have broken down and must be replaced by a Federal system, which alone can maintain schools in bankrupt and poverty-stricken areas.

The signs are definitely in the horizon that a change is overdue. The national committee for Federal emergency aid, backed by National Educational Association, is asking a $50,000,000 subsidy for the present fiscal year to keep the schools open in hundreds of communities where they are either closed or will shut-down shortly. For 1934–35 the committee is asking at least $100,000,000 from the present Congress, although careful estimates put the needed sum at $300,000,000. Unless the $100,000,000 is granted schooling for millions of children will slip back to standards prevailing 50 years ago.

Here is the school situation in a nutshell:

1. Two thousand six hundred schools were closed on or before January 1; 20,000 more will probably be closed April 1.

2. School budgets this year are $563,000,000 below the 1929 figure. Construction of schools has dropped to 25 percent of the 1930 figure. Some schools have gone on a tuition basis, thus forcing out workers and farmers children.

3. A million more students are enrolled than in 1930, but there are 40,000 fewer teachers.

4. Two hundred thousand teachers are getting less than $750, the code minimum for factory labor; 45,000 are getting less than $300 a year and 40,000 teachers are owed $40,000,000 in back pay.

5. In one State there are 45 pupils to each teacher. Kindergartens, music, art, playgrounds, and recreation, evening schools, and adult classes are being reduced or cut altogether. Textbook sales are down 3 percent.

In Alabama all schools are closed in 24 counties and 13 cities.

"Our Government has quibbled little about extending generous aid to material agencies and enterprises, some of doubtful validity", states the Federal emergency aid committee. "Shall it hesitate to bestow upon the innocent children of the depression that same measure of solicitude? Thirty million children are awaiting answer to that question."

The answer, of course, is "yes." Until educators are willing to tell the truth about an economic system that closes schools while boosting, year by year, the income of coupon-clippers, there is no chance that children will get a square deal. Even the National Education Association, however, is beginning to find its gonue, under the last of the industrial crisis.

"Supercorporations", states the leading editorial in the current N.E.A. Journal, "as they have developed under banker domination have much the same effect on the wealth of the people as the old Roman empire had on the wealth of its provinces. Through excessive charges made possible by monopoly control, they draw off dividends on watered stock and into stagnant corporate surpluses so much of the buying power of the Nation that commercial life in the small communities is paralyzed." The educators are getting near the sore spot.

Mr. MARSH. Also, may I read in a brief pamphlet by the General Welfare Tax League, Where the Sales Tax Falls?

The CHAIRMAN. We do not want to encumber this record too much.

Mr. MARSH. I have only one copy. If I may summarize it later and put that in?

The CHAIRMAN. Yes.

Senator BARKLEY. Have you copies enough to distribute it to the committee?

Mr. MARSH. I will write and try to get them.

Senator BARKLEY. That would be better than encumbering the record with it.

The CHAIRMAN. Mr. Marsh, you have occupied 20 minutes.

Mr. MARSH. In cooperation with questioners.

The CHAIRMAN. Thank you very much. If you have something else you want to put in the record that is on the point, you may do so.

Mr. MARSH. This is the brief showing how you can get the money which I stated you could get from the various avenues.

The CHAIRMAN. Very well. Was that put in the House record?

Mr. MARSH. No, sir. This is since I appeared before the House.

The CHAIRMAN. Very well.

Mr. MARSH. I want to close with this statement: The Government can raise just as much money by taxing as by borrowing. It depends on whose Government it is, whether it taxes or borrows.

Senator BAILEY. Is it your view that the processing taxes now amounting by appropriation to something better than $1,000,000,000, but of which perhaps $600,000,000 will come back in taxes——

Mr. MARSH (interrupting). What is that?

Senator BAILEY. About $600,000,000. That is the estimate. But we have appropriated something better than $1,000,000,000 for processing taxes. Do those taxes fall on the farmers or on the consumers?

Mr. MARSH. I think that you cannot make a positive statement in all cases.

Senator BAILEY. How does it fall in the matter of hogs?

Mr. MARSH. May be a part of it is on the farmer. I think most of it falls on the consumer. Obviously, if any of it fell on the farmer, it would tend to defeat the purpose which the Secretary of Agriculture and other Government officials had in advocating it, and Secretary Wallace, in a rather lengthy statement, has shown some committee—I have forgotten which—has claimed that none of it was paid by the farmer. It was paid by the consumer.

I am not discussing, you know, whether we should have bounties to farmers or not, but asking that the direct processing tax be repealed, and any payment that may be necessary to be made to farmers be made directly out of the Federal Treasury, because you can get it from those who can afford to pay it instead of compelling consumers to pay it.

The sales tax is a tax on inability to pay. A processing tax does the same.

(The brief referred to is as follows:)

BRIEF SUBMITTED TO THE SENATE COMMITTEE ON FINANCE, BY THE PEOPLE'S LOBBY, INC.

I. The essential to recovery under capitalism.
II. The function of taxation in recovery.
III. A program of Federal taxation.

I. THE ESSENTIAL TO RECOVERY UNDER CAPITALISM

The essential to recovery under capitalism is a redistribution of the national income in terms of purchasing power which will enable those who should work, to buy at least the essentials of a decent life, out of current income, for themselves and their dependents, and enable those who should not work to have a livable existence.

The commission on economic reconstruction, of Columbia University, discussing the economic problem raised by the disparity between actual and potential production, says:

"It is clear that if our society could continuously utilize to the full the productive capacity which is actually available, it could thereby overcome the evils alike of poverty and unemployment, assuming an equitable distribution of national income."

Nearly a year's experimenting with various devices to adjust the national income so as to start recovery has proven abortive, and the chief factors which prevent violence and even bloodshed in many sections are the belief that the President is trying to help, but is being betrayed by his lieutenants, and the fact that Governments, Federal, State, and local are expending money at the rate of about $1,350,000,000 a month in direct payment and credit, or nearly $16,200,000,000 a year.

Manipulating the content of the gold dollar, levying processing taxes upon farm products, to enable farmers to pay higher prices for manufactures, attempting to enable factory and other nonagricultural workers to pay higher prices through setting minimum wages, is an evasion of the issue, as is issuing greenbacks.

The Columbia University commission, discussing the methods of the National Recovery Act, says:

"Insofar as they are designed to prevent undercutting in wages and prices and other competitive practices incompatible with a decent minimum standard of living for the worker, they have a humanitarian justification, but they should be viewed in that respect.

"There should be no attempt to impose such regulations on any broader scale, with the idea that they are measures of recovery.

"There should be no illusion with regard to the fact that a general rise in prices through such measures, is not a sign of increasing prosperity."

Diffused prosperity, general enough to prevent the anticipated collapse, can be achieved only by reducing prices, in this Nation, with 5 percent of the people owning four fifths of the wealth, one fifth of them dependent upon Government for subsistence, and one half of them living below a decent standard.

Capital structure of corporations, long-term debts, and land values must be written down at least $150,000,000,000—or over one third.

That admittedly cannot be done at once.

Taxation can be invoked at once to right past wrongs and prevent future wrongs.

II. THE FUNCTION OF TAXATION IN RECOVERY

There are two ways to effect the necessary redistribution of the national income in America in time to prevent serious trouble—public ownership of all means of production, distribution, and exchange, or drastic taxation of income-personal or individual, and corporation, of estates and of land values, with a more moderate public-ownership program.

America will first try taxation, but will have to try it promptly.

The report on national income made by the Department of Commerce (with the active cooperation of the National Bureau of Economic Research, Inc.) in response to Senate Resolution No. 220, Seventy-second Congress, states:

"The total income distributed to individuals throughout the Nation was 81 billion dollars in 1929, 75.4 billions in 1930, 63.3 billions in 1931, and 49 billions in 1932, a decline of 40 percent between 1929 and 1932. Income produced in each of these years amounted to 83, 70.5, 54.7, and 38.3 billion dollars, respectively, with the decline from 1929 to 1932 amounting to 54 percent. The income distributed by industries in 1929 was less than that produced to the extent of 2 billion dollars, this amount being retained by corporate and individual enterprises. In the following years, however, the amount distributed exceeded the amount produced, a draft being made upon previously accumu-

lated surpluses and assets; such withdrawal of income exceeded income produced in 1932 by 10.6 billion dollars."

This report points out that "wages have suffered the most severely in the general decline since 1929, with a falling off of 60 percent in those industries in which it was possible to segregate this item. Salaries dropped 40 percent.

"A significant divergence in declining trends is apparent as between labor income and property income; by 1932 the former had fallen off 40 percent, while property income receded but 30 percent."

In 1929 labor income amounted to about 53 billion dollars, or 65 percent of the total income distributed.

In 1929 the total payment as salaries and wages in all industries, i.e., the total labor income, was $52,867,000,000, and the total property income was $12,215,000,000.

By 1932 the total labor income had fallen to $31,595,000—a reduction of $21,272,000,000—while total property income—interest and dividends—had dropped to $8,489,000,000, a reduction of only $3,726,000,000.

Net rents and royalties and other entrepeneurial unearned income fell from $15,956,000,000 in 1929 to $8,872,000,000 in 1932—a drop of $7,084,000,000.

In 1929 the 374,032 persons with net incomes over $10,000 received from ownership or control of property $11,692,352,744—an average of $31,260.

In 1932 the 102,134 persons with incomes over $10,000 received from ownership or control of property $2,209,189,457, an average of $21,630.

Although there was a marked reduction in total income from ownership and control of property from 1929 to 1932, there was about the same concentration of income from property and general income in 1932 as in 1929.

In 1929, 374,032 persons received less than three sevenths of the total property income, while in 1932 a little over one quarter of that number, 102,134 persons, received over one eighth of the total income from property.

In 1929 the average salary received by these 374,032 persons reporting net incomes over $10,000 was $7,419; in 1932 the average salary received by the 102,134 persons with such income was $8,747.

In 1929 the total income of the 374,032 with net incomes over $10,000 was $14,466,402,104, of which 80.1 percent was from ownership or control of property. They paid in Federal income taxes and surtaxes only $988,000,287, which was 6.9 percent of their total income, and 8.4 percent of their net income.

After paying Federal income taxes and surtaxes, they had left on average of $30,281.

In 1932 the total income of the 102,134 persons reporting net incomes over $10,000 was $3,102,544,373, of which 7.1 percent was from ownership or control of property. They paid in Federal income taxes and surtaxes $248,173,087, which was 8 percent of their total income and 10 percent of their net income.

After paying Federal income taxes and surtaxes, they had left an average of $21,836.

It will be observed that in both years, 1929 and 1932, the amounts those with net incomes over $10,000 had left after paying taxes was about equal to their income from property; i.e., they were practically exempt from taxes on their property income.

Large taxable profits due to high prices retard recovery.

The alleged position of those who favor borrowing instead of paying for most of current outlays by taxation is that an increase in prices will produce large profits to be later subject to taxes, directly as corporation and excess-profits taxes, and as dividends paid out, subject to surtaxes.

The real purpose, of course, is to save the wealthy from paying proportionate taxes on current income, and there is no assurance of a largely increased current national income for some time. The wealthy will not ask to pay more taxes when or if their income increases.

To permit a reasonably decent standard of living, however, for at least one fifth of the population, and a fair one for half, prices should not increase but should decrease, and the tax program should be based not upon anticipated increased profits, due to higher prices, but upon a current redistribution of the national income through taxation.

Four years of acute depression have demonstrated that Federal, State, and local systems of taxation are basic causes of unemployment, which cannot be offset by large Federal appropriations for relief or Federal credit for public works, though these must be continued and probably enlarged for at least 1 or 2 years.

The preliminary report of the House Ways and Means Subcommittee on "Double Taxation", published in 1933, states:

"The greater part of the general property tax is paid by persons with net incomes under $5,000." It estimates that $5,266,000,000 is collected from the general property tax or from franchise taxes levied in lieu of property taxes, and that the average rate of tax on property in the United States is 2.19 percent of its full value.

Amendment of State general property tax laws, to transfer taxes from buildings to land values, is obviously a matter for State legislatures, but the Federal Government's tax policy can expedite such action.

Over 1,500 State and local government units have defaulted on their bonds to approximately $2,000,000,000, and many of such governments do not raise taxes to meet current budgets, because they are afraid to tax those who could pay, or the people are unable to pay—or both reasons.

This situation lends support to the view that in the near future, the Federal Government will have to control the fiscal systems and expenditures of State and local governments, extending the principle now established in the division between the Federal and State Governments of the proceeds of the Federal estate tax.

In October 1933, 16 States with nearly half of the Nation's population, had general sales taxes, though such taxes were defeated by referendum in North Dakota and Oregon; while 27 States had personal and corporation net income tax laws.

These varied greatly. Some sales tax laws are "permanent." Others run till the middle of 1934 or 1935; in some States the consumer is mentioned in the law as the payer, and in all States, with rising or even stationary prices, the consumer will pay. Rates vary from 5 percent to 3 percent.

Exemptions and rates of State income tax laws also vary so greatly that no estimate is reliable as to the yield from year to year.

The lowest exemption is $500 for a single person in North Dakota, the next $700 in Idaho, while two States have $750, Kansas and Mississippi. In most States the exemption for a single person is $1,000 to $1,500, and for the married $2,000 to $3,000.

The House Ways and Means Subcommittee reported:

"The fact that the general property tax is not levied in accordance with the principle of ability to pay has been brought home to us during the current depression with great force." It might have added that the principle of payment for Government service is largely ignored in State and local tax systems, and completely in the Federal tax set-up.

The committee reports the total revenue from taxes in 1931 as $9,519,000,000, divided as follows:

Federal taxes	$2,428,000,000
State taxes	1,967,000,000
County taxes	958,000,000
City taxes	2,978,000,000
Local taxes	1,188,000,000

The committee estimated the total tax burden in 1932 at over $10,000,000,000. Government expenditures, this year, are over $16,000,000,000.

The per capital tax burden in the United States was approximately $77.53 in 1931.

Of the total taxes collected by all governments:	Percent
The general property tax yielded	53.5
Income taxes yielded	21.2
Special sales taxes yielded	11.3
Licenses and permits yielded	5.3
Estate and inheritance taxes yielded	2.4
Special assessments yielded	2.2
Total	95.9

The 4.1 percent is made up of various franchise and miscellaneous taxes.

The committee gives the following illustrations of consumption taxes, which the Federal Government increased in the last revenue tinkering, connected with the National Industrial Recovery Administration bill.

A 15-cent package of cigarettes a day yields in taxes:

Arkansas	$40.15
Tennessee	36.50
North and South Dakota, South Carolina, and Texas	32.85
Kansas, Ohio, and Utah	29.20

In Mobile, Ala., the user of 623 gallons of gasoline pays in Federal, State, county, and city taxes $59.15; in Palatka, Fla., $56.07; and in Harrison County, Miss., $62.30.

Transfer of $6,000,000,000 in taxes from consumption to funds seeking investment would break depression.

In 1931 total Government expenditures were about $11,000,000,000, or approximately one sixth of the national income of $63,289,000,000.

This year, 1934, with the national income probably between $40,000,000,000 and $45,000,000,000, all Government expenditures including relief and credit for public works, is about $16,000,000,000, or over one third of the national income.

Approximately nine tenths of all Federal credit for public works is for Federal projects from which the Federal Government will not receive any return.

Congress should have provided in the National Industrial Recovery Act that the cost of improvements should be assessed upon property benefited thereby. this would have saved the general taxpayers at least $2,500,000,000 in 1 year, and these expenditures are enriching landowners by $5,000,000,000 to $6,000,000,000.

The Secretary of the Treasury in his annual report for 1933 estimates the Federal Government's revenue for 1934 ending June 30 as follows:

Income tax, individual and corporation	$864,000,000
National Industrial Recovery taxes	153,700,000
All other	1,242,900,000
Processing tax on farm products	403,000,000
Spirits and fermented liquors	89,000,000
All other customs	310,000,000
Proceeds Government-owned securities (and foreign obligations)	20,000,000
All other	95,439,315
Panama Canal tolls, etc	25,672,424
Other miscellaneous	56,227,017
Total	3,259,938,756

Of the entire estimated revenue of the Federal Government for this fiscal year—about three and a quarter billions of dollars—only a little over one-fourth, the individual and corporation income tax and the small amount from the estate tax, is raised on the principle of ability to pay.

At least $2,250,000,000, including all consumption taxes, is obtained from taxes levied in accordance with need, and not with ability to pay.

England obtains four times as much from income tax as United States in proportion to wealth and income.

During the fiscal year (of each nation) 1932 the proceeds of the individual and corporation income tax were—

In England (pound at 486)	$1,781,500,000
In the United States	1,056,756,697
Excess in England	724,743,303

The wealth and income of the United States is about two and a quarter times that of England, so that the proportionate yield of these two taxes is about four times as great in England as here.

During the fiscal year 1933, the disproportion was even greater, England getting from these two taxes $1,527,900,000; the United States only $746,791,404. That year England got over twice as much from these two taxes as we.

The division here each year was as follows:

	Personal	Corporation
1932	$427,190,582	$629,566,115
1933	352,573,620	394,217,784

The Bureau of Internal Revenue reports that in 1932, the total income of the 3,420,995 persons making returns for the income tax was $13,764,294,643.

The Bureau of Foreign and Domestic Commerce reports the national income that year was $48,952,000,000.

The average income of about 26,000,000 families which did not make returns for the Federal income tax was, therefore, about $1,376 on this basis.

The Secretary of Commerce estimates the national income in 1932 at less than $42,000,000,000, and on this estimate the average income of these 26,000,000 families was $1,084. It is probable that the national income will not exceed $43,000,000,000 this year, and will not much exceed $45,000,000,000 to a maximum of $50,000,000,000, for at least 2 or 3 years, since, as stated by Dr. Thorp, Director of Foreign and Domestic Commerce, "withdrawal of income exceeded income produced in 1932 by $10,600,000,000", and this cannot be repeated often.

To increase the purchasing power of the masses of the people out of current income at once, through taxation, the Federal Government must repeal all consumption taxes, including processing taxes on farm products.

The increase in Federal revenues for the present fiscal year (1934) over 1933 is estimated at $1,180,242,015. Of this increase approximately $800,000,000 (over two thirds), is derived from increase in consumption taxes, the largest single item being the processing tax on farm products estimated to yield $403,000,000, National Industrial Recovery taxes, $153,700,000, "miscellaneous taxes", $384,682,000, and increases in tariffs (other than spirits and fermented liquors), $59,249,000. Of the latter two taxes, considerably over half are consumption taxes.

The repeal of the $1,500,000,000 or more of Federal consumption taxes would increase consumption by at least this amount:

"Business Week"—a McGraw-Hill publication—reports that in 1929, when it estimates the total national income was $90,873,000,000, the 14,816 persons who received an income over $100,000 spent for goods and services only $1,313,000,000, and saved $3,028,000,000, while the 45,337,000 persons receiving an income under $3,000 spent for goods and services $65,143,000,000 and saved only $3,746,000,000.

Since increasing not only purchasing power, but purchasing, out of current income is a prerequisite to any semblance of prosperity, and the wealthy cannot spend their income, the tax burden should, on purely economic and not ethical grounds, be shifted from those with small incomes under $3,000 to those with large incomes chiefly derived from property.

The wealthy who do not and cannot spend their income, but seek profitable investments, constitute a great menace to American equilibrium.

III. A PROGRAM OF FEDERAL TAXATION

1. *Increase yield from personal income tax $2,000,000,000.*—The following table shows how at least $2,000,000,000 additional revenue can be derived from the personal-income tax, assuming approximately the income in income classes of $3,000 to $1,000,000, as in 1932, the data for which year is used:

Class (thousands)	Number	Net income	Income taxes paid	Percent income from property	Amount left after taxes		Additional amount class count pay
					Total	Apiece	
Under 5	3,420,995	$7,112,000,000	$42,200,000	32.9	7,069,800,000	2,066	273,000,000
5-10	237,273	1,594,995,285	34,371,530	47.3	1,560,623,755	6,577	550,000,000
10-25	77,045	1,127,225,087	49,357,982	62.7	1,077,868,005	13,990	500,000,000
25-50	17,658	601,257,813	43,052,786	71.4	558,205,017	31,612	250,000,000
50-100	5,644	376,214,524	46,753,548	78.0	329,460,979	58,373	225,000,000
100-150	962	116,117,954	24,508,311	82.8	91,609,643	95,228	60,000,000
150-300	589	117,049,448	31,910,460	87.8	85,138,988	144,548	70,000,000
300-500	136	50,947,574	18,274,921	92.4	32,672,653	240,240	25,000,000
500-1,000	80	54,451,168	18,780,781	93.7	35,670,387	445,879	30,000,000
Over 1,000	20	35,239,556	15,534,321	99.3	19,705,235	985,261	17,000,000
Total	3,760,402	11,185,499,309	324,744,617	....	10,860,754,692	2,023,774	2,000,000,000

2. *Tax on liquid corporation surpluses $2,500,000,000.*—The Commissioner of Internal Revenue report for 1931 (the latest year available) states that at the close of that year the liquid assets (cash and tax-exempt investments) of the 381,088 corporations filing balance sheets was $26,548,4422,000, of which the 632 corporations, each having total assets of over $50,000,000, reported $13,288,-632,000, or over half.

At the end of 1932 the cash and equivalent of 104 corporations was $1,788,-000,000, which was 8.85 percent of their capital stock, surplus, and capital reserves; the liquid surplus of the 78 industrial corporations among these 104, was $1,382,000,000, or 19.88 percent of their capital stock, etc.

Recent experience has shown that while the Government can tell employers what wages to pay, and what hours to work, it cannot compel any employer to continue employment, nor to pay out accumulated liquid surpluses as dividends, so that such income would be subject to taxation.

The only practical method to compel equitable distribution of such surpluses is to tax them.

Profits and surpluses of many corporations have been largely increased under the N.R.A.

For a year or two $2,500,000,000 could be obtained from this source, allowing corporations a reasonable surplus to meet emergencies.

3. *Tax on income from Government bonds, $500,000,000.*—The House Ways and Means Subcommittee on tax avoidance reported that $40,500,000,000 of tax-exempt bonds are outstanding, and the annual interest thereon amounts to $1,805,000,000.

Much of these bonds are held by the wealthy, but a large part of those not subject to high surtaxes.

It is probable that subjecting such income to higher surtaxes would yield in additional revenue at least $500,000,000. It is unearned and should be heavily taxed.

4. *Tax on salaries and wages of State and local government employees, $150,000,000.*—Salaries and wages of State and local government employees amount to at least $1,500,000,000, but are not now taxable. A large part of this pay roll goes to those who should be subject to surtaxes as well as the normal income tax. Taxation of such income should yield at least $150,000,000.

5. *Increasing estate and gift tax rates, $400,000,000.*—The total of net estates of the 7,112 resident decedents for which returns were filed in 1932 was $1,391,560,000, and the total estate tax thereon was $84,006,000, of which $61,642,000 was returned to States, Territories, and the District of Columbia, so that the yield to the Federal Government was only $22,364,000.

During that year returns were filed for 45 net estates of $3,500,000 to "over $10,000,000", the aggregate net estate being $321,823,000 upon which the total tax was $40,594,000, the net estate after payment of tax averaging $6,249,533.

These estates should pay $200,000,000 more in estate taxes.

Returns were filed for 6 net estates "over $10,000,000" aggregating $105,662,000 net, upon which the total tax was $17,253,000, and the average net estate after payment of taxes, was $14,735,000.

These 6 estates alone should have paid at least $70,000,000 more than the tax levied.

During 1932, 197 returns were made for estates of $1,000,000 to $3,500,000, aggregating a total net of $331,194,000, upon which the total tax payable was only $20,016,000. After payment of such tax the average of these estates was $1,579,000.

These 197 estates should have paid at least $150,000,000 more than the tax levied. The average tax rate on the 45 net estates of $3,500,000 to "over $10,000,000" was 12.3 percent; on the 197 net estates of $1,000,000 to $3,500,000 was 6.05 percent of the net estate.

The Federal Government should retain most of the estate tax.

It should be noted that in 1932, price levels were low for stocks of corporations which were valued by estates for which returns were filed that year at $1,006,766,000, or 36.02 percent of the total.

Real estate also was valued at $433,374,000, or nearly one sixth of the total.

The inflation policies sponsored by the administration to date have increased prices of stocks and of real estate markedly.

6. *Tax of 1 percent on land values, $900,000,000.*—While the alleged purpose of the Public Works Administration was to encourage State and local governments to prosecute promptly needed public improvements by a grant in aid of

30 percent of the cost thereof, the widespread local "taxpayers' strike" thwarted this purpose, through no fault of the Secretary of the Interior.

To effect this failure of State and local governments to meet their share of the responsibility for providing work, the Federal Government expanded its construction program, so that over four fifths of the $3,300,000,000 appropriated under the Public Works section of the N.I.R.A. is being paid by the Federal Government. Congress refused to assess the cost of these improvements on property benefited thereby.

All these expenditures, as well as the Government's expenditures for relief and for made work, stabilize or increase land values.

To recoup the Federal Government for these outlays, Congress should levy a tax of 1 percent on all land values which would yield about $900,000,000. It could do this as a direct emergency tax or as an excise tax upon the privilege of holding land of given value. Such a tax would, of course, be chiefly paid by cities, where the real land values are.

Many of the recommendations of the House Ways and Means Subcommittee to prevent tax avoidance should be adopted.

Deductions for depreciation and depletion should be reduced and reorganizations should be ended; dividends out of pre March 1, 1913, earnings should be taxed, partnerships should be taxed, and consolidated returns stopped.

The committee's recommendations on "capital gains and losses" are, however, vicious. With a prospective net increase of over $10,000,000,000 in the Federal debt in 3 or 4 years, capital gains should be taxed at substantially the same rate as any other net income.

Excess-profits taxes have not been stressed, as a source of revenue. They should be heavily taxed; but if the N.R.A. and other similar agencies are anything but sounding brasses and tinkling cymbals, there will not be much excess profits.

The tax changes enumerated above would yield (deducting the $22,364,000 estimated tax on estates) additional revenue amounting to at least $6,427,636,000.

This would be increased by plugging the loopholes in the law and really taxing capital gains.

America could and should pay for the war on poverty, as it goes, just as it should have paid for the World War out of profitscurrently extorted.

Equally important almost, because of the wide-spread poverty, and low income level, is the repeal of consumption tax, inculding all processing taxes on farm products, excise, stamp, admission, gasoline, and all other nuisance taxes. At least one third of the price consumers pay for gasoline is Federal, State, and local taxes, while the tax on tobacco is much more than the producers receive for their tobacco. Any bounty or subsidy for farmers should be paid directly out of the Federal Treasury, not as a tax on consumers.

RELATION OF FEDERAL TO STATE AND LOCAL TAX SYSTEMS

The New Republic, in an editorial in its issue of February 14, 1934, concludes a statistical study What Has Happened to Wages:

"The net result of the N.R.A. has been to decrease the real earnings of the average worker even below the property level of last June. There was a rise during the 6 months (June to December 1933) of 3.7 percent in money earnings per worker, to compare with a rise of 5.4 percent in the cost of living."

Transfer of the 5 to 6 billion dollars of present taxes on consumption, most of which is paid by those with incomes under $2,000, and the major part by those with incomes under $1,500. Chiefly to those with incomes over $4,000 is the most immediately practical measure of recovery. We have shown how it can be started.

It means a transfer of most of that sum from saving to spending.

Business Week in the American Consumer Market, quoted above, states that more than 75 percent of the total value of consumers' goods and services absorbed in 1929 "was absorbed by those with incomes of less than $5,000, and more than 65 percent by those with incomes of less than $3,000." The income figures would now be about $3,500 and $1,500.

The Federal Government, through various agencies such as the Public Works Administration and the Reconstruction Finance Corporation, is now virtually underwriting the solvency of many cities and other local governments. It is spending unprecedented sums for Public Works, loaning large sums, and maintaining millions on relief rolls—formerly local and State charges.

It has therefore an ethical and by implication a legal right to stipulate the conditions under which it will continue such help. It can stipulate that State and local governments repeal taxes on consumption including taxes on buildings, and tax according to ability to pay, and benefits received.

The Federal Government itself cannot in decency do less.

STATEMENT OF M. L. SEIDMAN, NEW YORK, N.Y., REPRESENTING THE NEW YORK BOARD OF TRADE

Mr. SEIDMAN. I have a brief statement. My appearance here, gentlemen, is for the New York Board of Trade, as a member of its committee on taxation.

The New York Board of Trade is keenly interested in the development of this legislation, and presented its views on a number of items embodied in the original report of the House Ways and Means Subcommittee. The bill in its present form gives effect to a number of our recommendations.

The CHAIRMAN. Did you appear before the House Ways and Means Committee?

Mr. SEIDMAN. Yes, sir. We feel that much credit and real commendation is due to you gentlemen, for the very careful study that has been and is being given to this very intricate and important subject. The proposed revenue act in its present form is in many ways a substantial improvement over the present law. The changes designed to prevent tax avoidance are most commendable, and the New York Board of Trade is in hearty accord with their general purposes.

As the Secretary of the Treasury has recently pointed out, there is a feature about the plan of income taxation in this country which should be kept clearly in mind. He had reference to the fact that the income tax in the first instance is a self-assessed tax. It is the taxpayer himself who makes up his return in the first instance and indicates the amount of his tax liability. Accordingly, it is highly desirable that our tax laws be so drawn as to encourage the maximum of cooperation on the part of the great mass of honest taxpayers. This cooperation, the Secretary pointed out, can be retained even though the tax rates be relatively high, provided the taxpayer is convinced that the provisions for the tax are inherently fair and that they are being applied without discrimination.

In directing your attention to a most important provision of the proposed bill that does not, in our opinion, fit this requirement, of being "inherently fair", I would not want to convey to you the impression that the New York Board of Trade is selfishly contending for a tax benefit. My board has always been an enthusiastic supporter of the income tax as the fairest kind of tax to be imposed upon industry. We would like to see this tax developed more and more along the line of fairness and equity, if it is to remain as one of our permanent American institutions.

By far the most outstanding change proposed in this law is the treatment of capital gains and losses. The proposed law changes not only the concept and definition of capital assets from which result capital gains or losses, but it also changes completely the treatment of such gains and losses for income-tax purposes.

Under the existing law capital gains and losses result from the sale of assets held over 2 years. The tax on such gains is limited to

a 12½-percent maximum rate, with a corresponding limitation on tax savings in case of losses.

It is pointed out by the critics of this plan of taxation, that the British income-tax system, which entirely disregards such gains or losses for tax purposes, has shown a marked stability of revenue for the last 11 years in contrast with the extreme instability of our own revenue. In that period the maximum British revenue was only 35 percent above the minimum, while in our own case the percentage of variation was as high as 280 percent.

It is proposed, therefore, in the 1934 Revenue Act to take the first step in the right direction by including only a part of such gains and losses in taxable income.

To begin with, a capital asset hereafter is to mean not property held by the taxpayer for more than 2 years, as heretofore, but all property held by the taxpayer for any length of time. The only exceptions are to be such property as represents the taxpayer's stock in trade or property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, also, property held by the taxpayer primarily for sale in the course of his trade or business.

This definition, therefore, would include practically every asset on the balance sheet of a business, except trading assets, and practically all property of whatever kind and nature of a private individual or investor. It would include, for instance, in the case of a farmer, his land, his equipment, and practically everything else except his stock in trade. In the case of a corporate enterprise it would include all of its fixed capital and practically all of its working capital except its merchandise inventory and such other property as is held primarily for sale in the regular course of its business. This new concept of a capital asset, therefore, will cover an infinitely wider field than that covered by the more limited asset definition of the present law.

Under the proposed plan of treating capital gains and losses, the 12½-percent tax limitation is entirely removed and the following plan is substituted:

First. The gain or loss from the sale of property by an individual will vary with the length of time he has held the property, the amount of gain or loss subject to tax decreasing as the time of holding increases.

Second. If the losses as so taken into account exceed the gains, the excess loss is to be entirely disallowed.

Third. In the case of corporations, the graduated percentage reduction of gains and losses does not apply. However, capital losses sustained by corporations are allowed only to the extent of capital gains. Under the present law, corporations are allowed to offset capital losses against any taxable income.

It is particularly emphasized with regard to this plan that it is "safe" from a revenue standpoint, inasmuch as capital losses cannot be used to reduce ordinary income. Whether it is in fact safe, even from a revenue angle, must depend, we think, upon whether it is fair and equitable and will not discourage normal business transactions.

The great majority of capital transactions are necessarily in connection with securities, and the treatment of security gains and

losses has undergone some mighty important changes in the last few years. Thus, from the point of allowing full deduction of all losses and the privilege, under certain circumstances, of carrying forward net losses to apply against subsequent years' income, it has now reached the point where some losses are not deductible at all, except from similar gains during the same year. If there are no such gains, the deduction is forever denied the taxpayer.

This limitation has, as yet, not been extended to investment losses. It has been applied to losses resulting from the sale of securities held for a year or less. Nor does the limitation apply now to other property, no matter how long held. The proposal now made extends the limitation to all such transactions as well.

What effect is this change likely to have upon the revival of our capital goods industries. It is quite generally understood that these industries cannot be revived without an ample supply of long-term capital. The Securities Act of 1933 has impeded the sale of new securities upon which the revival of our heavy goods industries so much depend.

The treatment under the present income-tax law of losses resulting from the sale of securities held for less than 2 years has most certainly been another factor in discouraging investments. It is now proposed to further extend this obstruction to recovery by prohibiting such security losses as tax deductions on investments held for more than 2 years as well.

See what the investor is confronted with after he risks whatever capital he has left. If he makes a gain on his investment, the Government will tax it heavily; if he has a loss, the chances are that he will not be able to deduct any part of it in his tax return. This, added to the many other risks and uncertainties, impairs his incentive to invest. They make him hesitate.

Is there not something particularly inequitable and discriminatory about an arrangement that will fully tax one's gains but not fully allow his losses?

The plan for arriving at the amount of taxable income, in relation to the time the property was held prior to sale, seems a desirable first step in the direction of ultimately removing the tax on all capital gains and losses. But, until such a time is reached, where is the fairness in taxing gains but not permitting the deductibility of losses in excess of such gains?

This matter is further aggravated by the proposal to, hereafter, treat partnerships as separate entities as far as capital gains and losses are concerned. Under the proposed plan there will be disallowed as a deduction to the individual partner, in his own tax return, his pro rata share of such partnership capital losses, as exceed capital gains.

In the past such capital gains and losses were taxed to the individual partners, as if the pro rata share of such gains or losses were in fact part and parcel of their own transactions. That is as it should be. Since a partnership is not recognized as a separate taxable entity for income-tax purposes, and since each partner is required to pick up in his own tax return his pro rata share of the partnership income, what justification can there possibly be for denying him his pro rata share of capital losses, even if such losses exceed the gains.

How about the case of an individual having capital gains of his own and a pro-rata share of capital losses in a partnership? Under the proposed plan, he will be taxed on the gains but will not be permitted to offset any part of his share of the partnership capital net losses.

The House Ways and Means Committee report, after pointing out that the proposed treatment of all capital gains and losses will result in an estimated increased revenue of some $35,000,000, justifies the treatment of partnership capital net losses by stating:

> It has been strongly contended that many large partnerships, particularly those engaged in the baking and security business, have been the vehicle of widespread tax avoidance. It has been pointed out that wealthy partners have applied partnership losses against their individual incomes, with the result that in some of the past few years they have paid no individual income taxes.

It seems unfortunate that the deduction of such partnership losses by the individual members of certain well known banking and security firms should rebound so unfavorably upon all of the taxpayers of this country who may hereafter have capital losses with no offsetting capital gains. If it is indeed desirable to prohibit the deduction of such partnership losses in the banking and security business, why should the injustice be extended to the manufacturer, to the merchant, and to the investor?

Even when we were at war and, when our need for revenue was most acute, no attempt was then made to increase the amount of taxable net income by the arbitrary disallowance of bona-fide losses resulting from legitimate business transactions.

The New York Board of Trade does not believe such procedure should now be adopted. It recommends that the limitation be removed from the proposed 1934 Revenue Act. If it is not feasible to currently allow the full deduction of such excess losses over gains, then at least there should be permission granted the taxpayer to carry such losses forward as an offset against possible capital gains in the subsequent taxable year.

Senator CONNALLY. Let me ask you a question.

Haven't you got to bear this in mind in dealing with these losses and gains? If a man has a gain in a piece of property and he knows he has a gain, he is frequently deterred from selling it because he does not want to pay on the profit. That is true, isn't it? A lot of companies will say, "I won't sell this because I have to pay the Government so much, and I will hold it." On the other hand, if a man has a loss, he will take his loss, and get the benefit of it. Take these men that you mentioned—Mr. Mitchell and Lamont and Morgan, and others—they made fictitious sales so as to be able to take a loss. They are not going to make any fictitious sales to make a profit, because they would have to pay a tax on the profit. So unless you do something, you will never fill up these cracks whereby they evade the tax. Isn't that true?

Mr. SEIDMAN. I would not defend fictitious sales, of course.

Senator CONNALLY. I know, but how are you going to cure that? What have you to suggest? Here are these men that have a stock that has gone down. They sell it to their wives and take the loss and then reimburse here after the 1st of January. That is a pure device to get the benefit of the loss, isn't it?

Mr. SEIDMAN. It may well be, but the proposed law has a provision against that situation, and we have no objection to it. We heartily commend it.

Senator CONNALLY. Now, let us turn that around.

Suppose that stock has been held at a big profit. He would never have sold it to his wife.

Mr. SEIDMAN. If he were wise enough, he would have sold it in the open market.

Senator CONNALLY. One of them admits of a device to escape, and the other gives no compensation to the Government to get a tax when there is a profit.

Mr. SEIDMAN. I should say this, that merely because somebody might find some way of avoiding or even evading a tax, is no reason why all taxpayers should be denied the deduction of a legitimate and proper loss.

Senator CONNALLY. Certainly not; but you have got to make a law that will tax all people in the same way, and if you balance the losses against the gains and not permit a man to take a loss unless you offset it with a gain, you do correct that, in a way, because you do give that special treatment.

Mr. SEIDMAN. Your difficulty there is that those who have the losses may not have the offsetting gains and I really do not believe, that you advocate balancing of one group against another and thus call it a day. You do not, I am sure, want to hurt some people, as a means of getting at others.

The CHAIRMAN. Thank you, Mr. Seidman. I notice that there are 3 representations from 3 separate insurance companies, who desire to speak on section 22. Can't you gentlemen get together, and have 1 gentleman to have the 1 question of annuities? And I may say, on the same proposition, that there are four witnesses here on personal holding companies—Mr. Jackson R. Collins, Mr. A. W. Dickinson, Mr. Harry J. Gerrity, and Mr. Sidney B. Moskovitz. Can't you get together and have one to present that, in order to save the time of the committee and file your separate briefs, if you want them in the record?

Senator WALCOTT. Can't you suggest today, because we probably won't get to it until tomorrow, the same with respect to this question of oils? I find there are 39 here who are for or against this question of oils. Why can't they get together? We cannot possibly hear all of them?

The CHAIRMAN. I was going to say, before the committee meets on this oil proposition, that the group must get together and select their representatives. We cannot hear everybody that wants to be heard on that oil proposition. There are many witnesses here, and they can get together and select some one who should present it. In the first place, your case will be presented better, and the committee will give more consideration to that particular witness than if you come here and speak 5 minutes.

Senator CONNALLY. You refer to vegetable oils?

The CHAIRMAN. Yes.

STATEMENT OF D. W. SPRINGER, REPRESENTING THE AMERICAN SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

The CHAIRMAN. Is Mr. Springer, of Washington, here, representing the American Society of Certified Public Accountants?

Mr. D. W. SPRINGER. Just a statement and a request. The statement is that our committee represents 15 States from New York to California, and we sent a tentative brief, and we expect to be able to file, if permission is granted us, the completed brief after the hearing tomorrow.

The CHAIRMAN. Thank you very much.

BRIEF SUBMITTED BY THE COMMITTEE ON FEDERAL LEGISLATION OF THE AMERICAN SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS TO THE SEVENTY-THIRD CONGRESS, SECOND SESSION

MARCH 12, 1934.

To the Chairman and Members of the Committee on Finance of the Senate of the United States.

GENTLEMEN: The American Society of Certified Public Accountants is a national organization with a roster of 2,417, represented by certified public accountants in active practice in every State of the Union. The society, through its various technical and special committees, has been happy to cooperate in many ways throughout the years with the several departments, bureaus, and commissions of the Government of the United States. The members of the society are in intimate contact with business and industry throughout the Nation, and they are in a position to offer disinterested and objective comment on those phases of revenue legislation which most intimately concern the business life of the country. There are herewith presented comments, observations, and recommendations which it is believed represent the overwhelming opinion of the membership of the society. These views have been collated and prepared by certified public accountants who are the officers of the society and members of its committee on Federal legislation.

COMMITTEE ON FEDERAL LEGISLATION

Howard C. Beck, Woodward Building, Washington, D.C.
Burney R. Clack, 5528 South Owasso Street, Tulsa, Okla.
James J. Fox, Little Building, Boston, Mass.
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John T. Madden, 236 Wooster Street, New York, N.Y.
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Joseph J. Klein, 19 West Forty-fourth Street, New York, N.Y.
Douglas S. Meaden, Citizens Building, Cleveland, Ohio.
Ira B. McGladrey, Merchants National Bank Building, Cedar Rapids, Iowa.
Raymond H. Walker, 1223 Sharp Building, Lincoln, Nebr.

The Committee on Finance of the United States Senate may freely call on the society for all pertinent information and data in its possession or in its power to obtain.

Respectfully submitted.

JOSEPH J. KLEIN,
Chairman Committee on Federal Legislation,
American Society of Certified Public Accountants.

SURTAX RATES (SEC. 12)

The recommendation of the subcommittee of the Ways and Means Committee for the simplification of the rate structure has, in the main, been incorporated in the bill. It seems to us that it would be desirable to grade the surtax rates

more equitably than appears in the present bill. The bill contains 28 rates; the first 5 rise by 1 percent, the next 5 by 2 percent, the next 9 by 3 percent, the next by 5 percent, the next by 2 percent, and the last 7 by 1 percent. It is to be noted that the middle 10 rates are most precipitously graded. This is manifestly contra to the doctrine that taxes should be levied with due regard to ability to pay. It is submitted that many more equitable gradations could be found with fair prospects of equivalent revenue yield. Among the many which suggest themselves, the following is herewith submitted; the simplicity of the table is only one of its commendable characteristics: The first 9, increases of 1 percent each; the next 9, increases of 2 percent each; the final 10, increases of 3 percent each.

A comparison between the surtax rates in the House bill and the suggested ones is herewith presented:

Amount of net income	Surtax rate in House bill	Recommended surtax rate	Amount of net income	Surtax rate in House bill	Recommended surtax rate
	Percent	*Percent*		*Percent*	*Percent*
$0 to $4,000	None	None	$56,000 to $62,000	33	25
$4,000 to $8,000	4	4	$62,000 to $68,000	36	27
$8,000 to $10,000	5	5	$68,000 to $74,000	39	29
$10,000 to $12,000	6	6	$74,000 to $80,000	42	32
$12,000 to $14,000	7	7	$80,000 to $90,000	45	35
$14,000 to $16,000	8	8	$90,000 to $100,000	50	38
$16,000 to $18,000	10	9	$100,000 to $150,000	52	41
$18,000 to $20,000	12	10	$150,000 to $200,000	53	44
$20,000 to $22,000	14	11	$200,000 to $300,000	54	47
$22,000 to $26,000	16	13	$300,000 to $400,000	55	50
$26,000 to $32,000	18	15	$400,000 to $500,000	56	53
$32,000 to $38,000	21	17	$500,000 to $750,000	57	56
$38,000 to $44,000	24	19	$750,000 to $1,000,000	58	59
$44,000 to $50,000	27	21	Over $1,000,000	59	59 or 60
$50,000 to $56,000	30	23			

ANNUITIES (SEC. 22 (A) (2))

In an understandable attempt to speed up the collection of tax on the income element in annuities, the bill, it seems to us, would complicate the accounting for taxable income and correspondingly increase administrative difficulties. Parenthetically, the Treasury's alternate proposal to the Ways and Means Committee, i.e., to resurrect the provision of the 1924 act, section 213 (b) (2), would, in our opinion, still further complicate administration.

We have said that the bill's provision would complicate accounting for taxable income. Under formal annuity contracts, the date when cost has been recovered is definitely known. Many of these contracts now annually return to annuitants fully taxable income; others are rapidly reaching the income point. With respect to the first class, the 3-percent provision obviously is meaningless; so far as other contracts are concerned, records will have to be maintained which, to judge by experience in similar situations, will not prove easy of administration.

Perhaps it may not be amiss to refer to the fact that investments in Government securities and in annuities proved their worth during the depression. Possibly, annuities may become the popular medium for old-age and pension provision. Would it then not be desirable to encourage investments in annuities by providing that the proposed 3-percent tax should apply to annual annuities if in excess, say, of $3,000? If the suggestion is adopted, then the existing law could be retained with respect to the small annuities, that is, the taxable point to be reached only after cost has been recovered.

TAX ON PERSONAL HOLDING COMPANIES (SEC. 102)

The purpose of the Ways and Means Committee in providing for special treatment of personal holding corporations has been made perfectly clear. The committee sought to reach the so-called "incorporated pocketbook." Our observation is to the effect that there appears to exist unanimity of desire to impose punitive taxes on the income which results from the type of transactions which were recently exposed by a senatorial committee. It is axiomatic,

however, that legislation which attempts to reach an admitted abuse sometimes overextends itself and inflicts unintended hardship on innocent persons. The situation is well illustrated in section 102 of the bill now before your committee. This section provides for an additional tax or penalty of 35 percent on what is designated as "the undistributed adjusted net income of every personal holding company." Under the provisions of the bill, the 35 percent additional tax can be escaped only by distributing as dividends at least 90 percent of the "adjusted net income" of the corporation. Would you wish the 35-percent tax imposed in any of the following cases?

Case 1.—Many years ago a corporation was organized primarily for the purpose of holding title to a father's controlling interest in a manufacturing enterprise, so that, in the event of his death, the four sons might be less prone to operate at cross purposes. This holding company annually distributed its earnings which consist almost entirely of dividends on the manufacturing stock. During the past 2 years, no dividends have been declared because the shrinkage in the value of the company's assets has extinguished the entire earned surplus and impaired capital to the extent of about 70 percent. Under the local law, dividends may be declared only out of surplus. Yet, the proposed bill would penalize this company 35 percent on 90 percent of its earnings.

Case 2.—Another personal holding company, on January 1, 1934, has an accumulated operating deficit of $260,000. During 1934 it earned $20,000 on which it must pay Federal and State taxes of about $3,500, leaving a balance of $16,500. For failing to declare a dividend in the presence of an operating deficit of $243,500, the proposed bill would impose the 35 percent penalty.

Case 3.—In the days when bond issues were popular an industrial corporation borrowed money on long-term bonds which are due serially. The net earnings of this closely held corporation are just sufficient to meet these obligations. Default would result in foreclosure and all that that implies. The proposed bill does not give consideration to the inability of this company to pay a dividend; the 35 percent penalty is to be imposed on the implied, but unwarranted, theory that the enterprise is merely choosing not to distribute earnings.

Case 4.—Here is another corporation the credit of which is weak and which requires all of its current earnings for essential repairs and replacement of equipment. Nevertheless, the 35 percent penalty would be applied to it.

Case 5.—Another personal holding corporation, under the terms of a first lien on all of its property, given years ago, must maintain a current ratio of 2 to 1, and cannot declare dividends in excess of 6 percent on its capital stock. The mortgage becomes payable immediately upon failure to maintain the stated ratio or upon the payment of a larger dividend. In this case, the penalty would have to be borne under the provisions of the proposed bill.

Case 6.—The existence of a lawsuit and the presence of a contingent liability, which may become actual overnight, may make it essential to the very existence of a given enterprise that its assets be conserved. Nevertheless, the 35 percent penalty would be imposed for failure to hazard a dividend payment.

Case 7.—A corporation might dispose of its principal asset, a building, under a contract which provides for a down payment of just over 30 percent, the balance in installment payments over a period of years. How could such an organization meet the tax in question?

We appreciate that this committee is justified in expecting from critics of the bill suggestions for workable substitutes. In our opinion, the fault with the provision under review is that it is altogether too specific. We submit that Congress wishes to penalize personal holding corporations which, while they could conveniently distribute their income, nevertheless fail to do so. If you have confidence in the integrity of the Treasury Department, you will, in our opinion, feel justified in entrusting to it the task of imposing the penalty in every instance where the personal holding corporation unnecessarily accumulates earnings which it could afford to distribute. A presumption similar to that in section 103, with respect to other than "personal holding companies," would, in our opinion, suffice. On the assumption, however, that the Congress is determined to enact specific legislation, we suggest the following modification so as to exclude from the penalty corporations which every intelligent student of taxation or finance should be willing to admit ought not to be subject thereto. This can be accomplished by extending the definition of "undistributed adjusted net income" by adding to section 102 (b) (2):

"(C) Such additional amount as the Commissioner, in his discretion, determines to be necessary for the continued existence and functioning of the personal holding company."

Both in section 102 (relating to "personal holding companies") and in section 103 (dealing with other corporations), the tax bill allows as a deduction from the sum on which the additional tax is based, "dividends paid during the taxable year." It seems to us that the deduction would be more logical with respect to dividends declared within, say, 2 or 3 months after the close of the taxable year, and payable during the year in which declared. This is especially, but no exclusively, true of corporations during the first year of their existence.

The proposed additional tax is a penalty even though not expressly so designated in the bill. Would it not be equitable to permit stockholders of "penalized" corporations to take "penalty" credit on their own returns for dividends received from such corporations within a brief period after the payment of the penalty? For example, if the penalty were imposed on corporation A, its stockholders, upon the receipt of a dividend within 1 year after the payment of a penalty by corporation A, if the dividend was from earnings of the "penalized" tax year, should be permitted to exclude from their income the said dividends, but such exclusion should not be permitted to benefit the stockholder by more than the pro rata amount of "penalty."

We should also like to submit that this committee might well consider the granting of an option to stockholders of corporations, especially of "personal holding corporations", similar to that which existed under the 1926 act (sec. 220) and under the 1928 act (sec. 104), both of which provided for escape from corporate penalty if all of the corporation's stockholders, in their own returns, reported their pro rata share of the net earnings as though they had been distributed to them as dividends. This matter is discussed from another angle at the end of this brief under the caption "Recapture of foreign and domestic 'incorporated pocketbooks.'"

Finally, please permit us to say that our argument for modification of the proposed rigors of section 102 is not to be construed as favoring the proposal per se. Our own attitude toward the definition in the bill of "personal holding company" is aptly expressed in the report of this very committee with respect to a similar provision in the House bill, which eventually became the Revenue Act of 1928. We quote from your own report which resulted in the elimination of the obnoxious definition in the House bill (Rept. No. 960, p. 12):

"The House bill (sec. 104), through an artificial definition of personal holding companies, attempted to strengthen the provisions of the existing law (sec. 220) relating to the evasion of surtaxes through the formation of corporations and accumulation of income. As in the case of all arbitrary definitions, the effect was to penalize corporations which were properly building up a surplus and to fail to recognize business necessities and sound practices."

DISTRIBUTIONS IN LIQUIDATION (SEC. 115 (C))

The subcommittee of the Committee on Ways and Means pointed out that because liquidating dividends were treated in the 1932 act as equivalent to the sale of stock, wealthy stockholders were enabled to escape surtax upon accumulated corporate earnings by virtue of the fact that the liquidating dividend, to the extent that it represented taxable gain to the sockholder, could be subject to the flat 12½-percent tax in lieu of the high-grade surtaxes on ordinary dividends. Congress is entitled to help from all expert sources in the attempt to remedy the condition to which the subcommittee directed attention.

The bill does not meet the situation either adequately or equitably. To the extent that the liquidating distribution represents taxable gain to the recipient stockholder, it is subject to both the normal and the surtax. If, however, the stock were sold, the resulting profit would be subject to the sliding capital gain tax.

The bill provides that any loss resulting from a liquidation of stock in a corporation should be treated as a capital loss, with the result that if there are no corresponding gains, the loss is not deductible. Normally, a person does not speculate or invest in stock of corporations which eventually liquidate; ordinarily, a corporation which liquidates represents the business of one or a few stockholders which, frequently because of fiscal difficulties, is disbanding. It is submitted that in such a situation, the loss ought to be permitted as a

deduction against all types of income and not restricted as an offset against fortunate (and, in many instances, nonexistent) investments.

Because of the fact that it appears to be administratively inexpedient and legislatively impossible to prevent the sale of stock shortly before a partial or complete liquidation, it is submitted that it is unfair to penalize stockholders who may not have secured expert tax advice which, if the bill becomes law, would point the way to lawful tax avoidance by divestment of ownership prior to liquidation. Accordingly, it is recommended:

(1) That gains from the liquidation of a corporation be treated as capital gains. This result may be achieved by striking out from section 115 (c) of the bill (pp. 79 and 80) the following language:

"(24) * * * Despite the provisions of section 117 (a), a 100 per
"(25) centum of the gain so recognized shall be taken into account
"(1) in computing net income."

In view of the elimination of the flat 12½-percent capital gain tax, there is, obviously, much less need or occasion for the drastic proposal under discussion.

(2) That losses resulting from the dissolution of an incorporated business, which is of a type or kind that for all practical purposes is equivalent to a sole proprietorship or a partnership, should be deductible without the limitations imposed on capital losses. This result may be achieved by substituting in section 115 (c) for the sentence hereinbefore recommended to be eliminated, the following (on pp. 79 and 80 of the bill):

"(24) * * * Despite the provisions of section 117 (a), if the Commissioner, in his discretion, determines that the loss to the distributee resulted from the complete liquidation of a close corporation engaged in the business of agriculture, dairying, mining, manufacturing, or trading (except as a dealer in securities), the amount of the loss shall be allowed as a deduction from gross income as a loss incurred in trade or business, as provided in section 23 (e) (1)."

CAPITAL GAINS AND LOSSES (SEC. 117)

We do not believe it is wise, legislatively, to attempt to tax capital net gains (as defined in the 1932 act) at rates as high as provided in the bill, i.e., up to a maximum of 37.8 percent. The high rates proposed will undoubtedly deter realization and thus effect the collection of revenue. Regardless of this observation, we do not consider it equitable to prohibit the deduction of capial net losses from other income. The basis for our belief is that it is feasible for many (if not most) wealthy taxpayers to realize capital losses during taxable years in which capital gains occur, while the great majority of taxpayers have no such option. The inevitable general effect of section 117 thus would be to penalize the poorer taxpayer who might be forced to sacrifice his property because of fiscal distress.

An alternative method of treatment suggests itself, which, while not basically as equitable as the deduction of capital losses from ordinary income, may be considered by way of compromise. Nondeductible capital losses might be permitted to carry forward privilege for a period of from 2 to 5 years. There is nothing novel in the proposition because it existed, in principle, under all of the revenue laws since the 1918 act.

Aside from these observations, it would appear that Congress would need no urging to restrict the proposed capital gain and loss provisions to security investments. If a taxpayer should suffer a loss from the disposition of his entire business enterprise, or from the sale of a part of his manufacturing machinery, or a portion of his farm or urban real estate, would Congress wish to restrict such loss to deduction from capital gains? Or, if a profit should result, would Congress wish to impose the prevailing high rates of tax? It is submitted, as fully justified in equity, that the optional flat 12½-percent tax should be retained with respect at least to capital gains from nonsecurity transactions, including the liquidation of a close corporation's capital assets other than securities.

CREDIT FOR FOREIGN TAXES (SEC. 131 (B))

The bill in section 131 (b) cuts in half the credit for foreign taxes allowed in the Revenue Act of 1932; this provision is in lieu of the recommendation

of the Subcommittee of the Ways and Means Committee for the entire elimination of the foreign-tax credit.

The subcommittee's recommendation was predicated on the erroneous notion that the allowance of the foreign-tax credit discriminated as between American citizens and domestic corporations doing domestic business and those doing business abroad, to the advantage of the latter.

At a time when the administration is encouraging foreign trade, it seems to be working at cross-purposes for the Congress to make such foreign trade more expensive and less profitable to Americans engaged in foreign business. We are aware of the fact that the allowance of the credit diminished tax collected by the Treasury; it must not be overlooked, however, that the credit is in lieu of what otherwise would be a deduction from gross income. If there is danger that the denial of the credit would reduce the volume of American foreign business, then, we submit, aside from the direct economic loss to American producers, there would be an indirect loss to the Treasury, not alone because of diminished taxable profits but from the direct exporter as well as from the multitude of agricultural and industrial feeders for such export trade.

CONSOLIDATED RETURNS (2 PERCENT "PENALTY") (SEC. 141 (C))

The bill, wisely, has not adopted the subcommittee's recommendation to abolish the present act's privilege of filing consolidated returns for affiliated corporations. The House has continued the privilege but has seen fit to increase the price of three fourths of 1 percent provided by the 1932 act to 2 percent. There was no equitable justification for the higher rate under the 1932 act; there is, therefore, less reason for the proposed higher differential in the present bill.

Both business needs and economic administration are well served by the use of consolidated returns. The accounting and business arguments in favor of consolidated showing of operations, assets, liabilities, and capital of an affiliated group are too well known to require statement in this presence. Whether consolidated returns are permitted or not, consolidated accounting reports will continue to be employed because they are indispensable. When the Treasury is confronted with fiscal difficulties, there may be some excuse, rather than reason, for a small addition of one half or three fourths of 1 percent to the ordinary corporate rate; there is no excuse for so large a penalty or price as 2 percent. In our opinion, the use of consolidated returns does not deprive the Treasury of revenue; there is, therefore, no equitable justification for the higher rate proposed in the bill.

PARTNERSHIP LOSSES (SEC. 182)

Recent public testimony determined the subcommittee of House Ways and Means Committee to recommend that the members of partnerships should be prevented from employing their pro rata share of their firm's losses as individual deductions. The bill, as per the committee's report (no. 704, p. 17) restricts the nondeduction to security losses. Equitably, if partnership gains are to be taxed to the members of the firm, losses should be allowed as deductions. The proposal in the bill is another illustration of a remedy which overreaches itself. Examination of the practice which inspired the House action will reveal that what was involved was the tax deduction of a security inventory loss incident to a change in the membership of the partnership. The taking of such a loss could easily be prohibited by express statutory language. It is not necessary, or even desirable, to prohibit partners from taking deductions in their individual returns with respect to their pro-rata share of the firm's realized losses. This is as true of realized security losses as of other losses. Surely, in view of the large number of small professional manufacturing and retail partnerships throughout the country, Congress should not wish to discriminate against them in order to end a practice which it believes censurable. The more so is this true if the defined evil can be eliminated by a specific proposal which will not injure a large group, the activities of which are utterly unrelated to the transactions with which the House intended to deal. And it is especially true if the taxpayer who seeks expert advice can so easily circumvent the provision by merely arranging for a distribution in kind prior to sale of the securities. In such situations the poorer taxpayer, who does not have the assistance of tax practitioners, suffers while the wealthy taxpayer escapes through the medium of lawful avoidance.

RECAPTURE OF FOREIGN AND DOMESTIC "INCORPORATED POCKETBOOKS"

A Senate committee recently revealed successful tax avoidance through the utilization of the corporate device. Only those unfamiliar with income-tax practice were either surprised or shocked.

The bill attempts to deal with the situation in section 102 (tax on "personal holding companies"). We have commented hereinbefore on that section of the bill. In our comments and observations, we have indicated the unintentional hardship which the provision would inflict on certain "innocent" corporations. We now propose to deal with a somewhat related phase of the same problem.

During the past decade or so, many corporations have been lawfully organized under foreign jurisdictions, either for the purpose of consummating a specific trade which then would not be subject to our Federal and State tax laws, or to trade abroad for similar tax reasons. Sometimes both purposes were present. As a matter of practical administration, these corporations are probably immune from domestic tax, including the 35-percent penalty. Even death does not necessarily bring a day of reckoning.

Despite a temporary psychological change in attitude, it seems clear that those who took advantage of lawful escape from the incidence of taxation are more likely to continue to be envied than censured. The beneficiaries of the older loopholes in the law, when they seek solace are wont to turn to the language in *Ford* v. *Nauts* (25 Fed. (2d) 1015):

" * * * it is well settled that a taxpayer may resort to any legal methods available to him to depreciate the amount of his tax liability, so long as his efforts are confined to the law."

They may also go to Mr. Justice Holmes in *Bullen* v. *Wisconsin* (240 U.S. 625), who said:

"We do not speak of evasion, because, when the law draws a line, a case is on one side of it or the other; and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as an evasion, what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law."

Possibly because of existing public opinion many of the "incorporated pocketbooks", both those abroad as well as those at home, may be anxious or merely willing to give up their corporate status. We submit for the consideration of the committee the thought that restricted permission might be granted to unscramble the corporate omelet. Permission might be limited to 3 months following the enactment of the Revenue Act of 1934. The proposed provision might require accounting for all realized gains of the corporation on a capital-gain basis, for the allowance of no realized net losses as deductions, and for a distribution of other property without recognition of loss or gain and with a tax-basis similar to that provided for distributions in kind by partnerships (sec. 113 (a) (13)).

STATEMENT OF CHESTER LEASURE, OF THE CHAMBER OF COMMERCE, REPRESENTING F. H. CLAUSEN, CHAIRMAN OF SPECIAL COMMITTEE ON TAXATION, UNITED STATES CHAMBER OF COMMERCE

Mr. CHESTER LEASURE. My name is Chester Leasure, of the Chamber of Commerce of the United States, representing Mr. F. H. Clausen, chairman of the chamber's special committee on Federal taxation and presenting a brief.

The CHAIRMAN. That is on the subject of foreign tax credits?

Mr. LEASURE. It is on five general subjects, Mr. Chairman.

The CHAIRMAN. Thank you, very much.

BRIEF OF MR. F. H. CLAUSEN, CHAIRMAN OF SPECIAL COMMITTEE ON FEDERAL TAXATION OF THE UNITED STATES CHAMBER OF COMMERCE

To the Chairman and Members of the Senate Finance Committee: I appreciate the opportunity to present to you some of the views of the committee on Federal taxation of the United States Chamber of Commerce in regard to certain provisions of the revenue bill now pending before your committee.

The announced purpose of the revenue bill, as indicated both by the preliminary report of the subcommittee of the House Ways and Means Committee and by the report of the Ways and Means Committee itself, is to prevent tax avoidance. Business interests, as well as other taxpayers and citizens, are in entire sympathy with efforts to prevent evasion of taxes through technicalities.

It seems clear, however, that the bill, as passed by the House, in various instances goes beyond the announced purpose. Some of the provisions designed to reduce tax avoidance are so drawn that they will penalize conscientious taxpayers who cannot be charged with tax avoidance and who presumably were not intended to be included in the provisions of the law.

Certain provisions of the bill will have a discouraging effect on business. Through the corporation-income tax and a large number of excises and other levies, the Government is now collecting about two thirds of its total revenues directly from business activities. Government revenues will consequently increase satisfactorily as, and only as, business recovers. Encouraging business activity will be far more successful in bringing adequate Government revenues that will be the passage of a revenue act which may discourage business through the imposition of heavy rates of the levying of additional taxes on certain forms of business organization. It is essential for the recovery program, that, through the establishment of confidence and freedom from artificial obstacles, activities of private enterprises be brought to such a point as to enable them to absorb the unemployed of the country and relieve the Government of its present heavy emergency expenditures.

The Government should treat all its taxpayers fairly. There should be no indication that the Government, through its great power, which can easily become oppressive, is endeavoring to take advantage of the taxpayers. The income tax, for example, should be confined to a tax upon real income in the ordinary and business meaning of the word. There should be no attempt to increase revenues by distorting the definition of income, quite apart from constitutional considerations, necessarily resulting in inequities and discriminations.

The outstanding example of the departure of the bill from these principles is the taxing of all net gains which may accrue to taxpayers while at the same time denying them an equal right to deduct losses. This unequal treatment of gains and losses appears most prominently in the provisions of the bill affecting gains and losses arising from transactions in capital assets.

In the attached report of my committee, various specific provisions of the bill are discussed in some detail. The treatment of capital gains and losses for income-tax purposes is particularly unfair, and has already been commented upon. The provision affecting mergers or consolidations of corporations will result in confusion, and will discourage mergers which, in view of recent economic conditions should be made in the interests of good business policies, and because of the lessened number of mergers, revenues will probably decrease rather than increase. The provisions applying to personal holding companies as now drawn will penalize taxpayers who cannot be charged with tax avoidance. The additional tax imposed on the income of those corporations who file consolidated returns will penalize the use of a principle which is generally recognized as sound. The limitation of credit for taxes paid abroad will discourage foreign commerce and correspondingly lessen taxable income within the country which would otherwise be available. The denial of the benefits of the statute of limitations to taxpayers who through an honest mistake of fact or law understate their gross income appears indefensible. The application of the full Federal estate tax to American citizens who die abroad will result in double taxation which may amount to confiscation. Various specific provisions are included in the attached report, which in order to save the time of your committee, will not be mentioned here but to which your attention is invited.

Respectfully submitted.

FRED H. CLAUSEN,
Chairman Committee on Federal Taxation.

The following "report" was also submitted on behalf of Mr. Clausen:

REVENUE BILL OF 1934 (AS PASSED BY THE HOUSE)—REPORT OF COMMITTEE ON FEDERAL TAXATION, CHAMBER OF COMMERCE OF THE UNITED STATES

GENERAL POLICIES

The announced purpose of the revenue bill now pending before the Senate Finance Committee, as indicated both by the preliminary report of a Subcommittee of the House Ways and Means Committee and by the report of the Ways and Means Committee, is to prevent tax avoidance. Business interests, as well as other taxpayers and citizens, are in entire sympathy with efforts to prevent evasion of taxes through mere technicalities.

Various of the more objectionable of the earlier proposals have been omitted or materially modified in the revenue bill as passed by the House. The action of both the House and the Ways and Means Committee has in many instances been constructive. There are still some provisions in the bill, however, which, if enacted, will operate unfairly and harshly. Certain sections will have a peculiarly discouraging effect on business activity. In an endeavor to collect small additional amounts of revenues, taxes are imposed which will operate very unevenly and fall with particular severity on certain limited classes of taxpayers. It is doubtful if some provisions will be effective in their announced purpose to reduce tax avoidance. Other sections, while avowedly designed to minimize tax avoidance, are so far-reaching that they will work hardship on taxpayers who were not intended to be brought within the provisions of the law and who cannot be regarded as tax avoiders. Still other sections will impose greater taxes where there is no question of tax avoidance and these must consequently be regarded as levying additional taxation.

Through the corporation income tax, excises on a large number of commodities, and other levies, the Government is now collecting a very large part of its income directly from business. The proportion which business is contributing has been constantly increasing in recent years and now equals nearly two thirds of the total revenues of the Government. In view of this situation Government revenues will increase satisfactorily as, and only as, business recovers. Fostering and encouraging business activity will be far more successful in securing adequate Government revenues than will be the passage of a revenue act which may discourage business through the imposition of heavier rates or the levying of additional taxes on certain types of incomes or on special forms of business organizations.

The essential purpose of a revenue act is to produce revenue. Its outstanding characteristic should be one of endeavoring to raise the required amount of revenues through taxes imposed as fairly and equitably as circumstances permit. There should be no evidence of a penalizing spirit or of discrimination based simply on the size of business income or the volume of business operations. There should be no indication that the Government, through the use of its great power, is taking advantage of the taxpayers—no evidence of a "heads I win, tails you lose" attitude.

Furthermore, it is of utmost importance that the income tax be confined to a tax upon real income, in the ordinary and business conception of the word. Efforts to increase the revenue by distorting the definition of income or by arbitrary denials of proper deductions must be opposed. Artificial definitions of income, quite apart from constitutional considerations, necessarily result in inequities and discriminations and invariably will be met with opposition and resistance on the part of taxpayers, otherwise ready and willing to pay their fair portion measured by their true income.

The outstanding example of the departure in the bill from these principles is the taxing of all net gains which may accrue to the taxpayer, while at the same time denying him an equal right to deduct losses. This unequal treatment of gains and losses appears most prominently in the provisions of the bill affecting gains and losses arising from transactions in capital assets.

This and other concrete examples illustrating the tendency in the bill to place the taxpayer in an unfair position as compared with the Government are discussed in some detail in the following pages. Provisions which operate in this manner should have no place in the Revenue Act. If more revenues are needed, then additional taxes should be frankly and equitably imposed.

The cooperation of the taxpayers is essential in the imposition and collection of an income tax, as the taxpayers must furnish the essential facts from which the tax may be computed, and at present they also determine the amount of the tax in the first instance. Whenever the taxpayers become convinced that

the Government is taking an unfair advantage of them, or that the tax is levied unevenly or that certain classes, or certain types are of business organizations, or certain kinds of business transactions are being singled out for discriminatory taxes, then the corporation of the taxpayers will be alienated. The Government may be able to make detailed examination of the books and records of a limited number of taxpayers, but it cannot possibly make the necessary examination of the books, records, and business transactions and determine the taxes of all the 500,000 corporations and 4,000,000 individuals now filing income-tax returns. If the taxpayers cease to cooperate, there will result constantly greater inequalities, substantial decreases in revenues, and the ultimate breakdown of the tax.

The income tax properly levied and administered is recognized as one of the approved methods of raising revenues and should be preserved as a matter of general welfare. Moreover, in view of the dependence which the Government places on this source of revenue and of the present and probable future pressing need for revenue, the breakdown of the tax would be disastrous.

Perhaps the fundamental difficulty at the present time is that a burden is being placed on the income tax which was not originally contemplated and which appears to be too heavy for it to support. Immediately prior to the war, Government was securing from 5 to 7 percent of its total revenues from income taxes. Rates were relatively low, administration appeared to be reasonably satisfactory, and few complaints were heard from taxpayers. During the war the rates were raised to excessive levels. While rates were reduced appreciably after the war, still the Government placed main reliance on the income tax as a revenue producer, and in 1930 almost two thirds of the total revenues of the Government came from this one tax.

Then came the recession in economic activity. Revenues fell off alarmingly. In an endeavor to secure additional receipts, the income-tax rates, particularly the surtaxes, were radically increased in 1932. The high rates naturally stimulated efforts to find legal means of minimizing tax liability, and this, combined with other causes, brought, contrary to expectations, an actual decrease in the amount of revenues collected. Further efforts to increase revenues by increasing rates that are already on an exceedingly high level, on all or certain types of income, or by harsh or unfair methods of determining taxable income, will result in repetition of previous unsatisfactory experience and another disappointment in the amount of revenues collected.

PERSONAL-INCOME-TAX SCHEDULE

The revenue bill pending before Congress materially changes the rates and brackets now applicable to individual incomes. One of the principal effects of these changes will be to increase materially the tax on dividends. Since dividends are exempt from the normal tax but subject to surtaxes, this increase is accomplished mainly by reducing the normal rate from 8 percent to 4 percent and applying surtaxes at $4,000, rather than at $6,000 as provided by existing law.

No question of tax avoidance nor lightening the burden on earned income is involved in this instance. Reduction of the tax on earned income is accomplished by other means and there is no charge or implication that the treatment of dividends under present law results in any tax avoidance.

The original theory of the income tax was that the income from which the dividends were derived would be taxed at the source, that is, in the hands of the corporation prior to distribution, and the stockholders would be allowed an equivalent deduction, thus avoiding duplicate taxation. During the war the parity between the corporation rate and the normal personal rate, which represents the taxpayer's deduction, was lost and has not been restored. The chamber has repeatedly protested against this inequity in the past. The present bill still further increases this inequality, as corporations will be taxed 13¾ percent or 15¾ percent on their net income, while the individual will be allowed a deduction of but 4 percent.

Many computations have been made purporting to show that the tax on "earned" income is higher than that on an income of an equal amount accruing from dividends. The fact that these dividends have already been taxed 13¾ percent, or perhaps 15¾ percent, in the hands of the corporations before they reach the individual shareholder is not brought out. If the effective rate on an individual's income composed entirely of dividends is, for example, 6 percent, then the tax on such dividends is approximately 6 percent, plus 13¾

percent, or possibly 15¾ percent, a maximum of 21¾ percent; if the effective rate is 15 percent, the total tax approaches 28¾ or 30¾ percent; if the effective rate is 40 percent, the total tax may equal nearly 55 percent; and if the effective rate exceeds 50 percent, as it does in the higher brackets, the total tax may reach 65 percent. A tax, as heavy as this will in many instances exceed the point of maximum productivity. It will also materially encourage withdrawing of funds from active business and placing them in investments involving less hazard and subject to less taxes.

CAPITAL GAINS AND LOSSES

Rates and taxes.—Existing law provides a flat rate of 12½ percent on gains realized by individuals from the sale of capital assets held for 2 years or more (except where ordinary tax rates would be less), with corresponding limitations on deductions in case of loss. The bill entirely eliminates the 12½-percent rate. It then provides that a certain percentage depending upon the time the assets have been held—100 percent if assets have been held less than 1 year; 80 percent if assets have been held 1 to 2 years; 60 percent if assets have been held 2 to 5 years; and 40 percent if held more than 5 years.

The result of the proposed change will be to decrease to some extent the tax on capital gains for those whose incomes fall in the lower brackets but to increase the tax materially on those with larger incomes.

The treatment of capital gains and losses for income-tax purposes has long been objected to, since, among other effects, in times of rising prices it has a tendency to stimulate inflation. The tax on capital gains imposed by the bill on the taxpayer whose income is in the higher brackets will be heavy. For example, if taxable income from other sources amounts to $100,000 and there is a net gain of $50,000 on assets held from 2 to 5 years; the tax on the gain would exceed 30 percent—an amount that would seriously retard capital transactions and usually, too, at a time when such transactions should be encouraged.

Since under the proposed plan the tax decreases in proportion to the time assets have been held, there will be a constant inducement to delay transactions in appreciated capital assets so as to take advantage of the lower rates. The undesirable business-cycle aspects of the tax will consequently be accentuated both by the weight of the tax on assets held a limited number of years and the natural desire of the taxpayer to reduce these taxes by delaying sales.

It is not clear that any appreciable amount of additional revenues would accrue from the proposed change. The high rates combined with the inducement to postpone such transactions may so limit them and any taxable gains resulting therefrom that more revenues might be gained by retaining the 12½-percent rate with its less-retarding effect on the turnover of capital assets.

Limitation on capital losses.—The important section (117 (d)) of the bill affecting limitation on capital losses is very brief and reads:

"Losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges."

Another paragraph defines capital assets as "property held by the taxpayer (whether or not connected with his trade or business)", but excepts stock in trade and inventories. These provisions apply to all classes of taxpayers including individuals, partnerships, and corporations.

The provisions are perhaps the most far-reaching and also the harshest of any found in the bill. They are the outstanding example of the Government taking unfair advantage of its taxpayers. Evidence of this attitude is found in the report of the Ways and Means Committee which states:

"The method proposed is safe from a revenue standpoint, inasmuch as capital losses cannot be used to reduce ordinary income, while gains are taxed in full * * *."

The proposed change will unquestionably work serious hardships upon business enterprises generally, and particularly upon corporations engaged in industry with their operating plants and machinery. Sales of machinery becoming obsolete or perhaps discarded merely because unsuitable for future use, sales of plants themselves, of lands, of patents, and other property, are of usual and continuous occurrence in the conduct of any industrial business and, because of the conditions under which such sales occur, are frequently made at a loss. To deny deductions of these losses will result in a fictitious non-

existent income which it is now proposed should be used as a basis for taxation.

Under the proposed revision, a corporation which liquidates merely because unsuccessful, sells its assets at a loss and uses the proceeds to redeem its bonds at less than their face value, would pay a tax. The individual who become bankrupt and sells his property at a ruinous loss would nevertheless be compelled to pay a tax upon any "ordinary" income he may have had in the same year. The investor who buys a Government or Farm Loan bond must pay tax if he sells at a profit, but in most instances will be denied any deduction if he sells at a loss. The principle will apply generally to all property of any kind which an individual or corporation may own, excepting only stock in trade and inventories. Anyone who is unfortunate enough to sell a capital asset at a loss will in the great majority of cases be entitled to a correct statement of his true income for tax purposes.

The net result of the proposed change will be to tax the excess, if any, of capital gains over capital losses, but to disallow any excess of capital losses over capital gains. This provision is bound to work great injustice and hardship to taxpayers. Because of business cycles it will rarely happen that a taxpayer has his capital gains and losses in the same taxable year. Even if a taxpayer should be fortunate enough to sustain his capital losses in the same taxable year in which he derives his capital gains, the result would still be harsh and inequitable if the capital losses exceeded the capital gains because the taxpayer would not be entitled to apply the excess loss against the ordinary income. Though the taxpayer's ability to pay taxes would be sharply reduced by reason of the capital loss, the tax required to be paid would be the same as if no such loss had been suffered. If, as will be the case with most taxpayers, capital loss is suffered in a year in which there is no capital gain, the situation is even worse. Taxes will have been paid upon capital gains in the years in which they are realized, but no account will be taken in the years of capital losses of the reduced ability of the taxpayer to pay taxes.

Another provision in the bill (section 117 (f)) provides that upon the retirement of coupon or registered bonds, including those of the Government and political subdivisions, the amounts received upon retirement shall be considered as amounts received in exchange therefor. Under this provision, if bonds are acquired at a discount and later are retired at par, the resulting differential would be regarded as taxable gain. The application of this provision, while affecting numerous taxpayers, will fall with special severity upon banks which, as a normal routine part of their business operation, buy and hold large amounts of securities.

In addition, it has been primarily through the cooperation of the banks that the Government has been able to carry on its heavy financing essential to the success of the recovery program. The bill would not only tax the banks on all gains which may result from these transactions in Government securities while denying them an equal opportunity to deduct losses, but one provision in the bill 25 (a) (5) would work a special hardship. The income from Government securities is exempt from both the corporation tax and the normal tax on individuals, while that from State and municipal securities is completely exempt from the Federal income tax. It is now proposed to modify the method of allocating expenditures and deductions in such a manner that because of the conditions under which banks must operate, they would apparently be denied the complete tax exemption to which they are entitled according to the terms of the laws governing the issuing or the taxing of obligations of this character. Aside from the burden which these provisions will place on financial institutions, in view of the exceedingly large amount of Government issues contemplated in the immediate future, a ready market for Government securities should not be jeopardized by imposing taxes of such a nature as will discourage the absorption of future issues.

This tendency to deny or limit losses appears in the Revenue Act of 1932. The restrictive provisions in that act, however, affect only sales by individuals or securities held less than 2 years and were aimed primarily at speculators and others who sold securities a short time after purchase. The act, however, permitted losses which accrued from transactions in assets held more than 2 years to be carried over to the next taxable year, but that privilege was later withdrawn by the National Industrial Recovery Act. Now, it is proposed to extend further this principle to all taxpayers and to all property (except stock in trade and inventories) regardless of the time assets have been held. Thus

by gradation and by consolidating this provision with the tax rate structure there has resulted the essentially unfair situation that the deduction of certain usual and important types of losses admittedly necessary to determine real income are denied (except to the extent that they may chance to counterbalance like gains in the same year) to all taxpayers. Perhaps this gradation of steps may have obscured the extreme and far-reaching character of the final result.

CONSOLIDATED INCOME-TAX RETURNS

The present revenue law permits the filing of consolidated income-tax returns for affiliated groups of corporations. The statute provides that in order to take advantage of this right at least 95 percent of the voting stock of each of the subsidiaries must be owned within the group, and further that the parent corporation must own directly at least 95 percent of the stock of not less than one of the other corporations. That the real net income of such closely affiliated corporations is the net income of the group as a whole and that income computed on such a basis is a proper method of determining income for income-tax purposes, is generally accepted.

No tax advantage accrues to the group through making a consolidated return. Its profits or losses are reflected in a consolidated statement just as accurately and just as certainly as in the statement filed by a single corporation. An individual corporation usually has various departments and no one questions but that the true net income or loss of such a corporation is the combined profits or losses of the departments. A group of affiliated corporations, as this term is defined by the statute, is in substantially the same position as is a single corporation with its different departments. The variation is one of form and not of principle.

Congress itself has long recognized the soundness of this principle. Since provision was first made for consolidated returns in the Revenue Act of 1918, five revenue acts have been passed. Whenever a bill was before it, Congress considered the consolidated-income provisions and in each instance approved this method of computing income for affiliated groups of corporations.

Recently corporations filing consolidated returns have been required to pay an additional tax over and above the ordinary rate—at first ¾ of 1 percent, and later 1 percent. The bill proposes to increase this additional tax to 2 percent, making the effective rates on corporations which file returns on this character 15¾ percent. Since, according to accounting practices and previous action of Congress itself, and in the belief of this committee, the practice of allowing these affiliated groups to file consolidated returns is fair and correct in principle, there is no justification for placing a penalty on the application of the practice. The ends of justice and fairness would be better served by encouraging rather than discouraging the filing of such returns.

CREDIT FOR TAXES PAID ABROAD

By limiting the credit now allowed for taxes paid abroad, the revenue bill will seriously aggravate the tax burden on American enterprises marketing their products in foreign countries, while at the same time the Government is endeavoring to stimulate export trade through reciprocal tariff agreements, the establishment of an export-import bank and in other ways. The Treasury Department favored the retention of the full credit now allowed by law and the Department of Commerce has also recommended that the present credit provisions be continued. The retention in the bill of the principle is an admission of its soundness, yet the credit is arbitrarily reduced by one half. Such reduction is likely in effect to nullify the advantages of maintaining the principle.

The credit for foreign taxes was introduced in the Revenue Act of 1918 when the cumulation of the high postwar rates of two or more countries on the same income was paralyzing trade. Due partly at least to the sound policy of relief from double taxation, American enterprises established themselves in most of the markets of the world, and through bringing home their income they increased the general taxable wealth of this country. This policy helped to lift our commerce out of the depression of 1920 and is essential at the present time as a means of expediting recovery from the present depression. In fact, the credit for foreign taxes is needed much more at the present time because of the additional barriers to our export trade that have been raised in the last decade.

The credit for foreign taxes is necessary to enable American enterprises to compete in foreign markets with the enterprises of other important exporting countries (e.g., Great Britain, France, Italy, and Germany), which, with respect to certain markets or all markets, allow even greater relief from double taxation of their enterprises than is allowed by the United States to its own enterprises under existing law.

Reduced foreign sales by American enterprises would mean a corresponding reduction in the industrial activity and labor at home which is now devoted to the production of goods designed for sale abroad. This, in turn, will lessen business profits and result in smaller distribution of taxable dividends. It will also mean a reduction in the taxable income received by employees.

On the other hand, if foreign commerce is fostered and encouraged and the inflow of profits from abroad not obstructed by an artificial tax barrier erected by the United States itself, not only would there be increased taxable income resulting from greater business and industrial activity within the country but the inflow of earnings from abroad would increase the profits available for distribution in the form of taxable dividends.

It seems clear that the additional revenues estimated to accrue from the proposed restriction would not be realized but that, when all aspects of the situation are considered, there might well be a decrease in Government receipts.

Not only have various countries given direct relief for taxes paid abroad but they have also entered into agreements with other nations for the purpose of preventing double taxation. Great Britain, France, Germany, Italy, and other countries have been parties to about 30 agreements of this character all designed to facilitate the foreign commerce of their respective nationals, but as yet this country has not taken any such action. Authority granted the Executive to enter into agreements concerning the allocation of income for tax purposes and for preventing double taxation thereof would be helpful to American foreign commerce and give it relief similar to that now given by various other countries to their foreign trade. In the absence of such agreements the retention of the full credit allowed under existing law becomes all the more essential if American foreign commerce is to compete with other countries on an equal basis.

TAXES ON PRE-MARCH 1913 EARNINGS

Until a constitutional amendment was passed in 1913 the United States Government could not levy an income tax. In view of this situation Congress early recognized that it was not fair to tax profits earned before that time even though they should be actually distributed after the income tax became effective. This principle has been in the revenue laws since 1916. The question has been repeatedly considered at the time of the enactment of the various revenue bills and it has been the carefully considered judgment of Congress in each instance in the past that the principle is fair and should be retained.

The present bill eliminates this principle and taxes these profits when distributed as dividends even though such profits may have been actually earned prior to the time the Government had constituted power to levy an income tax. A tax on dividends of this character would be in effect a tax on capital and would also operate in an unusually discriminatory manner. It would apply almost exclusively to the earnings of corporations whose assets consist of natural resources, such as mines and timber, and the stockholders of such corporations would consequently be discriminated against as compared with those of other corporations.

A tax on dividends of this character would also result in discrimination as between the shareholders of corporations which have distributed their pre-March 1913 earnings, either as ordinary or liquidating dividends, have not been required to pay taxes on them. Stockholders of other similar corporations, however, which have conserved their assets and continued business, thus giving employment and contributing to the economic welfare of their communities, will be penalized if they are now subjected to a tax which was not imposed on the shareholders of like corporations which have already distributed their pre-March 1913 earnings.

It is estimated that only about $6,000,000 additional revenues would be gained by levying taxes on dividends of this character and it seems rather clear that, due to practical circumstances, this is an overestimate. In any event, the advantage accruing to the Government because of a nominal increase in revenues would be admittedly small. The burden of the tax on

individual taxpayers, however, cannot be adequately measured by the total yield of the tax. If the small amount of additional revenues were spread evenly over the total number of income taxpayers the increase in any one instance would be small. The tax will not, however, be evenly distributed and the total burden will fall on a relatively small number of individual taxpayers and result in a heavy increase in the taxes of those who happen to be included in this small number.

PERSONAL HOLDING COMPANIES

Section 102 of the bill, pertaining to personal holding companies, is new material. The two determining tests of a holding company for the purpose of the proposed statute are (1) the type of income—80 percent or more of its gross income derived from rents, royalties, dividends, interest, annuities, and gains from the sale of stock or securities, and (2) the number of stockholders—that is, 50 percent or more of the voting stock owned by not more than five individuals. Such a company could retain undistributed 10 percent of its "adjusted" income, but a heavy penalty tax would be placed on any earnings retained in excess of that amount.

The declared purpose of this provision is to reach companies of this character which are being used as a means of tax avoidance. The provisions as written, however, are so broad that they will reach and seriously affect many corporations engaged in proper and usual conduct of business where neither they nor their stockholders can be fairly charged with tax avoidance.

Among the corporations which may come technically within the provisions of the bill, but which the framers of the section presumably did not intend to include, would be many which, because of recent capital losses, should not as a matter of good business policy pay out current earnings but should retain them in order to build up their impaired capital, Corporations whose principal assets consist of real estate rather typically have only a very limited number of shareholders. Many such corporations have had heavy capital losses and should they attempt to repair their capital by retaining rather than distributing current earnings, they would be subject to heavy penalty under the provisions of the bill. Numerous other concrete cases can be cited which would be seriously and adversely affected although it does not seem that the tax was intended to apply to them, nor, as a matter of good business policy, should be applied to them.

It is recognized that there has been tax avoidance through the use of personal holding companies and that a satisfactory method should be sought to prevent such practices. Tests of liability based simply on the type of income, the number of stockholders and the family relationship thereof are, however, likely to fall short of their purpose and will certainly and unjustifiably penalize innocent individuals and legitimate sound practices and financial policies of business corporations.

ESTATE TAX ON NONRESIDENT DECEDENTS

Section 403 of the revenue bill amends existing law in such a manner that full Federal estate taxes will be imposed in case of United States citizens irrespective of whether they are residents or nonresidents at the time of death.

It is the almost universal rule followed in other countries that the estate of resident decedents are taxed except as to real estate located outside the country of domicile. The result of the proposed amendment would be that an American citizen dying abroad, in many instances having lived abroad in the interest of American foreign trade, would be taxed on his entire estate by the country in which he resided and likewise on the entire estate by the American Government. The only exceptions from complete double taxation would be as to any real property located within this country.

This accumulation of taxes would result in excessive levies and at times in complete confiscation as the taxes might equal or exceed the value of the estate itself. The American Government would also be treating its citizens more harshly than most other governments which almost universally follow the rule of subjecting to full taxation only estates of resident decedents.

The amendment is being proposed at a time when the excessive taxation of estates through double or multiple liability to death dues has been practically eliminated within the United States and when various foreign countries through bilateral treaties are endeavoring to relieve their respective nationals of the burdens of double taxation. The proposal is a distinct step backward and in direct conflict with the vigorous constructive efforts now being made to lessen or eliminate double taxation,

EXCHANGES AND REORGANIZATIONS

While the bill wisely retains most of the provisions of existing law for exchanges and reorganizations, two important changes are proposed.

Section 112 (g) of the present revenue act is omitted in this bill. This section provides that if a corporation pursuant to a plan of reorganization to which it is a party, makes to its stockholders, without surrender by them of their stock, a distribution of the stock or securities of a corporation which is a party to the reorganization, no gain to the distributee is then to be recognized.

This means that when a stockholder under certain circumstances simply receives two stock certificates, one in each of two corporations, to represent parts of his equitable interest in the same property which was formerly represented by one stock certificate in one of the corporations, no gain to him is to be recognized. The gain is to be recognized as realized, when by sale or otherwise he receives cash or its equivalent in some different property. The rule grants no exemption from taxation but merely recognizes that no income has resulted and defers the recognition of gain or loss until something is received other than the mere paper evidences of equitable interest in the same property in which the stockholder previously had a similar equitable interest.

In the cases covered by section 112 (g) no cash or property dividend has been paid. There have been no sales to outsiders. There has been nothing but a rearrangement of property interest, a change in the form of ownership. If the stockholder sells his stock in one or both corporations so as to receive cash or its equivalent, he will be taxable upon any gain just as he would be if he had sold an equivalent amount of his original stock.

As an illnstration, assume Corporation "A" is engaged in manufacturing office appliances. It pays $2,500 for the patent rights to a new kind of electric typewriter. Its directors hesitate to go into the typewriter field, but the stockholders are willing to risk a moderate sum of money on the new product. Corporation "B" is formed and all its stock is issued to Corporation "A" for the rights to the electric typewriter. Corporation "A" distributes the "B" stock to its stockholders, who thereafter attend to the financing and management of Corporation "B." Corporation "A" goes ahead with its office appliance business as before. This amendment would operate to levy a tax based upon an appraised or estimated value of the patent rights.

This illustration is typical of numerous legitimate business transactions, large and small, occurring daily, to which section 112 (g) of the present law applies. Similar situations arise, for example, where a manufacturing corporation whose stock it turns over to its own stockholders. The problems may occur if the manufacturing corporation undertakes the venture of supplying one or more of its own raw materials, and frequently is solved in the same way. Other illustraions are the formation of separate corporations to hold the land and factory in which the business is conducted or the offices located; to provide for the segregation of an unprofitable or necessarily speculative branch of the business; to segregate a wholly unrelated business acquired in satisfaction of indebtedness; to isolate property or branches of the business required by law to be owned by separate corporations, such as real estate and employees' insurance fund; or to provide satisfactory means of meeting various conditions which arise in normal business operations.

The present provisions of the law in this respect are fair and reasonable and should be retained.

The other important amendment to section 112 pertains to the definition of reorganization. This definition is changed by omitting the language of the present law which brings within that definition "the acquisition by a corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation or substantially all the properties of another corporation."

The apparant effect of this amendment will be to eliminate perhaps the most usual and important form of reorganization, leaving only comparatively restricted and technical forms permissible without tax. Under the amendment, if two corporations owned by different interests desire to consolidate and give their stockholders no cash or property, but only stock representing the same properties, they may apparently do so free of tax if they happen both to be in the same State and that State provides by law for procedure which can be called a "merger or consolidation", but if not, and if the transaction involves one of the corporations or a new corporation taking over the stocks or proper-

ties then a tax is seemingly payable based upon appraised or estimated values of the stocks.

The provisions in the income law pertaining to mergers and consolidations have always been complicated and difficult of interpretation. The omission of one of the clarifying definitions of these terms will make the law more confusing and more indefinite. The technical meaning of the terms would apparently have to be determined in various instances by the laws of the particular State which might be applicable in the case. What would be a merger or consolidation in one State might not be in another. Instead, then, of having uniform principles generally applicable to all corporations, there would be different standards applicable to different corporations.

The provisions applying to such cases have remained in the law practically unchanged for a considerable period of years and there has been presented no convincing evidence of any real tax avoidance. Stockholders will be very relunctant to engage in such consolidations when any apparent paper profits become immediately taxable. The net result of the amendment will logically be to preclude reorganizations, which in view of the recent financial difficulties may be highly advisable from the standpoint of business policy, while at the same time little or no gain will result to the Government in the form of additional revenues.

In the Government's struggle to cope with the occasional tax avoider the great majority of taxpayers are placed in the position of innocent sufferers, unless their interests are considered and protected. It is a doubtful benefit to the revenues to catch the avoider by means which work serious injury to the large group of bona fide taxpayers. To repeal these provisions of existing law would be doubly unfortunate at the present time when every effort is being made to accelerate the orderly recovery of industry and when tax rates are so high that unfair burdens deter or even defeat that desirable purpose.

STATUTORY TIME LIMIT

Time for assessment.—The time allowed the Government to assess income taxes is increased by the bill from 2 to 3 years and the time allowed a taxpayer to file a claim for refund or credit is also increased. Extending the time now allowed to the government for assessing income taxes appears unwarranted and unnecessary. The Bureau of Internal Revenue has now had about 20 years' experience with income tax administration and about 16 years in administering the complex revenue laws resulting from the War. Taxpayers should not have hanging over them any longer than absolutely necessary a Damoclean sword in the form of taxes unknown in amount. If under present conditions taxes cannot be definitely assessed within a period of 2 years, then the obvious remedy is not to harass the taxpayers further, but to simplify the law and improve administration.

UNDERSTATEMENT OF GROSS INCOME

Understatement of gross income.—Under the present law if a taxpayer files a fraudulent return with intent to evade the tax, or fails to file a return the statute of limitations is suspended and the tax may be assessed at any time. The bill (section 276) retains this part of the law, but extends the provision to a taxpayer who "omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return." Such a provision appears to be unreasonable and impracticable.

Neither the Revenue Act nor administrative rulings have ever attempted to set forth the exact rules for computing gross income. No fine distinctions have been drawn as to whether deductions are to be made in computing gross income or from gross income. If this provision is enacted into law, a complete new line of regulations and decisions would have to be built up to distinguish, as have never been done before, between deductions in computing gross income and deductions from gross income. The tax return should, as a matter of fairness to the taxpayer, also be completely revised so as to indicate definitely the technical meaning of the term "gross income."

A taxpayer who has thus understated his gross income, even though such understatement is due to an honest mistake of fact or law, is placed in the same position and under the same penalty as one who has filed a fraudulent return or failed to file any return at all. In view of the very complicated nature of the income tax law provisions, the frequent changes in the revenue

law and the uncertainty now surrounding the legal definition of gross income, there is ample opportunity, even though the taxpayer has the best of intentions for honest mistakes both as to law and fact.

This provision will be exceedingly unfair in many instances. For example, taxpayers frequently, but in good faith, report items of income in the wrong year. Again cases will arise where a relatively slight error in valuing inventories will result in such an understatement of gross income as will give the Goverment an unlimited period for collecting additional taxes.

Provisions which are necessary in order to collect taxes from persons who have attempted to avoid them are to be commended, but the penalty should not be inflicted upon the innocent who are entitled to demand certainty and finality in the determination of their tax liabilities. Furthermore, any extension of tim for collection of adfditional taxes should be accomplished by a reciprocal extension to the taxpayers for the recovery of overpayments.

EXCISES ON LUBRICATING OIL AND GASOLINE

The revenue bill, while not changing the rates now imposed on gasoline and lubricating oil, modifies very materially the method of collecting the tax.

The law contemplates that the tax shall be paid once and only once. Under existing provisions the original manufacturer is responsible for the tax except where he sells to another manufacturer for further processing of a taxable article, in which case the second manufacturer files a certificate with the first producer to that effect. The second manufacturer then receives the article tax free and is responsible for and pays the tax. This plan recognizes the practical operation of the petroleum industry and when reasonably well administered assures collection of taxes on the total volume of oil and gasoline sold or used for domestic consumption, excepting, of course, the amount purchased by such tax-exempt agencies as the states and their local subdivisions. The bill eliminates all tax-free sales by the original manufacturer and provides for refunds or credits if the original payor can secure the necessary evidence that the tax has been later paid elsewhere.

Due to conditions of the industry, however, the proposed method of establishing a claim for a refund would in many instances be impossible. There is a constant exchange of thousands of cars of petroleum products between producers. Many refineries are equipped to make only one quality of oil or gasoline: others a different kind or quality. Many refiners run only to certain cuts of the crude oil with the crude residue sold to and further refined by other refiners differently equipped. Some refineries operate upon crude oil; others use only partly finished material. Many refineries have limited marketing outlets. Others have marketing facilities beyond their own refining capacity and consequently buy for resale. Exchange of products between component parts of the refining industry is an inherent and necessary characteristic of the industry.

Another and more concrete example will still further illustrate the dificulty of securing the refund or credit proposed by the amendment. A producer may sell to another producer a car load of lubricating oil. According to usual practice the second producer may purchase similar car loads of oil from other producers. In connection with each of these transactions, the original producer under the proposed amendment will pay the tax. The aggregate amount of oil purchased then goes into a common tank of the second producer. Some of this may be sold in the same form in which purchased. Some may be further refined, leaving a residue of nontaxable articles. Some may be sold by the second producer to an exempt agency, such as a state or political subdivision, or it may be sold to a dealer who in turn sells to such an exempt agency. It would be physically impossible in the light of the actual practices in the industry to prove that any particular part of oil purchased from any given original producer has gone into any given channel of consumption. If, as a matter of administration, strict proof of the disposition of the oil was required before allowing credit or refund, there would inevitably be a duplication of taxation on oil which is exchanged between producers prior to sale to the consuming public.

This normal interchange of petroleum products between producers of oil or gasoline also means that the product must be held in store a considerable period before being resold or, in the case of further refining, before sale of the finished product. If it should be required that the tax be paid on gasoline and

oil at the time of the sale by the first producer, the investment in inventories would be very materially increased. This increase would correspondingly increase personal property taxes and insurance costs because of the greater insurable value of the products stored. In addition thereto, the inclusion of the tax would make it necessary to increase the credit extended. All these items will run into many millions of dollars.

The very nature of gasoline makes it susceptible to losses due to shrinkage because of temperature variations or because of losses incident to transportation, leakage, refining, and other operations incident to the industry. Losses due to those causes have been reliably estimated to amount to at least 2 percent and in a large number of cases somewhat greater.

It is contemplated that the tax should be paid once and only once, and only on the volume of articles actually passing into consumption. The law consequently should be so framed that, in line with conditions under which the industry must operate, the intent of the law can be realized in fact without undue and perhaps impossible burdens placed either upon the industry or upon the administrators of the law.

DEPRECIATION

The bill makes no material change in the provisions of existing law affecting depreciation. The Ways and Means Committee, however, in its report on the revenue bill discusses the administration of the depreciation section of the law and a letter from the Secretary of the Treasury on the subject is incorporated in the report. Since the matter is thus in the legislative record, it appears proper to comment on it here.

The earlier proposal to incorporate in the law a provision for an arbitrary reduction of 25 percent in depreciation allowances is abandoned and the determination of reasonable allowances is left to administrative action of the Treasury. This, it is believed, is the proper manner for checking and controlling depreciation allowances. It is urged, however, that there should be no intention, expressed or implied, that the Treasury should be expected to do anything else than grant the reasonable allowances to which the taxpayer is fairly entitled under the law.

The fact that depreciation deductions have, in the post-war years, gradually been increasing, is, in itself, no indication of a tendency toward excessive allowance. Naturally there would and should be increased depreciation to correspond to the immense expenditures which in those years were made for new and additional construction and equipment, generally on a high-cost scale. A business to be sound and survive must recover its plant and equipment investment out of its earnings during the period of useful life of the depreciable property. Otherwise, the gradual exhaustion, wear and tear, and obsolescence of such property will mean the ultimate impairment of its capital.

The appropriate allowances to be made in any particular case are not a matter of fixed rules or formulas, but rather of fair and reasonable judgment under the facts and conditions of its capital.

The appropriate allowances to be made in any particular case are not a matter of fixed rules or formulas, but rather of fair and reasonable judgment under the facts and conditions applicable to such case.

There is no convincing evidence that excessive depreciation allowances have been made, but if there are such instances, then appropriate correction and adjustment should be made. There should, however, be no thought that those who have heretofore been receiving only the reasonable allowances to which they were fairly entitled should now be subjected to drastic or unwarranted reductions.

Furthermore, there should be no thought of placing upon taxpayers a burden of presenting such extensive and detailed schedules and statement of facts as would tend to discourage and prevent the taxpayer from claiming reasonable allowances. Where the taxpayer keeps his full and appropriate records and accounts open for examination by the Bureau auditors, it should not be expected or required that such records need be duplicated in the Bureau's files. Appropriate allowances can better be judged on the ground where the records are kept and the property is located than in any other way.

It is generally recognized that the restoration of a market for capital goods is fundamental for business recovery. This will not be encouraged if there is any indication of an intention by the Government to deny to taxpayers the reasonable allowances necessary to recover the cost of depreciable assets during their useful life.

COMMITTEE ON FEDERAL TAXATION

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A. W. Robertson, chairman Westinghouse Electric & Manufacturing Co., Gulf Building, Pittsburgh, Pa.
F. H. Clausen, president, chairman the Van Brunt Manufacturing Co., Horicon, Wis.

STATEMENT OF GEORGE M. MORRIS, REPRESENTING THE AMERICAN BAR ASSOCIATION

The CHAIRMAN. Mr. Morris, how much time do you want?

Mr. MORRIS. I can say all that I have to say, Senators, in about 7 or 8 minutes, unless somebody wants to ask me some questions, in which event it will take longer.

Senator CONNALLY. Mr. Chairman, is this the oil matter?

The CHAIRMAN. No. Mr. Morris is representing the American Bar Association.

Mr. MORRIS. We wish, Senator, to commend, in the first place, the studies which the Joint Committee on Internal Revenue has made with respect to conflicting State and Federal taxation, with respect to the alteration of the valuation base in estate tax cases to take care of the widely fluctuating price features of estate assets between the time of death and the time for payment of tax. Those two studies we regard as very valuable. We hope they will be continued. We hope the committee, when it has an opportunity, will give close attention to the studies by the joint committee.

We also commend to this committee a study by the joint committee of international double taxation. It is apparent from the House bill, that there is a lot to be learned yet about international taxation, and no one is better capable to do the work than Mr. Parker and his staff.

We wish also to commend to this committee, the following sections of the House bill, namely, the change in the method of taxing gains and losses, so far as that change in method eliminates two very troublesome questions that have caused a great deal of litigation. The first question was the base which one may employ in stating his net income for the purpose of deducting the 15 percent contribution to charities. There has been a great deal of dispute as to whether that included the gains and losses or not. A new set-up in the House bill will eliminate that question and stop its further agitation. The second set-up in the House bill which arises from a change in the method of taxing capital gains and losses, is a source of questions that arose as to whether the redemption of a bond or the redemption of any obligation by the obligor, constituted an exchange for the man who was holding the obligation, or whether it was ordinary income. Well, the change that the House

has proposed in taxing capital gains and losses, will take care of that much-agitated question, and to that extent is a distinct gain for the community as well as the Government.

The third commendation we wish to put on the House bill for the benefit of this committee is that provision in section 503 which now provides, for the first time, clearly, that when the Commissioner of Internal Revenue and a taxpayer enter into an agreement to suspend the particular dispute in which they are engaged, to await the decision of some court case or some case before the Board of Tax Appeals, that by that agreement the running of the statute of limitations against bringing suit either by the commissioner or by the taxpayer is automatically suspended. That clears up a question which has caused a good deal of doubt in the minds both of the commissioners and the taxpayers. We wish to propose to this committee the following changes in the bill, as it passed the House.

In the first place, in the 1932 act, Congress made a retroactive change in a section having to do with reorganizations. Prior to the 1932 act, it was provided that when a reorganization took place, unless at least 80 percent of the ownership of the existing organization, the existing assets, entered into the new organization, that the assets that were transferred to the new enterprise should have a basis in accordance with their cost. By the 1932 act, it was provided retroactively that the percentage of ownership should be reduced from 80 percent to 50 percent. The effect of that measure was to upset the calculations that people had been making since December 31, 1917, as to the basis of assets paid in for the purpose of calculating depreciation, cost, and so forth. We regard that retroactive enactment as extremely unfortunate, and must protest and ask that so far as the past is concerned that mistake be rectified in this bill, so far as the future is concerned. From June 2, 1932, on we have no concern with it at all, because that is a substantive matter affecting taxation, but the vice of the retroactive application is that everybody who was trying to obey the law and trying to follow what the statute said suddenly finds himself, after a period of 12 or 13 years, thrown entirely out of the way, on a statute obviously existing before. We think that should be changed.

Senator REED. What is this—taxation of earnings prior to 1913?

Mr. MORRIS. No, Senator, it is the change that the 1932 Act made with respect to the basis for assets which are paid into a new enterprise. Prior to 1932, if 80 percent of the ownership of the new enterprise was the same as the ownership which held the assets, then the basis for the assets for depreciation, for subsequent sale, and so forth, remained the same. Now, the 1932 act dropped the 80-percent figure down to 50 percent, and it thereby was retroactive, clear back to December 31, 1917, and it is the retroactive feature from which we complain, because it has upset everyone who tried their best to follow the laws that then existed.

Our second point which we wish to present to the committee is this: As it stands now, when a man is discharged from bankruptcy, he is not discharged from the debt which he owes the United States for taxes, and we believe that the Government should have a complete prior lien for all taxes claimed by it, so far as the bankrupt estate exists.

Senator CONNALLY. Before you get to that point, what is there about this reorganization? What change does the bill make in that old system that you are talking about?

Mr. NORRIS. The 1932 bill?

Senator CONNALLY. I am talking about this bill.

Mr. MORRIS. This bill makes no change, Senator, and we think it should. We think that this bill should provide that that provision in the 1932 act should not be extended retroactively.

Senator CONNALLY. I see. All right. Thank you.

Mr. MORRIS. With respect to the bankruptcy situation. At the present time, when a man is discharged from a bankruptcy proceeding, the debts that he owes the United States for taxes hold over his head. We think that if the spirit of the bankruptcy laws is to be followed, particularly in the present time, which gives emphasis to the situation, that a man who is discharged, in the absence of fraud or improper conduct upon his part, from his debts, should also be discharged from his debt for federal taxes. We have so recommended and I am glad to say that we have the approval of our own committee—and when I say "our own", I mean the American Bar Association's Committee on Bankruptcy. They feel the same way that we do. So long as the spirit of the bankruptcy laws is the rehabilitation of the debtor, he should be rehabilitated against his obligations to the Federal Government for taxes as well as he should for any other obligations.

The third point we wish to make is this: As the matter now stands, when a man is a transferee of a taxpayer, he may be pursued for the taxpayer's tax. The way the thing practically works out very frequently is this: The Commissioner of Internal Revenue selects the man who is most likely to be able to pay the tax of the taxpayer whose assets he now holds. The Commissioner of Internal Revenue then proceeds against that one personally. The ordinary situation, of course, is this: A corporation distributes its assets. It distributes its assets among its stockholders. There may be one, ten, fifteen, or twenty. It is then discovered the corporation has not paid the correct tax. The Commissioner of Internal Revenue goes against one of these transferees. Now this individual may receive what is known as the 60-day letter and be brought before the Board of Tax Appeals, if he wishes to take his appeal. Unfortunately, however, there is no process by which that individual may bring the other transferees before the Board of Tax Appeals. The individual who is brought in is liable to the extent of the entire distribution to him for any tax which the original taxpayer owes.

Senator REED. Isn't he subrogated if he makes the payment?

Mr. MORRIS. He is, Senator, afterwards.

Senator REED. He can sue in a common law court?

Mr. MORRIS. Yes, sir; in an equity court. Now, this is the difficulty in the first place, when that man goes into the equity court to compel contribution from the other transferees, he is met with a necessity upon his part to prove the correctness of the tax against the original taxpayer. Now, when the Commissioner of Internal Revenue comes before the Board of Tax Appeals, prima facie, his finding as to the tax of the original taxpayer is correct. The transferee must upset it. Now, when the transferee who is actually held

by the Board of Tax Appeals, has to go into an equity court, he has a different burden than the Commissioner has, because he has no prima facie presumption in his favor. It is necessary for him to prove that all the tax that the Commission laid out was the correct tax against the original taxpayer. Very frequently, he has no means in his possession of showing that.

Senator REED. Isn't there a presumption of correctness in a tax which was assessed and enforced by a Board of Tax Appeals?

Mr. MORRIS. No, sir; not in the court. He starts ab initio. He starts from the beginning, and he has to prove the tax claimed against the original transferor, the original taxpayer, was correct.

Senator COUZENS. Have you drafted the kind of an amendment you would like to have in the bill on that?

Mr. MORRIS. Yes, we have, and we have no pride in it. This is a very difficult question. We have talked it over with the men on the joint committee and the legislative draftsmen. I think everybody has sympathy, to a large extent, with what we are trying to do, but we all have difficulty in doing it effectively, and cleanly and in such a way as not to confuse an already complicated situation; but the point is, that I am trying to make here, this is an important matter. This should be pursued until it is successfully solved. We can put up something to shoot at.

Senator COUZENS. Will that be included in the brief you are going to file?

Mr. MORRIS. Yes, sir; and we have something here to shoot at. As I say, we are not proud of it. It can be improved undoubtedly. It should be improved, and this thing should be straightened out, because it is a continual situation that one man is being called in and being held, and he has to pay the tax on the transferor, and then he has to scatter all over the United States to get the people who ought to pay at the same time; whereas, if he were permitted by a motion before the Board of Tax Appeals to bring in all these other people that he knows about, similar transferees, then in one procedure you could settle the question, and anybody who was obligated to pay, and the extent of their obligation.

Senator REED. You do not know of any case where the Commissioner has followed property into the hands of the transferee, who gave full value for the transfer, do you?

Mr. MORRIS. Oh, no; you cannot do that, of course, because that would be a straight sale from the transferor.

Senator REED. Yes.

Mr. MORRIS. When the transferee pays for what he gets, then he cannot be followed any more than he could in any other conveyance.

Senator REED. Not until a lien is filed?

Mr. MORRIS. But he could not even be followed then, if he paid for what he got.

Senator REED. Oh, yes, he could, if there was a lien filed against him.

Mr. MORRIS. Well, if the transferor received a consideration, I mean if the taxpayer received adequate consideration, and it were not a fraudulent transaction, the transferee, I should think, would be completely clear. It is only when he does not pay in as much as he should.

Senator REED. Just like the lien of a judgment, that would apply to anybody.

Mr. MORRIS. I bow to your superior knowledge on that, Senator; but I do not think it gets right into this problem. I know of no case where it has been attempted, at any rate, which was your original question.

The next point we wish to call attention to, is this: When a case is brought before the Board of Tax Appeals, the Commissioner of Internal Revenue quite properly, we all agree, is able, at any time, at a hearing or at a rehearing, to increase the amount of deficiency which he claims against the taxpayer. There is no limitation that will stop him. Now that is the way it should be. So long as that matter is open before the Board of Tax Appeals, the Commissioner ought to be able to assert a deficiency and collect the amount of the tax that is owed. On the other hand, the taxpayer, in the event that he has paid too much, as it turns out, is not able to get his money back unless he has filed his petition before the Board, or a refund claim, prior to the running of the statute of limitations.

So then, we have this situation: The Commissioner, by reason of the taxpayer's appearing before the Board of Tax Appeals, is absolved from any statute of limitations so far as the deficiency for the years is concerned; but the poor taxpayer if it turns out as a matter of fact that he has paid too much money, if he has not filed a claim within the statute of limitations, he cannot get his money back. Now all we feel about that thing, is that the relationship should be reciprocal; if the matter goes before the tribunal to settle the dispute, and one party thereto may get what he is entitled to get, we think the other party should get it too; and it is a matter of straight reciprocity. We think that situation should be corrected.

The next point is this: There has been a correction in the time for filing petitions before the Board of Tax Appeals. Frequently this situation arises: Some chap who is not a resident of Washington and does not know the holidays that are observed in the District of Columbia, sends in his petition on the assumption he is going to be within the limitation period. Prior to the House bill, it was 60 days. Now it is 90 days; but on principle it makes no difference what the time period is. Supposing we have a holiday here on a Monday, that that same man out in Nebraska, for instance, does not have in his State at all, he calculates that his petition is going to get here on the Monday morning mail. The Board of Tax Appeals is closed. The petition is not filed until Tuesday, and that fellow is out of court. Now, we have taken care of the situation, the existing statute takes care of the situation by saying that if the last day is a Sunday, then the next day counts. We will propose an amendment which simply says, that if the last day is a holiday or a half holiday in the District of Columbia, the next day will be an adequate filing. Now, that is the way it is done in most States, and it should be done in the Federal statutes, which is a very simple thing and which ought to be taken care of, because every now and then some poor devil is left out on the end of a limb because he does not know the holidays in the District of Columbia.

Senator BARKLEY. Well, there are a lot of people in the District of Columbia who cannot keep up with them.

Mr. MORRIS. All right, Senator, I am sure the Senators are keeping up with them anyway.

Senator BARKLEY. By working.

Senator KING. We have no holidays.

The CHAIRMAN. All right.

Mr. MORRIS. Our next point is this: At the present time there is a confusion in the existing statute as to the circuit court to which appeals are taken from the Board of Tax Appeals. In at least nine cases, appeals have been improperly taken because of the existing confusion in the statutes. In at least 100 cases or more, now, it has been necessary to appeal to 2 circuit courts at the same time, in order to be protected against a misconstruction, or against the construction of the court to which your first appeal, against your construction of the statute. That situation should be remedied. It applies both to the taxpayer and to the Commissioner. Sometimes the Commissioner has made the mistake of appealing to the wrong court. Sometimes the taxpayer has.

Senator KING. You have offered a clarifying amendment, have you?

Mr. MORRIS. We have proposed one, Senator, of which, again I say, we are not particularly proud, but it is something to shoot at. The situation should be remedied. Maybe we did it wrong here. It might be better to go back and correct the original statement. I am not so sure about it, but it is an important matter and should be fixed up. It is a reciprocal matter, as I have said before. We have called attention in the brief we have filed to the necessity of a change. We have proposed in this set-up here that wherever anybody wants to raise the question of the March 1, 1913, value, he may go before the Commissioner voluntarily, even though there is no dispute, and have persons appointed to assign March 1, 1913, value. Rather obviously, that is an inept provision, but this committee and the Congress sooner or later is going to have to do something about the March 1, 1913, value.

Senator REED. As far as capital gains are concerned, that would be corrected if this new method of treating capital gains were carried on by the addition of two or more brackets so 20 percent of the gain was to be considered if the asset had been held for 10 years or more, and zero if it had been held for 15 years or more?

Mr. MORRIS. Yes, sir; I think it would.

Senator REED. That would get us away from March 1, 1913, altogether?

Mr. MORRIS. On capital gains.

Senator REED. On capital gains.

Mr. MORRIS. Which is the most important.

Senator REED. As far as depletion and depreciation go, that has already been ascertained?

Mr. MORRIS. That is very well worked out; yes, sir.

Senator REED. So you could pretty nearly eradicate 1913 if we would carry that logically to its conclusion?

Mr. MORRIS. I think that is an excellent idea.

Senator REED. The House Ways and Means Committee has gone the first step, you see, by putting in four brackets.

Mr. MORRIS. Oh, I think that would be a grand way out of an extremely difficult problem, if we could work out something which would simply obviate the necessity of using it at all, because everybody is dying or is dead that knew anything about it, and so as a practical thing it is going to be a proposition of who has got the biggest liar as to the value that he has got, that he knows nothing about. That is what it amounts to.

The CHAIRMAN. What other suggestions have you?

Mr. MORRIS. We have two others, Senator. I have concluded with our original provisions. We wish to say two things about the bill that passed the House.

The first is this. Section 276–a provides for the removal of the statute of limitations in the case of a man who has reported his gross income 25 percent less than the Comissioner thinks it should be. We think that that is a very unfortunate suggestion.

Senator REED. Where is that?

Mr. MORRIS. Section 276–a. The situation there is this. Nearly all mistakes as to the income for a given year, when the taxpayer is honest, arise from a mistake on his part either of fact or law, as to which year a given item of income should be placed. The books are full, for instance, of this type of case. Somebody declares a dividend, a corporation or some man says "I am going to pay you the money I owe you." That comes along at the end of December. When is it income? Is it income on that day in December, or, is it income in January when the man gets it?

I say, it is a common matter of dispute. It will vary back and forth with the fact or the circumstance, which is a very infinitesimal matter in the whole scale, but turns the balance. Some fellow comes along and reports his income for 1923, thinking that he got it in 1923. The Commissioner comes along and says, "No; you did not get it until 1924, therefore the statute of limitations is removed, and we will tax you for 1924." No allowance at all for the fact that he did report it in 1923. Over a period of years—and I think everybody will testify that this is correct—the honest taxpayer necessarily reports his gross income. He may miss it by 2 or 3 years, as to which year it goes into, through litigation, for instance. One time the court says that payment really belonged back in 1923, and the next court will say in this situation, "This payment belongs in 1927 when you got the money." If you are honest, those things are washed out in the long run. If you are dishonest, we have no defense at all in the matter.

The CHAIRMAN. The committee will consider your suggestions.

Mr. MORRIS. There is one other point which I want to make, and that is this. About section 102. That is the "incorporated pocketbook" section. We feel and we say this not as lawyers because this is going to make money for lawyers, but we feel that this is an attempt to do legislatively what is essentially an administrative problem. Section 102 has built an iron ring. It drops the iron ring down into a group of taxpayers. It is an open invitation to everyone who actually is operating an incorporated pocketbook to lift his foot out of the ring, and the minute he has his foot out of the ring, he is clear.

The section provides, for instance, that the holding should be 50 percent, by not more than 5 people in 1 family. In the last half

year. The invitation to a man who wants to beat that racket is to bring in a sixth person and sell him a little bit of stock on the 29th of June, or, instead of having 50 percent, cut it down to 49 percent. You can sell a share of stock. So much for the invitation to the fellow who wants to beat this thing. The other problem on this thing is this——

Senator COUZENS (interrupting). If they do that, does not the control pass out of the original owners?

Mr. MORRIS. For the last half year, yes; but there are other situations where the man could buy the share of stock at a small figure and would be willing to go along with the original owners.

The other situation, and this is the most unfortunate—seems to be that administratively that is inept, because it is so easy to evade—the other aspect of it is this: there are, I think in the knowledge of all of the members of the committee, a number of situations where holding companies exist for a perfectly legitimate purpose. It has nothing to do with this "incorporated pocketbook." For instance, something such as this—that they control a manufacturing concern on the one hand and a selling concern, say, marketing the product of the United States; and on the other hand there may be another selling concern marketing it in Canada, or some such situation as that. For pure business economy, for good business reasons, they have various operating organizations which may be controlled by some organization which simply stands there holding the proceeds. If those people are unfairly accumulating surplus, if they are not trying to discharge some bond obligation with a sinking fund, then they should be penalized under this section 103, which is an appropriate section, but that is an administrative problem, and in order to be handled in an administrative way, so that the real intent and the real purpose to evade or to avoid the tax is discernible before you let this thing down, and as it is in section 102 you automatically drop this ring right down on a number of people who are not operating an "incorporated pocketbook" at all, but who are operating businesses. They simply happen to fall within the definition of section 102, that which it sets out, or they would fall within any definition. It is not section 102—the definition—that we complain about. It is that method of approach.

Senator, I have a letter that I would like to submit to the legislative draftsmen, if I may.

The CHAIRMAN. Thank you, very much. And your brief is filed.

Senator REED. Just a minute. I want to ask a question or two about that. After all, this witness knows so much about the income-tax law that I think what he is telling us is profitable. It occurs to me that section 102 is pretty easy to beat?

Mr. MORRIS. Yes, sir.

Senator REED. In the first place, the holding company does not need to take from its subsidiaries any more than just enough to pay its dividends.

Mr. MORRIS. Yes, sir.

Senator REED. Unless it has debts to meet, and then it is in trouble. In the next place, it has been said—I am still a little doubtful about it—that the whole section would be defeated by the filing of a consolidated return. What do you think about that?

Mr. MORRIS. That would entirely depend, of course, upon your factual set-up in your consolidated affiliated situation. In other words, there are situations undoubtedly where the effect of section 102 could be defeated, and in others it could not be. That would turn upon the facts and not the law.

Senator REED. In an incorporated pocketbook idea, where a man is not one of many stockholders, he puts all of his holdings in his own private company—the Wiggins type of company—there he could not file consolidated returns of his company with the Chase Bank.

Mr. MORRIS. No; not at all. That type of corporation would be definitely out. He would be in the classification. On the other hand, you pick that fellow up so rapidly under section 103 or under the type of provision which is section 103. If I may take just another moment. I have had a number of the old section 104 cases.

Senator REED. Section 220.

Mr. MORRIS. Yes. And old section 104. Those are the accumulation of improper surplus. Those sections have been a marvelous policeman, because the minute a man is called in by the Bureau of Internal Revenue, the Commissioner says, "We suspect you of accumulating surplus for the purpose of avoiding a fair tax." The man has to come in and say, "Here is my story." The man sitting on the Commissioner's side says, "That story does not sound good to me." This fellow says, "My goodness, I want to know what is the right thing to do about this." "All right, if you want to do what is right, you go ahead and distribute that accumulated surplus and pay the dividend tax on it the way anybody else does." That is a splendid policeman, and it does a much better job in a policing job than it does in a prosecuting job.

Senator COUZENS. Do you know any taxes that ever were paid under section 104?

Mr. MORRIS. Yes; I do. Myself. That is, my clients did.

Senator COUZENS. Under section 104?

Mr. MORRIS. Yes.

Senator REED. What would you do if you were attempting to reach the objective contemplated under section 102?

Mr. MORRIS. I would drop section 102 and use section 103. There may be one or two features in section 102 that may be worth incorporating in section 103, but as I look at it, I do not think that is a wise thing to do. I think what should be done is the bolstering of the administrative arm through section 103. If section 103 does not give you enough authority to administer this thing properly, then I would bolster section 103, but the moment you go beyond that, the legislative end of this thing on section 102, you are headed for trouble through the innocent protestant, and you are setting up a direct authority for the fellow who wants to step around this thing and evade it. He says, "There is the ring I want to get out of," and the moment his foot is out, even the administrator cannot catch him.

Senator KING. Don't you think it would be good to levy a very heavy tax on undistributed profits, if it is for the purpose of evading taxation?

Mr. MORRIS. I think the 25 percent is very close to what it ought to be.

Senator HASTINGS. What would you think of changing the presumption and setting up that under a certain state of facts, he will be presumed to have done a certain thing; in other words, change the burden of proof on the taxpayer instead of on the administration as it is now.

Mr. MORRIS. As a practical matter, Senator Hastings, that is the way they handle it now. You see, as soon as the Commissioner asserts a deficiency against the taxpayer, the Commissioner is held to be prima facie correct, and it is up to the taxpayer to prove that the Commissioner is not correct. Generally, unless we provide in the statute, as we do in fraud cases, where it is an allegation of fraud, that the burden shall be on the Commissioner, automatically in all of the other cases the burden falls upon the taxpayer, so for practical purposes, that is exactly the way it works. The Commissioner calls you in and says, "Here, I think you are unfairly accumulating a surplus. Show me." You have to show him. If you do not show him, you meet the tax.

Senator COUZENS. May I ask this one question? A case came to my attention yesterday where a mill owner was saving up—he might be considered as one of these personal holding companies—and he said he was conserving his dividends for the purpose of rebuilding his mill and therefore did not distribute. In what position is the Commissioner of Internal Revenue to determine a case of that sort?

Mr. MORRIS. The Commissioner of Internal Revenue is usually in a very strong position, because it then devolves on the man who makes that protest to show that as a matter of fact he really has the plans, that the plans are sensible plans, that it is quite within the scope of the prospective future as he and his associates in his business see it to need the money for that purpose.

Senator COUZENS. Then in your judgment, that personal holding company should be permitted to conserve its dividends for the purpose of reconstructing or rebuilding the plant.

Mr. MORRIS. Not at all. Only if the man could show affirmatively that that was a logical, reasonable prospect, and that they definitely had that prospect in mind, and had not invented it for the purpose of avoiding the tax under section 103.

Senator COUZENS. Then you would give the Commissioner authority to waive the tax?

Mr. MORRIS. Well, I would not give him authority to waive the tax. I would give him authority to assert it if he thought there were grounds upon which he could collect.

Senator CONNALLY. Isn't that inaccurate? You would find him not liable for the tax unless he was doing it for the purpose of evading it.

Mr. MORRIS. If he was holding it for avoiding it, he would have to pay, and I would see that he did.

Senator CONNALLY. If you found that he was holding it not for the purpose of evading the tax, but for rebuilding his plant, he would not be liable.

Mr. MORRIS. That is right.

Senator COUZENS. If he set up adequate reserves, why should that not be sufficient for rebuilding without having to hold dividends?

Mr. MORRIS. Now you are raising an entirely different question.

Senator COUZENS. It resolves itself into the same question, as to whether or not a taxpayer can withhold paying dividends for the alleged purpose of building a plant or a building.

Mr. MORRIS. Yes, sir; I would say that if this man had a sufficient depreciation fund for the purpose of replacing his buildings, then he could not demonstrate to me as the commissioner that he was saving the money to build, but was obviously holding up the surplus to evade the tax.

Senator KING. Why could not the owner of a home, instead of reporting his earnings in his profession as a doctor, a lawyer, etc., why could he not say, "I am withholding reporting those because I expect to build myself a better home next year or in two years, and I have employed an architect." Do you think that is right?

Mr. MORRIS. But an individual does not declare dividends.

Senator KING. But he is subtracting it from his income.

Mr. MORRIS. No; he cannot under the law.

Senator KING. Why should he not be permitted to subtract it from the income tax upon the theory that those were accumulations which he intended to use for the building of a new home?

Mr. MORRIS. In the first place, you are talking about a situation where the man is not putting his money into wealth-creating or income-creating enterprise. The situation presented here was that this factory owner is about to create an income-producing enterprise. If it is legitimate and honest, and that is what the money is being used for, and he can establish against the burden which lies against him, as I pointed out to Senator Hastings, certainly he is not keeping it to avoid the dividend tax. If he is keeping it to avoid the dividend tax, he ought to be held.

Senator COUZENS. I can see the point which Senator King is making. That is, that an individual who is saving up to build a home, that it is just as reasonable that he be exempted from taxation on that special rule as that a corporation is exempted on savings for the same purpose.

Senator KING. After allowing for depreciation, obsolescence, etc.

Mr. MORRIS. A man's home creates no income. A man's factory does.

The CHAIRMAN. Thank you very much.

(The brief of the American Bar Association is as follows:)

RECOMMENDATIONS OF THE AMERICAN BAR ASSOCIATION. PRESENTED BY ITS COMMITTEE ON FEDERAL TAXATION TO THE SEVENTY-THIRD CONGRESS, SECOND SESSION

WASHINGTON, D.C.,
December 21, 1933.

To the Chairman and Members of the Ways and Means Committee of the United States House of Representatives.

To the Chairman and Members of the Finance Committee of the United States Senate.

GENTLEMEN: We are privileged to present herein recommendations of the American Bar Association with respect to the internal-revenue legislation, contemplated at the second session of the Seventy-Third Congress beginning in January 1934, and with respect to allied subjects. The recommendations were adopted by the American Bar Association at its fifty-sixth annual meeting at Grand Rapids, Mich., on August 30, 31, and September 1, 1933.

For a better understanding of the purposes of the resolutions adopted by our association we have reprinted therewith the recommendations of the committee which proposed the original resolutions.

Respectfully,

THE COMMITTEE ON FEDERAL TAXATION OF THE AMERICAN BAR ASSOCIATION.
LOUIS A. LECHER, Wisconsin,
ROBERT N. MILLER, District of Columbia,
GEORGE M. MORRIS, Chairman, District of Columbia,
HENRY W. TOLL, Colorado,
GEORGE B. YOUNG, Vermont,
HARRY C. WEEKS, Texas,
MABEL WALKER WILLEBRANDT, California.

RECOMMENDATIONS

1. CONFLICTING AND DOUBLE TAXATION

A. Tax conflicts between Federal, State, and local governments.—The costs of operation of the Federal, State, and local governments total approximately $13,000,000,000 a year. This cost is being increased. At the same time, the yield from existing taxes has decreased. Consequently the Federal Government and the States have added new taxes, many of which overlap. Income and inheritance taxes are levied both by the Federal Government and by most of the States. In the field of sales taxes, serious conflicts already exist as to tobacco, beer, electrical energy, and gasoline. Facing the taxpayer is the prospect of much more serious conflicts created by the enactment of general sales taxes.

Governmental efficiency, and equity to the citizen, a substantial proportion of whose income is now consumed by taxes, require a vigorous attempt to harmonize the national tax system and 48 State taxing systems.

No adequate governmental machinery exists to accomplish this intricate and difficult task. Several significant efforts, however, are now being made. The Ways and Means Committee of the United States House of Representatives and the Finance Committee of the United States Senate have organized subcommittees on conflicting taxation which are surveying the situation from the standpoint of the Federal Government; the Interstate Assembly, organized by the American Legislators' Association, and composed of delegates sent by both the legislatures and the executives of the various states, has established the Interstate Committee on Conflicting Taxation, which is surveying the problem of double and conflicting taxation from the standpoint of the states. The Chamber of Commerce of the United States and the National Tax Association also are taking active parts in the solution of the problem.

Your committee believes that the American Bar Association can serve best in connection with the problem by endorsing the undertakings already under way, cooperating with the organizations above mentioned and recognizing them as capable of definite and much needed public service.

Your committee, therefore, recommends the following resolution:

Be it resolved, That the American Bar Association commends the undertakings of the subcommittee on conflicting taxation of the House of Representatives and Senate, the Interstate Committee on Conflicting Taxation of the Interstate Assembly, the United States Chamber of Commerce and the National Tax Association, to harmonize the taxing systems of the federal government and of the 48 states; that the American Bar Association recognizes these undertakings as much needed and endorses the objectives of the studies now in course.

B. International double taxation.—The problem of domestic conflicts in taxation has its even more complex counterpart, quite apart from the question of tariffs, in the international sphere. While various governments through domestic legislation or through treaties have reduced, in a measure, international tax conflicts, these adjustments have been rather sporadic and lacking in uniformity. Your committee has been gratified to observe that definite proposals are now being drafted by representatives of various nations and designed for approval by many governments to relieve from undesirable effects of international double taxation and to develop tax uniformity. Such

organizations as the International Chamber of Commerce and the League of Nations are giving active attention to problems of international double taxation. The undertakings of these organizations, as well as others, deserve, your committee believes, the full endorsement of the American Bar Association. Your committtee also believes that the American Bar Association can be of valuable assistance in passing on the merits of either general principles or of particular proposals as they may be formulated. The American Bar Association should also, your committee believes, urge the American and other governments to approach the problem of double taxation in a broad-minded, sympathetic manner and to make concessions if such are necessary, in order that the problem of double taxation may be solved and world trade stimulated by the removal of the present heavy burden.

Your committee, therefore, recommends the following resolution:

Be it resolved, That the American Bar Association recognizes the problem of international double and conflicting taxation as one of extreme importance both to international traders and to the different governments; that the association endorses the efforts of the International Chamber of Commerce, the League of Nations, and other organizations in their efforts to solve this problem; that it offers its assistance in passing on the merits of either general principles or of particular proposals as they may be formulated and that it urges the United States and other governments to give the problem their speedy and favorable attention, to approach it in a broadminded, sympathetic manner and to make concessions, if such are necessary, in order that it may be solved.

2. ESTATE TAX RELIEF

In its report to the fifty-fourth annual meeting of the association, the committee on Federal taxation reported its recommendation to Treasury officials that the rules with respect to the valuation of securities and other property in the case of decedents' estates be liberalized to take into consideration abnormal rises and falls in market value. Efforts of administrative officers in this direction have proved to be too circumscribed to afford adequate relief in the case of the estates of decedents dying during the high prices of recent years. Recognizing this situation, the staff of the Congressional Joint Committee on Internal Revenue Taxation, in the course of an exhaustive report on "Federal and State Death Taxes" (U.S. Government Printing Office, 1933) has dealt with the situation in a style affording a basis for an intelligent advance in legislation of this character. While the subject matter leads to the substantive aspect of taxes rather than the practice and procedural topics with which this committee has concerned itself, it is believed that the studies are commendable and further inquiry by the Congress is warranted. Your committee proposes, therefore, the following resolution:

Be it resolved, That the American Bar Association, recognizing that the valuation base for determining the Federal estate tax has proved too inelastic for a just reflection of values in an era of rapidly changing price levels, endorses the studies published by the staff of the Congressional Joint Committee on Internal Revenue Taxation and commends to the Congress and to the Treasury Department the development of a system of estate taxation better calculated to reflect the price fluctuations in the value of assets in the estates of decedents both at the time of death and at the time the tax is paid.

3. BASIS OF DEDUCTIONS FOR CONTRIBUTIONS TO CHARITABLE AND OTHER ORGANIZATIONS.

Considerable confusion has arisen under the present tax laws as to whether capital gains and capital losses are to be included in making the computation of that "net income" which serves as the basis for the 15 percent limitation on deductions for contributions to charitable and other organizations. The United States Board of Tax Appeals has held that capital losses are to be excluded in making the computation. *Elkins*, 24 B.T.A. 572. The Board first held that capital gains were to be included. *Harbison*, 27 B.T.A. 896. Later it reversed its previous position. *Straus*, 27 B.T.A.—, no. 100. Your committee believes that rather than to compel taxpayers to make controversial returns and to incur the expenses of the litigation necessary to clarify the law, it is preferable to secure affirmative legislative action clarifying the law.

Your committee, therefore, recommends the following resolution and amendment:

Be it resolved, That the American Bar Association recommends to the Congress that section 23 (n) of the Revenue Act of 1932 be amended definitely to make clear whether capital net gains and capital net losses are to be included or excluded in computing net income for the purpose of determining the amount of contributions that are deductible in the calculation of taxable income and that the association's committee on Federal Taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committees of the Congress:

Proposed amendment:

"That section 23 (n) of the Revenue Act of 1932 be amended by inserting after the phrase '15 per centum of the taxpayer's net income' the parenthetical clause '(including in the computation thereof the amount of capital net gain or capital net loss),' and by adding at the end thereof, 'Similarly in the computation of net income as used in section 23 (n) of the Revenue Act of 1928 and in section 214 (a) of the Revenue Acts of 1926, 1924, and 1921 there shall be included the amounts of capital net gains or of capital net loss,' so that the phrase, as amended, will read as follows:

'(n) *Charitable and other contributions.*—In the case of an individual, contributions or gifts made within the taxable year to or for the use of:

* * * * * * *

to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayer's net income (*including in the computation thereof the amount of capital net gain or capital net loss*) as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. (For unlimited deduction if contributions and gifts exceed 90 per centum of the net income, see section 120.) *Similarly in the computation of net income as used in section 23 (n) of the Revenue Act of 1928 and in sections 214 (a) of the Revenue Acts of 1926, 1924, and 1921 there shall be included the amounts of capital net gain or of capital net loss.*'"

4. RELAXATION OF LIMITATION ON DEDUCTIONS FOR CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS

The failure of charitable organizations sufficiently to meet the demands made upon them as a result of the present emergency is resulting in the necessity of greatly increased public aid. It appears advisable that every facility for enabling charities to fulfill their function without drain upon governmental funds be granted to them. The flow of necessary contributions to charitable organizations, instead of being materially encouraged, has been and will continue to be considerably retarded because of the limitation placed by the Congress on the amount of deduction in the calculation of taxable income allowed for contributions to such organizations. This committee believes that the existing limitation will, while reducing in a measure governmental income, effect a total saving by reducing the requirement of governmental public assistance. Your committee believes, however, that only contributions to those charities dispensing the necessities of life should be benefited.

Your committee, therefore, recommends the following resolution and proposed amendment:

Be it resolved, That the American Bar Association recommends to the Congress that deductions for contributions to those charitable organizations dispensing the necessities of life to needy individuals should be allowed to the extent of 100 percent of the net income of the donor and that the Association's Committee on Federal Taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committees of the Congress:

Proposed amendment:

"That section 23 (n) be amended to read as follows:

"'*Charitable and Other Contributions.*—In the case of an individual, contributions or gifts made within the taxable year to or for the use of:

* * * * * * *

"'(2) a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

* * * * * * *

to an amount which in all the above cases combined does not exceed 15 per-centum of the taxpayer's net income as computed without the benefit of this subsection. *The amount of contributions or gifts made to institutions specified in this subsection organized and operated primarily for the relief of the poor and the indigent shall be deductible without limitation and the amount of such deduction shall not be included in calculating the 15 per centum limitation hereinabove imposed.*' "

5. CAPITAL GAINS AND LOSSES

Section 101 (c) of the 1932 act defines capital gains and losses as the gains or losses resulting from the "sale or exchange" of capital assets. The United States Board of Tax Appeals has determined in *Henry P. Werner*, 15 B.T.A. 482, that included within the terms of "sale or exchange" was the redemption by the obligor, at or before maturity, of a capital asset. Later, the Board held in *Watson*, 27 B.T.A. 463, that such redemption was not a "sale or exchange." Your committee believes that the Congress did not intend to remove from the benefits of the capital gains and loss provisions gains or losses from the redemption of capital assets, especially when such gains or losses, if the assets had been sold by the holder immediately before redemption, would be considered capital gains or losses.[1]

Your committee recommends, therefore, the following resolution and amendment to section 101 (c) of the 1932 act:

Be it resolved, That the American Bar Association recommends to the Congress that the Congress redefine the terms "capital gain" and "capital loss" to make clear whether such terms include gains and losses resulting from the redemption at maturity of capital assets, and that the association's committee on Federal taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committee of the Congress:

Proposed amendment:

"That section 101 (c) (1) and (2) be amended to read as follows:

"'(c) *Definitions.*—For the purposes of this title—

"'(1) 'Capital gain' means taxable gain from the [sale or exchange] *sale, exchange, or redemption* of capital assets consummated after December 31, 1921.

"'(2) 'Capital loss' means taxable loss resulting from the [sale or exchange] *sale, exchange, or redemption* of capital assets.'"

6. ADJUSTED BASIS FOR PROPERTY ACQUIRED IN REORGANIZATIONS

Your committee was authorized by the association at its fifty-fifth annual meeting "actively to oppose * * * any retroactive provisions in proposed measures as to Federal revenue where the circumstances are such that the public and the bar have relied and acted on the basis of the previously existing state of law."

Section 113 of the Revenue Act of 1932 made particularly distressing retroactive changes in the prior law. It upset the basis of all property acquired in any corporate reorganization made after December 31, 1917, where more than 50 percent and less than 80 percent of the control of the old company continued into the new. It also upset the basis of all property acquired by a corporation after December 31, 1921, as paid-in surplus or as a contribution to capital. If the property has been transferred to bona fide holders for value, the section unjustly affects the income-tax liability of these bona fide holders who relied, as they had to do, upon the law as it then existed. It also affects the bar, in that the sound advice of those members of the bar whom corporations and individuals consulted with respect to their then existing rights has become, by virtue of the change in the law, a trap from which there is no escape through administrative action.

Your committee, therefore, recommends the following resolution and amendment:

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[1] See House Ways and Means Committee Report No. 350, 67th Cong., 1st sess., to accompany H.R. 8245, pp. 10, 11.

Be it resolved, That the American Bar Association recommends to the Congress that the Congress amend section 113 of the Revenue Act of 1932 to remove therefrom its retroactive features and that the association's committee on Federal taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose upon the proper committees of the Congress:
(Proposed amendment.)
"That section 113 (a) (7) and (8) of the Revenue Act of 1932 be amended to read as follows:
"'(7) Transfers to Corporations Where Control of Property Remains in Same Persons.—If the property was acquired after December 31, 1917, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of [50] *80* per centum (*or, if such property was acquired after June 6, 1932, then 50 per centum*) or more remained in the same person or any of them, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance in stock or securities of the transferee as the consideration in whole or in part for the transfer.
"'(8) Property Acquired by Issuance of Stock or as Paid-in Surplus.—If—
"'(*A*) The property was acquired after December 31, 1920, by a corporation [(A)] by the issuance of its stock or securities in connection with a transaction described in section 112 (b) (5) (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or,
"'(*B*) *The property was acquired by a corporation after June 6, 1932,* [(B)] as paid-in surplus or as a contribution to capital, as paid-in surplus or as a contribution to capital,
then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.'"

7. DISCHARGE OF A BANKRUPT FROM FEDERAL TAX LIABILITY

Under the present bankruptcy law, a discharge in bankruptcy does not discharge Federal tax liability. Thus a bankrupt may have incurred all the disadvantages of bankruptcy and yet be forced to carry his tax burden which, in many instances, is sufficiently large to prevent him from making a successful new start in business. There is no essential reason why the Government should not share as other creditors in the losses resulting from bankruptcy nor why the bankrupt should be compelled to carry his tax burdens after he has been discharged. Such a situation is contrary to the economic rehabilitation spirit of our bankruptcy laws. Your committee, in concurrence with the association's committee on commercial law and bankruptcy, believes that to put the Government in the position of an ordinary creditor would not only relieve actual distress and make more effective the purposes of the Bankruptcy Act, but also would result in no lowering of the guard against fraudulent bankruptcies, which have severely injured many reputable creditors.

Your committee, therefore, recommends that the association direct this committee, with the concurrence of the association's committee on commercial law and bankruptcy (which committee is making an identical recommendation to the association), to propose an amendment to the bankruptcy law to discharge a bankrupt from his tax liability, with adequate safeguards to the Government, and proposes the following resolution and amendment:

Be it Resolved, That the American Bar Association recommended to the Congress that the Bankruptcy Act be amended to permit the discharge from his tax liability of a bankrupt and that the association's committee on Federal taxation is directed to urge, with the concurrence of the association's committee on commercial law and bankruptcy, the following proposed amendments and, failing the acceptance of the proposals as drafted, their equivalent in purpose, upon the proper committees of the Congress:
Proposed amendment.

"That section 17 of the act of July 1, 1898 (30 Stat. 550, 11 U.S.C. 35), be amended to read as follows:

"'A discharge in bankruptcy shall release a bankrupt from all of his provable debts except such as (first) are due as a tax levied by [the United States] the State, county, district, or municipality in which he resides; (second) are liabilities for obtaining property by false pretenses and false representations; or for willful and malicious injuries to the person or property of another. * * *'

"That section 1 of the act of July 1, 1898 (30 Stat. 544, 11 U.S.C. 1), as amended, be amended to read as follows:

"'SECTION 1.—Meaning of Words and Phrases.—The words and phrases used in this title and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows.

"'(4) "Bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke the discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt;

"'(4½) *"Claim" shall include the claim of the United States against the bankrupt for Federal taxes;*"

"That section 58 (b) of the act of July 1, 1898 (30 Stat. 561, 11 U.S.C. 94), as amended, be amended by adding at the end thereof the following:

"'(b) * * * *It shall also be the duty of the referee to notify by registered mail, within thirty days after the reference of a bankruptcy to him, the proper United States collector of internal revenue of the fact of the bankruptcy proceedings. If the bankrupt is an individual, the referee shall notify the collector of the district in which is located the legal residence or the principal place of business of the bankrupt (or, if he has no legal residence or principal place of business within the United States, then the collector at Baltimore, Maryland); if the bankrupt is a corporation, the referee shall notify the collector of the district in which is located the principal place of business or principal office or agency of the bankrupt corporation (or, if it has no principal place of business or principal office or agency within the United States, then the collector at Baltimore, Maryland).*'"

"That Section 57 (n) of the Act of July 1, 1898, 30 Stat. 560, 11 U.S.C. 93, as amended, be amended to read as follows: * * *

"'(n) Claims, *including claims of the United States for Federal taxes*, shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within 30 days before or after the expiration of such time, then within 60 days after the rendition of such judgment. The right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.'"

8. PROCEDURE IN TRANSFEREE CASES

Under the present law, a single transferee of a corporation or estate may be held liable to the extent of the value of the property received by him for the full amount of the transferor's unpaid Federal income taxes, although all the other transferees are solvent and do not contribute to the payment of the tax. Usually the most accessible and wealthiest transferee is selected by the Bureau as the object of a tax deficiency notice. While a transferee theoretically may compel contribution from the other transferees he must, in case of a contest, affirmatively prove the tax liability of the transferor. If the statute of limitations on the liability of the transferees had run at the time the deficiency was paid, or if the deficiency was voluntarily paid, it becomes legally impossible for him to compel contribution. A procedure which will more adequately protect the rights of all transferees and facilitate the enforcement of contribution from their cotransferees is believed desirable and necessary if justice is to be done. There are five different sections of various revenue acts relating to transferee proceedings. Amending each of these sections in turn is an awkward and cumbersome procedure. To avoid this result your committee proposes the enactment of an entirely new section of the law in substitution. The exact location of this section will have to depend upon the general topic structure of the expected new legislation. In a situation of the historical and inherent procedural complexities of this subject perfection in drafting is hardly to be obtained. The amendment is proposed, therefore, not as an embodiment of perfection but of purpose:

Be it resolved, That the American Bar Association recommends to the Congress that those held liable for the taxes of their transferors be afforded a process for compelling pro-rata contribution by their fellow transferees and that the Association's committee on Federal taxation is directed to urge the following proposed amendment, and failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committees of the Congress:

Proposed amendment:

"*Sec. —. (a) The United States Board of Tax Appeals is hereby given jurisdiction in all proceedings before it now pending, or hereafter brought, to determine in one proceeding the respective liabilities in law or equity of all transferees of a tax delinquent transferor. The Board shall make rules deemed by it needful and proper to effect the purpose of this section, including a rule requiring the Commissioner of Internal Revenue to notify all the transferees of a delinquent transferor of an asserted deficiency against any one or more or them.*

"*(b) In any proceeding under (a), the defense of the statute of limitations shall not avail any impleaded party before the Board unless such defense is available to all impleaded parties; provided, however, that no transferee may waive the statute of limitations except with the consent, in writing, of all his cotransferees.*

"*(c) The decision of the Board of Tax Appeals in any proceeding under (a) shall be reviewable in the manner provided for review of other decisions of the Board.*

"*(d) The final determination of the Board shall be binding upon all transferees to whom notice of the proceeding has been given, under such rules as the Board shall prescribe.*

"*(e) Properly certified copies of the final decision and order of the Board in any proceeding under (a) shall be prima facie evidence in any court of the correct tax liability of the transferor and of the liability of each transferee therefore.*"

9. JURISDICTION OF BOARD OF TAX APPEALS OVER REFUND CLAIMS

The American Bar Association at its fifty-second, fifty-third, and fifty-fourth annual meetings approved resolutions urging upon the Congress the grant to the United States Board of Tax Appeals of full jurisdiction over refund claims. Your committee believes that the opportunity for the fulfillment of the American Bar Association recommendation is now at hand. If the Board were granted jurisdiction over refund claims, the result would be increased speed in disposition of tax cases, relief of a heavy burden upon the district courts, greater efficiency in settlement of tax disputes and increased consistency in tax administration.

Your committee, therefore, recommends the following resolution and amendment:

Be it resolved, That the American Bar Association again recommends to the Congress that the jurisdiction of the Board of Tax Appeals be extended to suits by the taxpayer for recovery of overpayments of tax, and that the association's committee on Federal taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committees of the Congress:

Proposed amendment.

"That section 3226 of the Revised Statutes, as amended, be amended to read as follows:

"'SEC. 3226. No suit or proceeding shall be maintained in any court or *in the Board of Tax Appeals* for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the

expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates. *In lieu of suit in any court, the taxpayer may, within two years after a mailing by registered mail to the taxpayer by the Commissioner of a notice of disallowance of the claim or a part thereof file a petition with the Board of Tax Appeals for a redetermination of any income, war-profits, or excess-profits tax, or estate tax, and if the Board finds that the taxpayer has made an overpayment thereof, the amount thereof shall, when the decision of the Board has become final, be credited or refunded to the taxpayer in the same manner as an overpayment found by the Board where the taxpayer has filed a petition for redetermination of a deficiency.*' "

10. TIME FOR RAISING CLAIMS FOR REFUNDS

Under the present law, the Commissioner of Internal Revenue may at any time before the hearing, or rehearing, of a case before the United States Board of Tax Appeals urge upon the Board an increase in the deficiency of tax. The taxpayer, however, has no right, if he files his petition or a claim for refund after the expiration of the statutory period for filing claims, to secure a refund even though the board determines that a refund is due. The Congress, your committee believes, intended to grant the taxpayer reciprocal rights with the Commissioner by an amendment made to section 284 (e) of the Revenue Act of 1926 by section 507 of the Revenue Act of 1928,[2] but this amendment did not accomplish the intended result. Further amendment is required to this end. Your committee, therefore, recommends the following resolution and amendment:

Be it resolved, That the American Bar Association recommends to the Congress that section 507, Revenue Act 1928, be amended to give the Board of Tax Appeals, in all cases where it finds that the taxpayer has overpaid his tax, jurisdiction to determine the amount of such overpayment which shall, when the decision of the Board has become final, be credited or refunded to the taxpayer, and that the association's committee on Federal taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committees of the Congress:

Proposed amendment.

"That section 284 (e) of the Revenue Act of 1926, as amended by section 507 of the Revenue Act of 1928, be further amended to read as follows:

" '(e) If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer [as provided in subdivision (a) *and in such cases, no claim for refund shall be required.* Unless claim for credit or refund, or the petition, was filed within the time prescribed in subdivision (9) for filing claims, no such credit or refund shall be made of any portion of the tax paid more than four years (or, in the case of a tax imposed by this title, more than three years) before the filing of the claim or the filing of the petition, whichever is earlier.' "]

11. TIME FOR FILING PETITIONS WITH THE BOARD OF TAX APPEALS

Under the present law taxpayers may file petitions with the United States Board of Tax Appeals within sixty days after the mailing by the Commissioner of a notice of deficiency in income tax. If, however, the sixtieth day falls upon a holiday, the taxpayer is given only fifty-nine days. In several instances, taxpayers have been deprived of their "day in court" by the fact that their petitions, although arriving in Washington on the sixtieth day, were not received by the Board until the sixty-first day, due to the intervention of a holiday. Your committee suggests that the present law be amended to give the taxpayer in every instance his full sixty days. It, therefore, recommends the following resolution and amendment:

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[2] Ways and Means Committee Report No. 2 (70th Cong., 1st sess.), to accompany H.R. 1, pp. 29, 30.

Be it resolved, That the American Bar Association recommends to the Congress that section 274 (a) of the Revenue Act of 1926 be amended to permit the filing of petitions to the Board of Tax Appeals with the Board on the next succeeding business day when the sixtieth day falls on a Sunday, or holiday, and that the association's committee on Federal taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committees of the Congress:

Proposed amendment:

That section 274 (a) of the Revenue Act of 1926 be amended by inserting after the phrase "Within sixty days after such notice is mailed, not counting Sunday", a comma and the words "a holiday or partial holiday in the District of Columbia", so that the first two sentences of 274 read as follows:

"'SEC. 274. (a) If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within sixty days after such notice is mailed (not counting Sunday, *a holiday, or a partial holiday, in the District of Columbia* as the sixtieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency.'"

12. SUSPENSION OF THE STATUTORY PERIOD FOR BRINGING SUIT

Frequently disputes between taxpayers and the Commissioner of Internal Revenue turn upon adjudications already pending in the Board of Tax Appeals or in the courts.

Taxpayers often cannot wait as they would like to do until the controlling cases are decided but must, in order to protect their rights against the bar of the statute of limitations, incur the expenses of suit. To make unnecessary such litigation, the Congress provided in the Revenue Act of 1928 that the Commissioner of Internal Revenue might make refunds after the applicable statutory period if he and the taxpayer had consented to a suspension of the statute of limitations on suits against the United States until after the applicable decisions had been made by the courts.

The Congress, it is believed, intended to give the taxpayer the right to sue for a refund within the statutory period as extended by the agreements. Considerable doubt, however, exists as to whether it accomplished this purpose. Your committee recommends that this doubt be clarified by appropriate amendment to the existing revenue law and reconmmends the following resolution and amendment:

Be it resolved, That the American Bar Association recommends to the Congress an amendment to Section 3226 of the Revised Statutes to permit taxpayers, in case such agreements under Section 608 (b) (2) of the Revenue Act of 1928 have been entered into, to bring suit at any time within ninety days after the final decision of the case, or cases, specifically mentioned in said agreement, notwithstanding other provisions of law, and that the association's committee on Federal taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committees of the Congress:

Proposed amendment:

"Section 3226 of the Revised Statutes, as amended, is amended to read as follows:

"'No suit * * * *except that if the taxpayer and the commissioner have, either before or after the enactment of this amendment, agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts, then a suit or proceeding may be maintained if brought within ninety days subsequent to the date the decision of the last-decided case named in said agreement became final.*'"

13. APPEALS FROM THE BOARD OF TAX APPEALS

Appeals under the present law may be taken from decisions of the Board of Tax Appeals to the Circuit Courts of Appeals. Considerable confusion has arisen in many cases as to which Circuit Court of Appeals has jurisdiction. In at least nine cases during recent years petitions of taxpayers have been dismissed on jurisdictional grounds. In more than one hundred cases the petitioner

has been required, in order to protect his interest, to incur the expense and trouble of filing petitions in two or more circuit courts. Your committee believes that it is only fair that a petitioner be not penalized where honest doubt exists as to the proper forum, especially in view of the fact that not all circuit courts of appeals have ruled consistently on questions of jurisdiction. It, therefore, recommends the following resolution and amendment:

Be it resolved, That the American Bar Association recommends to the Congress that section 1003 of the Revenue Act of 1926 be amended to permit any circuit court of appeals and the Court of Appeals of the District of Columbia, to determine without dismissal of petitions for review of decisions of the Board of Tax Appeals, what circuit court has jurisdiction of said petitions, and to transfer said petitions to the proper court, which shall proceed to the determination thereof with the same effect as if such petition had originally been taken to it; that the American Bar Association recommends to the Congress the following proposed amendment to section 1003 of the Revenue Act of 1926, and that the association's committee on Federal taxation is directed to urge the following proposed amendment and, failing the acceptance of the proposal as drafted, its equivalent in purpose, upon the proper committees of the Congress:

Proposed amendment.

"That section 1003 of the Revenue Act of 1926 be hereby amended by adding at the end thereof the following new subsection:

"'(c) *If any such petition for review has been or shall be taken to a court referred to in section 1002 and such court decides that it has no jurisdiction thereof, such petition shall not for that reason be dismissed. In such event the court shall also determine (subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in Section 240 of the Judical Code, as amended) which other of said courts has jurisdiction thereof, and shall thereupon transfer the petition to the proper court, which shall proceed to the determination thereof with the same effect as if such petition had originally been taken to it. If, as provided in section 1001 (c), there is a bond which refers to the court to which the petition is originally taken, such bond shall nevertheless have the same effect as if the reference had been to the proper court. If any such petition has heretofore been dismissed for lack of jurisdiction it shall be revived and proceeded with as provided herein if a motion to that effect is filed by either party within 90 days after the approval of this amendment.*'"

14. ESTABLISHMENT OF MARCH 1, 1913 VALUE

The lapse of time since March 1, 1913, resulting in the loss, and danger of loss, of supporting evidence, makes it increasingly difficult for persons to establish the fair market value of property on March 1, 1913, as the basis for determining the gain or loss upon the sale or other disposition of such property. Your committee believes it desirable, therefore, that some procedure be established whereby a taxpayer may, if he so desires, have the March 1, 1913, value of any property determined irrespective of the existence of any controversy, which determination shall be made by the Commissioner of Internal Revenue and be conclusive in all subsequent proceedings on all parties thereto. To this end, the following resolution and amendment are recommended:

Be it resolved, That the American Bar Association recommends to the Congress that the Congress by appropriate legislation require the Commissioner, with the approval of the Secretary of the Treasury, to prescribe rules and regulations whereby a person may, upon application and submission of satisfactory supporting evidence, have the fair market value of property fixed and determined as of March 1, 1913, as a basis for determining the gain or loss from subsequent sale or other disposition of such property:

Proposed amendment.

"That Section 773 of the Revenue Act of 1932 be amended by adding at the end thereof the following:

"'*The Commissioner with the approval of the Secretary shall furthermore prescribe and publish all needful rules and regulations and establish a procedure by which any person, subject to the taxing jurisdiction of the United States, may upon application and submission to the Commissioner of evidence satisfactory to the Commissioner, have the fair market value of any property of the said person as of March 1, 1913, fixed and determined. When so fixed and determined such valuation shall thereafter be the basis of determining gain or loss from the subsequent sale or other disposition of such property.*'"

15. THE UNITED STATES BOARD OF TAX APPEALS

The committee wishes to express its general satisfaction with the performance of the United States Board of Tax Appeals. That institution in the 9 years of its existence has demonstrated an adequate capacity to interpret, as a specialized tax court, the multitude of everchanging Federal tax laws which began in 1913 and have played so important a part in the business life of the country ever since. In these 9 years the independence of the Board's judgement, as against mere administrative determinations, is indicated in many respects. The surest indication of this independence is the reduction of aggregate deficiencies proposed by the Commissioner of Internal Revenue in excess of $1,300,000,000 to approximately $400,000,000. The records show that less than 12 percent of appealable decisions of the Board have actually been taken, that the Board has been affirmed in whole or in part by the Circuit Courts in more than 70 percent of its decisions, and that its record before the Supreme Court is even better.

While the delay in the decision of too many cases is still a condition for criticism, the performance of the Board, at a surprisingly low cost, and the protection it has offered the taxpayer against the harsh rule of collection first and discussion afterwards, has made it apparent that if the Board did not exist, the invention of its equivalent would be required.

American Bar Association, Committee on Federal Taxation, Before the Senate Finance Committee

ADDITIONAL MEMORANDUM FILED IN ACCORDANCE WITH THE PERMISSION GRANTED BY THE CHAIRMAN

Re: Section 276 (a) of the House bill removing the statutory limitation on erroneous returns of gross income.

While this committee is not able to speak for the American Bar Association, because of the absence of any meeting of that association since the revenue bill passed the House, the members of our committee, as individuals, feel impelled to comment upon section 276 (a) as contained in the House bill. As we see it, this section, providing the taxpayer omits from his return of gross income an amount properly includable therein which is in excess of 25 percent of the income stated in the return, the tax may be assessed or collected at any time, would be an unfortunate provision. The effect of the proposal is to abolish the protection of the statute of limitations to such a taxpayer regardless of the absence of fraud, deceit, or wrongdoing upon his part. This means that a taxpayer whose integrity is not impeached will have no repose and may, years after an innocent error and years after the normal statute of limitations has run, be held for an additional tax.

Understatement of income in any one year usually arises, where the taxpayer is honest, as the result of a mistake of law or fact as to the year in which the income should be included. These mistakes result not so much from negligence as they do from ignorance and uncertainty. Over a period of years the honest taxpayer is certain to return all of his gross income.

The provision appears to be directed against the recipient of small income, coming largely from a single source, rather than against the recipients of large incomes resulting from a number of sources. It is the little man whose error on any one item will amount to 25 percent of his total income: seldom is that the situation with the recipient of a large income.

If the privilege of unlimited review is to be given to the Commissioner, a reciprocal opportunity should be extended to all taxpayers who have overstated their gross income by 25 percent for any 1 year. In fact, to reopen the year in which income has been understated and to refuse to reopen the year in which the same item of income may have resulted in overstatement is palpably unjust.

SECTION 102 OF THE HOUSE BILL RESPECTING PERSONAL HOLDING CORPORATIONS

As in the case with respect to section 276 (a) of the House bill, our committee is unable to report the position of the American Bar Association, but as individuals, we feel that the attention of the Senate Finance Committee should be called to the ineptness of section 102 to reach the objective which

the House apparently had in mind and, at the same time, point out the hardship which the proposed section may work in a number of situations which the House has apparently not considered. The following letter sets out ideas which have the endorsement of the individual members of our committee:

MARCH 8, 1934.

Hon. GEORGE M. MORRIS,
Chairman of the American Bar Association,
Special Tax Committee,
Washington, D.C.

DEAR GEORGE: I would like to invite the special attention of your committee to section 102 (about personal holding companies) in the Federal tax bill now pending, H.R. 7835. I know, of course, that your committee cannot advocate legislation without the express approval of the association; but what I am suggesting here is that section 102 be opposed.

In my judgment, such an arbitrary statutory definition would be wholly ineffective to reach the "incorporated pocketbooks", which it means to reach, but would do injustice to many corporations which, while not organized or used to avoid taxes, nevertheless come within the statutory definition; many of them are so tied up in their relations with banks and trustees under the sinking-fund provisions that they would be powerless to remove themselves from within the definition.

Suppose a wealthy individual owning a city lot desired, sometime since, to improve it with a hotel or office building, financing the building with a mortgage under the sinking-fund provisions. Finding that there was little market for bonds of an individual, and that the public is accustomed to buying the bonds of corporations in like circumstances, a corporation is organized to build and operate the property. Such company is a statutory "personal holding corporation" within the definition of section 102 and would be subject to the 35 percent penalty tax on its undistributed adjusted income. If the corporation distributes its earnings in violation of the sinking-fund provisions, the mortgage can be foreclosed; if it does not, a substantial amount of the earnings will be absorbed by the 35 percent penalty tax, and this diversion of the earnings may, again, prevent its complying with the terms of the mortgage.

Or, suppose 51 percent of the value of the outstanding stock of a manufacturing or mercantile business of long standing happens to be owned by five individuals or less and its corporate structure includes a parent operating company which has been doing the financing for the group, and a 100 percent owned subsidiary which conducts the principal operations for the group. Under such circumstances more than 80 percent of the parent's income might easily come from the subsidiary under the form of dividends, though really from the manufacturing or trading activities of the subsidiary. The parent would be a statutory "personal holding company" in spite of the fact that its structure was adopted many years ago for purely business purposes and its debts have been incurred on the assumption that it was a free business agent, as regards distributions.

Clearly banks, bond owners, or other creditors to which such corporations owe money are unjustly prejudiced by the 35 percent tax or by any pressure tending to divert earnings of the corporation to the shareholders instead of the creditors of the corporation.

Independent holders of the 49 percent minority stock of such a company, though without power to decide whether or not distributions are to be made, suffer from the 35 percent provision in spite of the fact that when they purchased a minority interest there was no reason to expect such a definition and such a tax as this.

Any attempt to penalize "the incorporated pocketbooks" by means of an arbitrary definition such as that the present section 102 contains, encourages the incorporated pocketbooks to alter the situation so as to come without the definition but penalizing many real business agencies which were never "pocketbooks" at all. A true commercial business, whether there are one or more corporations, and whether its activities have to do with dry goods or natural resources or machinery, has complicated economic problems which are entirely different from those of the investment corporation which is properly described as an "incorporated pocketbook." Provisions applicable to the latter are impossible in their application to the former. Just now when business corporations are not able to borrow what they need, a great number of the businesses

need to use in their business every cent they can earn. Many of them have been operating on short-term loans and are compelled to use their earnings in repaying these loans. To command needed credit a business must be able to demonstrate that it is increasing its surplus. The provision goes further than the real intent expressed on pages 11 and 12 of the Ways and Means Committee report, which makes the limit of actual intention clearly as follows:

"Thus, the section should work no real hardship upon any corporation except one which is being used to reduce surtaxes upon its shareholders."

Section 102 actually exceeds these limits. The same report declares an intention to distinguish between one corporation and another according to "the nature of its business"; this provision makes the distinction on the ground of the nature of the income and does not make any distinction as to the nature of the business conducted—as between investment on the one hand, for instance, and manufacturing, hotel operating, theater operating, oil producing, etc.

I thoroughly agree with the committee's policy of avoiding recommendations having to do with tax rates and other substantive matters; this provision does not belong in that category but is properly classified as one of the provisions which are inserted for administrative purposes, merely for its influence on the problem of administering the law. I submit that the bar association committee, composed of men whose experience qualifies them to give information as to whether such administrative methods will actually work out in practice, should not withhold its views as regards that provision.

You will understand, of course, that in writing this letter I am merely suggesting that the committee consider this matter, and if it agrees with the views just expressed, include this matter with other features which I know the committee is preparing to oppose in the hearings before the Finance Committee of the Senate next week.

Sincerely yours,

F. S. BRIGHT.

STATEMENT OF H. B. FERNALD, REPRESENTING THE AMERICAN MINING CONGRESS

The CHAIRMAN. Whom do you represent?

Mr. FERNALD. I am chairman of the executive committee of the American Mining Congress, and I am speaking for the mining industry of the country as represented through that organization.

The CHAIRMAN. Very well. Proceed.

Mr. FERNALD. I shall be very brief, as brief as I can, in trying to touch on the important points in which the mining industry is interested, and I shall try not to duplicate what has already been said on these points.

I want to start from the statement which was made to you by the Secretary of the Treasury in his statement of March 6, with regard to the proposed changes for the "elimination of the serious loopholes which our experience has shown to exist in the present income-tax law", where he stated:

> No taxpayer can legitimately complain of these changes, since they result in a more equitable distribution of the tax burden over those persons who are best able to sustain it.

We believe this is a fair statement of the position of the Treasury Department and of the House of Representatives as to the purpose and intent of the changes and that it is in this spirit that the Senate committee will consider them.

Perhaps there can be no better statement of the fair ground on which taxpayers may meet their Congress in considering these changes. We shall assume it is the intention that these changes should result in a more equitable distribution of the tax burden over those persons best able to sustain it and that it is not intended to

make such changes as give to any taxpayers legitimate ground for complaint.

Accordingly, we briefly present certain points where we believe the facts show that the changes will not result in equitably placing the tax burden on those best able to sustain it.

Foreign tax credits: The proposal of the House bill in section 131 (b) (1) and (2) for cutting in half the credit for foreign taxes as heretofore allowed seems based principally on the thought that this will yield some $5,000,000 a year additional revenue to the Government. We believe that this assumption is erroneous and that in fact a reduction, rather than an increase, in Government revenues would result from the proposed change.

In the effort to assemble and present pertinent facts on this subject, data have been secured from six of the leading companies engaged in mining abroad. These companies furnish a very large tonnage of products to be smelted and refined in this country, although the resulting base metals are not marketed here but sold to foreign consumers. They have in connection with this foreign business expended in the United States an annual average of approximately $16,000,000 for materials and supplies and an annual average of approximately $19,000,000 for wages, salaries, services, freight, insurance, taxes, and other expenditures, or a total annual average expenditure in the United States in connection with their foreign business of $35,000,000. Since the foreign-tax credit first became effective in 1918, there has been spent by these companies in this country as a result of their foreign business, some $600,000,000.

All of these expenditures have contributed to employment, created business, and, both directly and indirectly, aided in the production of incomes subject to our income and profit taxes here.

These expenditures include large amounts for freight to the railroads and we need not emphasize what additional business for the railroads mean in wages, materials, and supplies, and to every investor in railroad securities. It has meant millions of dollars of ocean freight for the American merchant marine. It has meant a large business in smelting and refining by plants in the United States of mineral products which, except for the American interest in these properties, would never have been brought to this country. Millions of dollars of insurance premiums have been paid to American companies on the properties and products of these companies.

These expenditures have aided the general welfare of the country, and they have also meant very material contributions to the taxes of our Federal and our other Governments.

Furthermore, this group of companies has distributed in this country out of the earnings from this foreign business a total of interest and dividends paid during the period 1918 to 1933, inclusive, of approximately $400,000,000.

Our Government has derived large revenues from the individual taxes which had to be paid upon these amounts as they were distributed to stockholders, bondholders, and so forth. Then, again, these funds, as disbursed by those who received them, have given rise to further wages and business which yield further taxes as these funds circulate through the country.

These are only incomplete figures, far from the totals involved, but they are sufficient to show that even though the full foreign-tax

credit is given, large revenues accrue to our Government from this foreign business.

Another example: The coal regions are directly interested in the export of coal. For the 4 years, 1928 to 1931, inclusive, our exports of anthracite, bituminous, and coke averaged in value about $90,000,000 per year. This business largely results from established outlets created by American firms and American interests abroad. This and more of this export business in coal is certainly needed for the benefit of the coal regions.

Any additional tax on this foreign business is just so much reduction in incentive to try to build up and develop our foreign trade. Furthermore, the double taxation often means a direct competitive disadvantage against those of other nations who are exempt from double taxation.

Senator KING. You are not asking for a tariff in that connection, are you, because there might be retaliation, and such as would close your market to this $90,000,000.

Mr. FERNALD. I do not want to go into the tariff question, because I think I have enough to cover in the little time that I have.

Senator KING. You appreciate the value of the foreign markets for your coal and coke and your bituminous products?

Mr. FERNALD. Yes; yes, sir.

Senator COUZENS. Have you anything else to take up but foreign credits?

Mr. FERNALD. Yes, sir; I have. I want to speak briefly on a few other things.

On the matter of consolidated returns, no stronger reasons for the consolidated return provision can be given than the statement of the Treasury Department's position as set forth in the House committee's report on this bill (p. 17). It is admittedly the one way to secure a correct statement of income of affiliated corporations, with elimination of intercompany transactions, thus guarding against a shifting of profits from one company to another and getting an accurate picture of the earnings of the group as a whole. The consolidated enterprise actually pays tax on its real income. Administration is simpler because the Treasury is able to deal with a single taxpayer and to eliminate the necessity of examining into the bona fides of thousands of intercompany transactions. Accordingly, the House committee and the House itself concluded that it would be undesirable to abolish consolidated returns. There was, however, written into the bill a provision which would place a penalty tax of 2 percent on consolidated net income where consolidated, rather than separate, returns were used.

The reasons stated for continuing the provision for consolidated returns seem to us equally effective reasons for not discouraging them by placing a penalty tax upon them.

It is doubtless true that there will be corporations that would continue to submit their consolidated returns even though this 2-percent penalty was imposed. There will be many, however, to whom this penalty tax will be enough to make them shift from a consolidated to a separate basis. More important than this is the fact that by imposing a penalty tax on consolidated returns, the Government is taking a position that it does not wish to have the

tax paid on the true net income of a consolidated enterprise but prefers to have the tax imposed with all the artificialities which can be brought into separate corporate organizations. We urge that the spirit and intent, as well as the letter of the law, should be the imposition of tax on true income and no penalties should be imposed on returns which will show the true net income and the tax applicable thereto.

I do not believe that you can afford to tell people that you do not want this tax imposed on the true net income of an enterprise. I think that tinges your entire effect throughout the country.

Senator KING. It depends upon what you mean by an enterprise. There might be a number of enterprises acting independently, some of which are profitable. Then there may be a number of enterprises acting independently which are operating unprofitably and a group makes a return, and the gains in some are absorbed by the losses in the others.

Mr. FERNALD. I think you will find that very rare, if you find that they are not affiliated and subsidiary enterprises. You will find it just as you will find it in a single corporation, which may have several different things it is engaged in, but usually when one taxpayer or one group of corporations are under consideration, you will find there is very definite relationship between the various plants or the various manufacturing and selling and distributing divisions, or an interrelation in the products they are turning out.

Senator REED. In other words, the Treasury should not permit a consolidated return unless they are truly affiliated.

Mr. FERNALD. We have made the test now as to ownership of stock. We have abandoned the test of whether or not they were engaged in similar enterprises, because that was simply found impossible to determine as they merged one into the other, and we made the test in that way, and I think this is a much more practical test that they have now. You can have the Treasury's own testimony as to the administrative feature.

Now I want to speak briefly of this denial of deduction for losses. Section 117 gives a very broad definition of what constitute capital assets and provides that losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges.

We join with others in urging before you the essential unfairness of taxing capital gains but denying deduction for capital losses except to the extent that such gains and losses occur within the same taxable year. It is certainly not equitable treatment as between taxpapers to say that one taxpayer who has a gain in one year and a loss in another shall be fully taxed on his gain in addition to any other income he may have in the year of gain, but will not be permitted to deduct his loss from his other income in the year of loss, whereas the man who happens to have both gain and loss in the same year can offset the one against the other. The man who has his gain in December and his loss in the next month of January would be allowed no deduction for his loss, whereas the man with a gain in January and a loss in the following December, or a loss in January and a gain in the following December would be allowed his offset one against the other, or vice versa.

Senator COUZENS. He will see that he does not get into that position.

Mr. FERNALD. He cannot always see that he does not.

Senator COUZENS. He regulates his losses and gains so that he does not pay any more tax than he has to pay. However, I am just commenting. You may proceed.

Mr. FERNALD. Furthermore, many items of capital gain or loss are closely related to so-called "ordinary" income. For example, when a taxpayer purchases stocks or bonds (possibly acquiring an interest in a corporation he is attempting to develop), if he receives any interest or dividends, these are to be fully taxable as received, but if ultimately the investment is sold or liquidated at a loss, the loss is to be disallowed even though the entire amount recovered through interest, dividends, and final selling price may be less than the original investment.

There even seems question of whether ordinary plant assets would fall within this designation so that when they were dismantled and sold the loss, which is a very definite business loss, might be disallowed.

Additional revenue requirements should not be met by departure from sound principles upon which tax-paying ability is determined and measured. Capital losses are just as real as other losses. They reduce ability to pay to an equal extent. They are a proper deduction in computing taxable net income, whether or not a capital gain has been currently realized. The sale of assets held more than 2 years certainly affords no opportunity for tax avoidance. The proposed change in existing law is unnecessarily harsh and inequitable.

Then there is this question of the so-called "incorporated pocketbook" to which the Senator was referring. You may have questions arise, and you do, covering that proposition there, but all I am asking, and that comes up under this section A, that in trying to reach a few people who may be guilty of such abuses, you do not go to work and penalize and hurt ordinary and legitimate business.

I am not going to try to go into that entire subject, but just simply record our hope that you will not do that thing.

As to the tax on capital gains, the proposed bill would depart from the fundamental principle which was the basis for the 12½ percent rate of the present law, namely, that this rate was about as high as it was possible to impose on sales of capital assets without substantially blocking the sales. Only under extreme conditions will a man be likely to sell valuable property if it means payment of a substantial proportion of its value to the Government as a tax. The man who may have paid $10,000 for a property now worth $100,000 is not likely to sell it if he has to give up $30,000 or $40,000 of his price as Government tax. He will not be inclined to sell a $100,000 property if he will only have $60,000 or $70,000 net to show for it. The higher tax rates which this proposal involves will defeat themselves. For these reasons we believe the law should impose the flat maximum limit of 12½ percent on capital gains, at least as to property which has been held for more than 2 years.

For the same reasons we urge that the provisions of section 102 of the 1932 act should still be continued, limiting the tax to 16 percent of the selling price in the case of sale of mines and oil or gas

wells where the principal value has been demonstrated by the taxpayer. While this is of limited application, it is of importance in some cases. If a man acquires a property and within a short time proves he has a valuable mine, oil or gas well, the sale of his property to others who might be able better to carry it forward and develop it will probably be stopped unless some such provision as this is in the law.

Senator REED. If that is a fair thing, why should we not extend it to inventions?

Mr. FERNALD. I do not know that I should argue with you on that, Senator.

Senator REED. I do not know why we should differentiate between different kinds of property.

Mr. FERNALD. I am just trying to speak from the standpoint of a mining man as to something which I think should be done there, and whether or not patents are adequately covered by a 12½ percent limitation, I shall leave to you.

Senator WALCOTT. I would like to ask you a question just before you leave capital gains, so that it is a part of the record. How do you feel toward the former capital gains tax? Don't you think it was a very big factor in our excessive speculations in 1927, 1928, and 1929? That the capital gains tax was?

Mr. FERNALD. I do not think the capital gains tax itself was so much a factor in our speculation. I think it is perfectly true that many people did not sell securities during those years, which would have tended to avoid the terrible peak of 1928 and 1929 because of the tax which would be involved in selling.

Senator WALCOTT. Did not failure to sell or unwillingness to sell, because of the tax that they would have to pay the Federal Government, cause a practical shortage in many of the stocks, and therefore accentuate the gambling feature?

Mr. FERNALD. There is no question that it retarded sales which if made would have tended to keep the prices from running up. I do not like to try to say how much effect it had on gambling, because I think some people will gamble in stocks regardless, but there is no question that it did mean—I should state from my personal knowledge—that there were very many people who looked at the prices and said, "These are too high." They figured how much tax they would have to pay and they said, "Why should I sell this stock for what is equivalent to 20 or 30 or 40 points under the market? I will hold this." That same condition is existing today.

Senator COUZENS. And they were penalized for it.

Mr. FERNALD. They were. There is no question about it.

Senator WALCOTT. But the Government was, too.

Mr. FERNALD. I agree with you, Senator.

The CHAIRMAN. You have had 20 minutes.

Mr. FERNALD. Excuse me. I have just given you the title of a few things, and I will offer this brief so that you can see our points. We do want to protest against the additional 4 percent tax on dividends as it appears here under this change from normal to surtax rates.

As to exchanges and reorganization provisions, we feel it is unfortunate to change that definition or at least to leave it in the status as it is in the House bill, where they have given far more indefinite-

ness and uncertainty to it instead of giving greater definiteness and certainty, which if anything, was desirable.

We think the March 1, 1913, value of property should apply for the losses as much as for the gains.

We urge that the old provision of March 1, 1913, distributions out of earnings and profits should be continued for the reasons which this committee has repeatedly set forth.

The CHAIRMAN. You do not think very much of this bill?

Mr. FERNALD. I am trying to state a number of these changes to which we feel there is very little exception to be taken.

The CHAIRMAN. We are very glad to get your opinion.

Mr. FERNALD. I also want to speak of this 25 percent provision—this proposal to class an error of 25 percent of the gross income in with the cases of fraud or with the intention to avoid the tax, which means the statute of limitations does not run. I hope you will read my criticism on that.

The CHAIRMAN. The committee will, and the experts will study your suggestions, because we appreciate the fact that you are really an expert in this proposition, and we thank you.

Mr. FERNALD. Thank you.

(The portions of the brief of Henry B. Fernald, not orally presented to the committee, are as follows:)

5. ADDITIONAL TAX ON DIVIDENDS

The proposed scale of individual tax rates differs principally from the present law in that it would decrease the present 8-percent normal tax by 4 percent and add this 4 percent to the surtax rates. The main result of this is to place an additional 4-percent tax on dividends. The profits represented by these dividends have already been subject to tax in the hands of the corporation. The basic principle evidenced by our earlier income-tax laws was that the earnings of the corporation should be taxed at their source and then, on distribution to stockholders, would be exempt from individual tax to an amount equal to the corporate rate. Existing law has already departed from that principle when it taxes these earnings 12¾ percent to the corporation, but allows a maximum 8-percent normal-tax exemption when received by the stockholders. The pending bill would reduce this normal-tax exemption to 4 percent, although the corporation would be required to pay 13¾ percent on these earnings. We believe this is unfair and excessive taxation on such distributions of corporate earnings.

There are other points which we can only briefly mention to support what others are presenting to you, but we wish to record that these are of substantial interest to the mining industry.

6. EXCHANGES AND REORGANIZATIONS

The proposed change in definition of "reorganization" we believe would be unfortunate, giving uncertainty rather than definiteness. We also believe the proposed elimination of section 112 (g) is not called for. Where the taxpayer receives simply two pieces of paper to indicate the same property ownership previously evidenced by a single certificate, we see no reason for imposing the tax. Where cash or other real assets are distributed, the tax would be imposed under present law. We believe this is as far as the law should go.

7. BASIS FOR DETERMINING GAIN OR LOSS

The bill in section 113 would deny the March 1, 1913, value of the property as its basis in case of a loss, if such basis is more than cost. We believe the principle of March 1, 1913, value for property should be continued as much for determining loss as for determining gain, and urge that the present provisions of the law in this respect be continued.

8. DISTRIBUTIONS OUT OF MARCH 1, 1913, EARNINGS OR PROFITS

We urge that the present provisions of section 115 should be continued for the reasons which heretofore repeatedly have been set forth by the Finance Committee.

9. PERSONAL HOLDING COMPANIES

The new provisions of section 102 are intended to meet the matter of the so-called "incorporated pocketbook." As they are now written they will, however, reach and penalize many corporations regularly and properly engaged in ordinary business which we believe it is not the intention of Congress thus to penalize. We urge that this feature receive your careful consideration in order to prevent an unnecessary and uncalled-for penalty on legitimate business enterprises.

It should be manifest at this time that it is not to the interest of business of the country or of the Government to penalize reasonable accumulation of those reserves which are necessary to carry business over recurring periods of depression. Few enterprises would have survived the past few years except for their established and consistent policy of building up a substantial surplus.

10. STATUTE OF LIMITATIONS

Section 276 (a) would remove the statute of limitations if there was an omission from gross income amounting to 25 percent of the gross income stated by the return, placing any instance of such difference in the stated gross income in the same classification as the failure to file return or the filing of a false or fraudulent return with intent to evade the tax. This provision regarding erroneous computation of gross income is impracticable of administration because of the uncertainties which in any event surround the determination of "gross income." Neither the Treasury Regulations, the tax return forms, nor the Treasury audit procedure have ever been calculated to try to determine a figure for the gross income of the taxpayer. An entirely new body of rules, regulations and decisions would have to be built up to make this provision effective.

Equitably the statute of limitations should not be removed or extended merely because of errors made in the preparation of returns which involve no intent to evade the tax.

11. GAIN ON DISSOLUTION

Section 115 (c) is amended to provide that the entire gain on dissolution should be 100 percent taxable at full normal and surtax rates, regardless of the length of time the taxpayer may have owned the stock. This would simply mean that if such a taxpayer sells his stock before dissolution, he might only have to pay on 40 percent of his gain, but if he holds his stock and himself receives the proceeds of dissolution, he would be 100 percent taxable. Such discrimination would certainly be unjust to those who continued to hold the stock until dissolution as against those who, perhaps better advised, might sell it before the dissolution took place. Every argument which justifies the reduced rate on the sale of capital assets, would seem equally to apply to the reduced rate on dissolution.

STATEMENT OF EDWIN A. KRAUTHOFF, BALTIMORE, MD.

Mr. KRAUTHOFF. Gentlemen, I want to give you my relation to this situation. I am attorney of some experience, and having some time at my command that I wanted to dedicate to the service of my country, I appear here in an individualistic attitude to present some thoughts with respect to the improvement of this bill, not with relation to representing any industry whatsoever, not even by own income tax.

The CHAIRMAN. We will give you 10 minutes.

Mr. KRAUTHOFF. In addition to that, I wanted to present some considerations in respect to some new taxes.

The CHAIRMAN. Have you a brief?

Mr. KRAUTHOFF. I have my suggestions in writing.

The first subject to which I wanted to direct the attention of the committee was the effective date of the new act. The new act attempts to make a radical change in the policy of the law of 1932.

The CHAIRMAN. You oppose that?

Mr. KRAUTHOFF. Under the law of 1932, the new law became effective immediately as to everybody without regard to how they kept their books. This law, as passed by the House, undertakes to say that one who keeps his books according to the fiscal year will not be subject to the new law until the next fiscal years begins.

The CHAIRMAN. Do you oppose that?

Mr. KRAUTHOFF. So far as opposing that——

The CHAIRMAN (interrupting). We know just what the change is. I understood you were giving us the benefit of some views.

Mr. KRAUTHOFF. My thought is that that would make the whole law unconstitutional.

The CHAIRMAN. Do you oppose it?

Mr. KRAUTHOFF. Yes, sir. And the reasons that make it unconstitutional are that 2 taxpayers, operating side by side, like 2 partners deriving income from the same partnership, would find themselves possibly paying a different tax, depending upon their individual method of bookkeeping, and if it be argued that that is a method that the taxpayer could change under section 46, he cannot change his method of bookkeeping and change his tax rates, except with the approval of the Commissioner, so to make the operation of the act depend upon the unregulated discretion of the Commissioner is vital in that relation. The Commissioner has the absolute power to say as to one taxpayer that he may change, and as to another taxpayer that he may not change, assuming that he has the absolute right to change. It would be possible for a man to now take a fiscal year from December 1, 1933, to December 1, 1934, and not pay the new taxes until the fiscal year had begun, the 1st of December 1934——

Senator COUZENS (interrupting). In other words, 11 months after the other taxpayer.

Mr. KRAUTHOFF. Yes, sir.

Senator KING. You challenge that upon the ground that it produces lack of uniformity in taxation.

Mr. KRAUTHOFF. It produces a lack of uniformity, on the one hand, and if it be held valid, it produces inequality, because it permits taxpayers of one class to pay at one rate, and taxpayers of another class to pay at another rate.

For that reason I submit a memorandum that you should restore either the 1932 plan of making it upon the calendar year without regard to fiscal years, or at least give the taxpayer a chance to change to fiscal years if he so chooses without the Commissioner having the control over the situation.

The CHAIRMAN. I hope that the tariff and tax experts will listen to that suggestion, because it is a question, Mr. Parker, that you have to combat when we get into executive session.

Mr. KRAUTHOFF. I have presented my views in writing, and I regard it as exceedingly serious because I think if that should be held invalid, it would cause the whole income-tax structure of the law to fall. In other words, it is not a separable proposition that the court could say, "We will make it work in some other way."

The next thing I have undertaken to do is to rewrite sections 102 and 103—the ones as to personal holding companies and improper accumulation of surpluses of companies.

The Treasury Department points out that the present definition of personal holding company is arbitrary. It undertakes to say that it applies to five individuals or less, it applies to corporations that have a certain income, 80 percent derived from a certain source, and absolutely determines that if they keep a certain proportion of their income, that they are conclusively subject to the 35-percent law. The theory I have is that sections 102 and 103 may be consolidated into one section and made operative according to a principle and not according to a fixed and definite arbitrary rule. In other words, that if the Commissioner in any case finds that any corporation is formed for the purpose of improperly accumulating a surplus, that then he may advise the corporation of the amount of the surplus which in his judgment they have improperly accumulated and give them 30 days in which to distribute this improperly accumulated surplus, or to file an agreement by their stockholders to include it in their income, and then if at the end of those 30 days it has not been distributed, the tax is imposed. In other words, it does not make a man violate the law at a penalty of being assessed in one case 35 percent and in another case 25 percent.

Senator COUZENS. I understand that your proposal still leaves that great power with the Commissioner of Internal Revenue.

Mr. KRAUTHOFF. It is a question of fact that has to be decided by somebody.

Senator COUZENS. The question of a fact cannot be predicated upon the future. Many of these corporations come in when they are accumulating their funds and say that they are accumulating them to rebuild their plant or to rebuild their hotel or to rebuild their apartment houses, and in that view the Commissioner may say they are not improperly accumulating.

Mr. KRAUTHOFF. The court would have to decide it. It is a question of fact whether it is a reasonable accumulation for the purpose. The question that I have undertaken to frame—it is not easy—and if you were inclined to adopt this suggestion at all, it is to strike out all of sections 102 and 103 and insert in lieu thereof the following:

SEC. 102. In the event that the Commissioner shall find, subject to review on appeal to the Board of Tax appeals, under such rules and regulations as may be prescribed by the Commissioner, that any corporation, partnership, trust estate, or any form of organization whatever, however created or organized, was formed or is being availed of for the purpose of preventing the imposition of the surtax levied in this title upon the stockholders, members, donors, or beneficiaries of such organization through permitting gains and profits to unduly or unreasonably accumulate, not in good faith for the usual or ordinary purposes of business, but for the purpose of preventing the imposition of surtaxes upon the stockholders, members, donors, or beneficiaries or such organization, instead of being divided or distributed, then the Commissioner, subject to appeal to the Board of Tax Appeals as hereinbefore pro-

vided, shall determine under the same rules, regulations, and laws applicable to like incomes, the amount of the undistributed surplus of gains and profits which the Commissioner shall find to have been unduly or unreasonably permitted to accumulate not in good faith for the usual or ordinary purpose of business but for the purpose of preventing the imposition of surtaxes.

And so forth.

Of course, that would have to take into consideration both the present and the future, just as a railroad has to take into consideration its depreciation when it fixes its present rates. I assume if the Commissioner were arbitrary in his action and decided it upon a state of facts that was not proved, a court would say that his finding was void.

Senator COUZENS. Of course, when the Commissioner decides in favor of the taxpayer, it does not come to court.

Mr. KRAUTHOFF. Perhaps not. Still, the Government can take it into court over the Commissioner's finding.

Senator GEORGE. Isn't that substantially the same thing as the present law? Does not the power exist today substantially as you suggest?

Mr. KRAUTHOFF. There is a provision now in the present law about a corporation which improperly accumulates a surplus.

Senator GEORGE. That is what this is aimed to prevent.

Mr. KRAUTHOFF. I doubt that that is sufficient to cover the evil of which I speak.

The CHAIRMAN. You have your suggestion in writing?

Mr. KRAUTHOFF. Yes, sir.

Senator KING. Do you think the present law, the one which has been operating for a number of years with respect to accumulations of profits, sufficiently penalizes—although I do not like to use that word?

Mr. KRAUTHOFF. It makes it 50 percent, as I understand it now. The present law is 50 percent, and the new law has less.

Senator KING. You remember that during the speculation in stocks some of these large corporations had accumulations from 100 to 250 millions of dollars, that they threw those large holdings into the market for the purpose of stimulating stock speculation and made large profits, charging a high rate of interest, and contributed thereby very much to the development of the gambling spirit which brought about the debacle.

Mr. KRAUTHOFF. The evil is something that should be corrected. I agree with that. But the point I am trying to make is that instead of making it a definite fixed and certain rule—as an English judge said many centuries ago, he refused to define "fraud", because just as soon as he defined fraud, somebody would undertake to defraud the definition—and in the debates of the Senate on what constitutes unfair practices in interstate commerce time and time again the effort was made to write some law that would define what is unfair practice in interstate commerce, and the Senate refused to do it. Like the question of just and reasonable rates in Interstate Commerce Act, or under the Standard Oil case of what is the unduly in-restraint-of-trade contract. I do not see that anyone can write one of these laws that undertakes to say just exactly what it shall be in any particular case, and for that reason I have undertaken to make it flexible.

The present law makes it a matter of judicial scrutiny, I assume, because it does not say that the Commissioner may find—this proposed act makes the finding of the Commissioner a definite proposition, just like the finding of the Interstate Commerce Commission—and then the important thing that I am bringing out here is that the Commissioner finds it, and after he has found it, the corporation can then comply with his finding and turn over its surplus instead of violating the law at its peril. At present a business man would go to a lawyer and say, "How much surplus can I accumulate?". And he would would have to tell him, "Well, we cannot tell you. That depends. You cannot improperly accumulate it." And that is all that it says.

Now, the question of these family transactions. I think that that too is open to criticism in that it makes an arbitrary rule as to some transactions and leaves the door entirely open as to any other.

Senator KING. You are speaking of the bill before us rather than the existing law?

Mr. KRAUTHOFF. I mean the law that is proposed. Under the proposed law, if a man sells to his wife or his son or his daughter or certain members of his family, he may not claim the deductible loss, but if he sells to his brother-in-law as distinguished from his brother, then he may claim it as the deductible loss. It does not say that in so many words, but it does not mention a sale to his brother-in-law. It is possible for a man to actually sell property to his brother. I think some people still may sell to their brother and still may sell to their wives—that there are men who have brothers who do buy property from them, and the information I want to submit to the committee in this respect for its consideration is the fact that it be made flexible, and in every case where the sale is not made in good faith, and such as an ordinarily prudent business man would make in the usual and ordinary course of business, but for the purpose of evading payment of the income tax, that then the law shall provide that the loss shall not be deductible. Further, in creating a prima facie rule that in case of family transactions, it is prima facie in violation of the law, putting the burden on the man that made the sale to sustain the good faith of the transaction.

Senator KING. With no difference in the degree of consanguinity or affinity.

Mr. KRAUTHOFF. The primary rule is the same as in the proposed law.

Senator KING. Have you submitted a proposed amendment?

Mr. KRAUTHOFF. I have the amendment here.

Now, I think there are some things in the proposed law that are unfortunate. There is a jump from $6,000 and another to the $8,000 figure, where the $8,000 man gets a reduction of $20 but the $6,000 man does not get the benefit of a reduction, and I therefore have intimated that the surtax between $4,000 and $6,000 should be 3½ percent so that the man between $4,000 and $6,000 would get $10 while the man at $8,000 was getting the $20 advantage, but not rearranging the whole surtax structure. Just making it 3½ between those two amounts.

There are several things you can do to increase your revenue which I think are very just. One of the things that I propose is that all

of the money that passes through the hands of the United States courts should pay a tax of 1 percent. Senator McAdoo is familiar with the situation in California, I believe, where large estates have been brought into the Federal courts to be administered as courts of equity.

I have in mind, for example, in St. Louis, the St. Louis & San Francisco Railway Co. was sold at public auction for $45,000,000, and the securities that were issued were $315,000,000, and the judge in passing on the reorganization plan, had to pass on securities involving $315,000,000.

The CHAIRMAN. You would put a 1-percent tax on all of the unfortunate fellows that had to go through the courts?

Mr. KRAUTHOFF. All the money that passed through the court.

The CHAIRMAN. That would be the unfortunate corporation or individual who had to go through.

Mr. KRAUTHOFF. On the theory that that is a fair contribution to the expense of the Government in administering the estate. In other words, he pays everything else out of the estate, he pays the lawyers, he pays the receiver, he pays fees of one sort or another, but the court is the machinery set up by the Government.

Senator KING. Let me see how far you would go. Take one of these men who has a little home. He has a first and a second trust. His home is foreclosed and sold under the hammer, and the sheriff receives, say, $1,000. That goes toward the payment of the first or the second trust, and then there is a deficiency judgment against the poor homeowner. Do you think that that $1,000 should be taxed? Of course, it gets into the hands of the court.

Mr. KRAUTHOFF. It does not apply to a State court. These foreclosures do not come into the Federal courts. But it might be just to have an exemption, that it shall not apply to any estate less than $10,000.

Senator MCADOO. Is it your idea that the tax you suggest should be imposed on the bid price of the property, or the knock-down price?

Mr. KRAUTHOFF. On the value.

Senator MCADOO. Would that be taken as the value or would the issue of securities be taken as the value?

Mr. KRAUTHOFF. It is to be taxed as costs in the administration, and I suppose the court would say that presumptively the bid price was the value and it might be worth a great deal more.

Senator MCADOO. Wouldn't it be well to define that?

Mr. KRAUTHOFF. I have said in here that it should be upon the value, and also upon all of the money that passes through the hands of the court.

Senator MCADOO. On the theory of the inheritance tax. It is a tax based upon the right of transfer of title.

Mr. KRAUTHOFF. Yes, sir. And if you have a case in the bankruptcy court, you pay 1 percent to the referee in bankruptcy for his services. It seems to me if you deposit money with the clerk of the Federal court, and where you pay 1 percent——

Senator KING (interrupting). I think that insofar as the small man is concerned, that is unjust. There should be a reasonable fee to be determined by the court.

Mr. KRAUTHOFF. I think there should be a limit on the amount. But, if a corporation like a railroad company should sell itself for millions of dollars, and then pay a few dollars of clerk's fees as the contribution to the Government, while at the same time the lawyers, the receivers, the bankers, and everybody else connected are dealing in large fees—I understand the Chicago, Milwaukee & St. Paul Railroad paid out millions of dollars.

Senator COUZENS. Nine millions.

Mr. KRAUTHOFF. Millions of dollars to reorganization managers and lawyers and receivers and innumerable people.

Senator COUZENS. Why not take this out of the lawyers and the bankers instead of out of the bankrupt?

Mr. KRAUTHOFF. The lawyers are always open to that, of course. [Laughter.]

Senator MCADOO. I think there is merit in the suggestion that a tax should be applied on the theory of tax on the privilege of transfer.

Mr. KRAUTHOFF. It is court costs.

Senator MCADOO. It could be taken either way. In the Federal courts (as we have developed it in this investigation of receivers and bankruptcies in the Federal courts, and in the administration of them) I know that there is room there for readjustment in the taxing power that would be just and advantageous, as well as providing revenue.

Mr. KRAUTHOFF. My thought is that they should pay the expenses that the Government undertakes in setting up the machinery.

Senator MCADOO. We impose it in bankruptcy upon the estate of the distressed debtor. If you go into the equity side of the Federal court, where those large receiverships go usually, there absolutely is no tax of any kind or fee of any kind charged.

Mr. KRAUTHOFF. There is a 1 percent commission in bankruptcy. I can quite see Senator King's intimation that it ought not to apply to any estate where the total estate disbursed is less than $10,000.

Senator MCADOO. There is no distinction in the bankruptcy court. They pay 1 percent all the way through.

Senator KING (acting chairman). Let us proceed.

Senator MCADOO. We have no foreclosure in the Federal courts that I am aware of. That is always in the State courts, and they would not be included in the tax bill.

Senator KING. We have a practice, there are a number of proceedings in the Federal courts where corporations interested in such character——

Mr. KRAUTHOFF (interrupting). Nonresident; yes.

Senator KING. We have had some here in the District.

Senator MCADOO. Those are large matters.

Senator KING. But those large matters involve a great many homes sometimes.

Mr. KRAUTHOFF. I think that is a wise provision. I would suggest an exemption, say, of $10,000?

Senator KING. Submit it as you wish. Proceed, please.

Mr. KRAUTHOFF. My idea would be that in every case $10,000 should be exempt, so that there will be an equality between the large estates and the small estates.

There is an opportunity here, if you are reaching out for excise taxes, to levy a tax on some articles that are sold in great numbers. One is this cellophane wrapping paper, this transparent wrapping paper that they call cellophane. It is almost impossible to buy anything today that is not wrapped in that cellophane. It is made by the du Ponts, and I think that they should pay a tax of 2 percent.

Senator COUZENS. Have you estimated what that would be?

Mr. KRAUTHOFF. I have not any idea. Safety razors and razor blades, and toilet paper. There was one advertisement in the Saturday Evening Post a week ago by the Scott Tissue Paper Co., boasting of how many trees they cut down every day in serving the world with toilet paper.

I have an idea which is so elaborate that I am not going to voice it in full, but suggest it and you may do with it what you think best. It is the check tax. The present check tax is a 2-cent tax on every check, regardless of its size, regardless of where deposited, or where it is handled. I have an idea that a check tax which is based on a logical basis and will yield a sum of money that I do not know how great it might be, and that is, that if you present a check—for instance, Senator King—if I may be personal for a moment—takes a check to a bank in Washington on his bank account in Utah. Under the present system of banking, the bank takes the check at par and makes no charge for that check, although it may take a week or 10 days for it to get the proceeds of that check. That is one of the beneficent results of the Federal Reserve Banking System. I have an idea that you should levy a stamp tax on any check, warrant, or order for the payment of money that is presented for payment in a city other than the city in which the check is drawn, as a fair charge for handling that transaction. You are getting an accommodation. You take in a $100 check, say, and you should pay 10 cents or 20 cents for the purpose of getting that check cashed and getting the money on it. That does not seem unreasonable.

Senator KING. It has been the practice of some banks to charge, treating it as a collection.

Mr. KRAUTHOFF. I think what you should do, if you will pardon my saying so, is to make the stamp tax a tax of which one half goes to the bank for handling the stamps, and then say that a bank who is a national bank or a member of the Federal Reserve System shall not make any other or further charge for the handling of checks, so that those banks that are charging will have to pay something to the Government for what they get out of it, and those that are not charging will get something out of it, and the Government will get something out of it also. Senator McAdoo will probably know what the volume of these check transactions is.

Senator MCADOO. I am not familiar with it now.

Mr. KRAUTHOFF. It is quite large.

Senator MCADOO. You mean interstate checks?

Mr. KRAUTHOFF. Yes, sir; checks presented in one city on banks in another.

The law is very liberal just now in exempting mutual savings banks. I appreciate that we open a wide door of controversy in this. But I think the paper in Baltimore the other day said that there were 10 billions of dollars on deposit in the mutual savings

banks in this country, whose earning power would be somewhere in the neighborhood of 350 million dollars of interest. These depositors do get the benefit of that. The public does not get it. The average depositor has $700, this paper said, so that if there were excise tax of say 2 percent on the interest, it would cost one of these depositors somewhere in the neighborhood of 40 or 50 cents in the course of the year, but the Government would get about $7,000,000 in money out of the situation.

Then the building and loan associations or corporations of the same nature. They operate purely for the benefit of the man who is a stockholder in it. He puts in a certain amount of money for a certain length of time, and at the end of it, he is immediately in possession of a certain sum of money. If you are taxing annuities on insurance companies and taxing insurance companies, I do not see a logical reason for the building and loan associations escaping.

I have an intimation here that speaks for itself, that suits against the internal revenue tax collector should be brought against the Government and not against the collector. The Treasury Department I think has recommended that all suits to recover taxes, be brought against the Government and not against the collector. As it is now, you sue the collector, but you cannot collect it. You cannot issue execution against the collector. And it means that if the collector is sued and if he dies, his estate is technically held up until the final settlement and administration, and there is no reason why the taxpayer who has a claim against the Government should not be able to present it against the Government and sue the Government.

I think it is unfortunate to put in the retaliatory clause, in view of our efforts to restore world trade.

I do not believe that is a very good way to start doing business with the world, by saying to the world, "We are going to soak your nationals in this country if you do not behave in that country." In other words, if you are dealing with a man across the table, it is best to deal with him and not carry a club.

The earned-income credit is open to a peculiar situation. It provides that if a man has a little shop in which capital is a part, in the law as presented, that if the income depends upon capital as well as upon working power, that he cannot get an earned income in excess of over 20 percent of his profits. Take in the case of this, for instance, if there is a little shoemaker in my neighborhood who has his capital invested in shoemaking machinery, and before he could get the credit, he would have to earn $3,000. I have undertaken to eliminate that and leave the rule the same as in the case of a corporation, namely, that it should be reasonable in every case having regard to the rules and regulations of the Department.

I have undertaken to intimate also from details here that speak for themselves—I will not elaborate them—and that is that the law should plainly state upon its face, without elaboration of the regulations, to what individuals the law applies. It says that there shall be levied upon the net income of every individual an income tax, but if you start to find out what individual that refers to, you do not find it. I did not at least, in the months of study that I gave to the situation. But you do find in the regulations that it shall apply to

an individual, whatever income he has, and a resident of the United States of the income that he gets wherever he gets it——

Senator KING (interrupting). You think the regulations are too comprehensive and include something in the term "individual" that ought not to have been included?

Mr. KRAUTHOFF. No; I think they should be in the law.

Senator KING. Do you think that the regulations defining the word "individual" and who would come within that category, are too ambiguous or need clarification, or what?

Mr. KRAUTHOFF. I have not undertaken to sit in judgment on that. I have taken the liberty of following the regulations and writing it in the law what the regulations provide, but I think a law that undertakes to levy a tax on the net income of individuals ought to show at least on the face of the law what individuals it applies to, without having to write to Washington to find out what the law means.

Then, as to contributions to charity, that has been pointed out. I will not mention that. Corporations these days, as a business proposition, contribute to community chests and charity drives, and they should be permitted to deduct them. I understand in practice they do deduct that as business expense, and that the Department allows them.

Senator COUZENS. We have had that up before.

Mr. KRAUTHOFF. But the law says, "individual".

Senator GORE. I infer that you think that corporations ought to be allowed to make contributions.

Mr. KRAUTHOFF. The same as an individual. The proposed law permits a partnership to deduct it. Of course I appreciate that Senator Couzens knows that a corporation cannot indulge in a general charitable scheme.

Senator COUZENS. As a matter of fact, most of the community chests are now raised by corporations, and there has been no general objection to it.

Senator KING. Is that all?

Mr. KRAUTHOFF. One other suggestion, and then I shall be through. That is, the Supreme Court of the United States has decided that if a man paid a debt from which he had been discharged in bankruptcy, that there was a pure gift on his part in so doing, there being no legal responsibility on his part, and he was in effect making a gift. It seems to me that that type of honesty ought to be encouraged rather than discouraged, and if a man paid a debt that was discharged in bankruptcy or barred by limitation, he should have the same deduction as if he paid an actual debt that was really alive.

In connection with the bankruptcy law, if I may suggest it, there is a provision in this act that a man who is discharged in bankruptcy is not discharged of his income-tax obligation, and it seemed to me that if we have a bankruptcy law that discharges a man of his individual debts on the theory that thereby he is restored and made an active member of society, that the Government ought to be willing to be a good neighbor, as the President says——

The CHAIRMAN (interrupting). The committee thanks you very much, and we will consider your suggestions and submit them to our experts.

Mr. KRAUTHOFF. One further question. Are you interested in the power of Congress to levy a surtax on estate obligations without Constitution amendment?

The CHAIRMAN. We would be very glad for you to submit it.

Senator GORE. What is your reaction on that?

Mr. KRAUTHOFF. I think under the sixteenth amendment, properly construed, the Government has the right to tax such obligations.

Senator GORE. The Supreme Court has held that under the sixteenth amendment you could not tax anything that you could not tax before.

Mr. KRAUTHOFF. I am sufficiently bold to intimate that the Supreme Court was wrong about that.

Senator GORE. It often is, in my judgment.

The CHAIRMAN. You will file your suggestions in the record?

Mr. KRAUTHOFF. Yes, sir.

(The suggestions mentioned are as follows:)

SUGGESTIONS BY EDWIN A. KRAUTHOFF, 667 WEST FRANKLIN STREET, BALTIMORE, MD.

The author of this memorandum submits the same to the committee, pro bono publico, in the hope it may be of service to the committee.

In logical order, the first point to be considered is the affective date of the proposed act.

H.R. 7835, as passed by the House, contains an important change from the policy of the Revenue Act of 1932, as to the time that Revenue Act of 1934, as the new law is called, takes effect.

The Revenue Act of 1932 was approved June 6, 1932, and applied to the taxable year 1932, and succeeding taxable years, without regard to whether the books of the taxpayer were kept according to the calendar year or according to an accounting period or fiscal year of the taxpayer's own choosing. That is, the rates charged by the 1932 act applied to all income derived after January 1, 1932, without regard to methods of bookkeeping. Provisions were made in Revenue Act, 1932, for prorating in case of taxable year, as chosen by a taxpayer, embraced portions of 2 calendar years for which the laws are different (Revenue Act, 1932, secs. 14 and 105).

But the proposed law, Revenue Act of 1934, in its present form, applies:

(a) To taxpayers who keep their books on the basis of the calendar year, for all income derived in the year beginning January 1, 1934; and

(b) To all taxpayers who keep their books on a fiscal year basis, a year or accounting period chosen by the taxpayer, or distinguished from the calendar year, for all income derived in a fiscal year which began after January 1, 1934.

For example, as to a taxpayer who keeps his books from July 1 to June 30, the proposed rates would apply from July 1, 1934, to June 30, 1933, instead of January 1 to December 31, 1934, as provided with respect to taxpayers who keep their books according to the calendar year. This is a discrimination in favor of one class of taxpayers against another. Two taxpayers, operating side by side, competitors perhaps in the same line of business, would pay different rates of taxes, dependent on a method of bookkeeping.

Equality before the law is a cardinal principle of American jurisprudence.

Inasmuch as an income-tax law is in part at least, as to such intangibles as salaries, an excise tax, the income tax must be uniform.

If it be argued that such a law is uniform because taxpayers are free to choose their method of bookkeeping, the answer is this:

(a) Under section 46, if a taxpayer changes his accounting period, the net income can be computed on the basis of the new accounting period only with the approval of the commissioner. So a taxpayer, according to the language of the act, is not free to remove the discrimination.

(b) But if it be contended, and such is the logical conclusion from the proposition that Congress cannot delegate its power to make a law, that the clause in section 46 (H.R. 7835, p. 37, lines 13 and 14), relating to the approval

of the Commissioner is void as an attempted delegation of legislative power (*Field* v. *Clark*, 143 U.S. ——), then a taxpayer who is on a fiscal-year basis may select a new fiscal-year basis beginning December 1, 1933, and escape the new taxes on all income derived prior to December 1, 1934. The ordinary taxpayer pays his taxes on an income calculated according to the calendar year. It is the larger taxpayers, the ones whose income taxes are substantially increased by the proposed act and against whom many of the reforms proposed by the new law are directed who keep their books on a fiscal-year basis, in many cases, or have the ingenuity to charge their accountings periods so as to minimize taxes and avoid paying the new taxes as long as possible. The new law in its present form benefits unjusly the very class of taxpayers whom it is desired to reach.

The foregoing considerations are fundamental:

(*a*) If the law be held valid because the taxpayer may change his bookkeeping, there will be a great loss of revenue.

(*b*) If the law be held invalid, because section 1 does not operate to make it uniform, the whole structure falls.

AMENDMENT NO. 1 TO H.R. 7835

Amend section 1, H.R. 7835, to read as follows:

"(a) The provisions of this title shall apply only to the taxable year 1934 and succeeding taxable years.

"(b) Income, war-profits, and excess-profits taxes for taxable years preceding the taxable year 1934, shall not be affected by the provisions of this title, but shall remain subject to the applicable provisions of prior revenue acts, except as such provisions are modified by title III, of this act or by legislation enacted subsequent to this act.

"(c) Sections 14 and 105, Revenue Act, 1932, are continued in force and shall apply to this title.

"(d) Amend section 48, paragraph (a), H.R. 7835, by adding thereto the following words:

"'The first taxable year to be called the taxable year 1934 shall be the calendar year 1934, or that portion of a fiscal year which began prior to January 1, 1934, and extended beyond that date and that portion of a succeeding fiscal year which began after January 1, 1934, which shall have elapsed on December 31, 1934.'"

AMENDMENT NO. 2 TO H.R. 7835

If present theory of H.R. 7835, as to discriminating between calendar-year and fiscal-year taxpayers, is to be maintained, the following amendment is submitted so as to avoid misunderstanding and make the meaning clear:

Amend H.R. 7835, section 48, paragraph (a), by adding the following:

"The first taxable year to be called the taxable year 1934 or any fiscal year beginning during the calendar year 1934 sections 14 and 105 of Revenue Act of 1932 shall not be applicable to taxes levied under this title."

And by adding to section 48, the following paragraph:

"(b) Taxes on income derived after January 1, 1934, whose fiscal years ends after December 31, 1933, shall be computed prior to the end of such fiscal year, by the prior revenue acts, and after the end of such fiscal year, by the provisions of this title."

AMENDMENT NO. 3 TO H.R. 7835

Amend H.R. 7835, section 46, to read as follows:

"SEC. 46. (a) In case the Commissioner shall find that the change in the accounting period of the taxpayer hereinafter mentioned shall not operate to reduce the amount of taxes payable by the taxpayer, the taxpayer may charge his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, then, in such case, the net income shall be computed on the basis of such new accounting period, subject to the provisions of section 47.

"(b) In case the Commissioner shall find that the charge in the accounting period mentioned in paragraph (a) of this section would operate to reduce the amount of income taxes payable by the taxpayer, the taxpayer may nevertheless make such charge, but in such case the net income shall be so computed

that such charge shall not have the effect of reducing the amount of income taxes payable by the taxpayer."

In *Brushaber* v. *Union Pacific R. R. Co.* (240 U.S. 1), Mr. Chief Justice White pointed out that the Constitution recognizes two classes of taxes: Direct taxes required to be apportionment:

DUTIES, IMPOSTS, AND EXCISES REQUIRED TO BE UNIFORM

The sixteenth amendment, it was ruled, did not undertake to create a new class of taxes, a direct tax not requiring either apportionment or uniformity but left the income tax in the class of duties, imposts, and excises required to be uniform.

M. Poe v. *Seaborn* (282 U.S. 101, 117), it was assumed that a Federal income tax law is required to be uniform.

Again, certain income taxes are upheld as excises, which are specifically required to be uniform.

In the majority opinion on rehearings in *Pallock* v. *Farmers' Loan & Trust Co.* (158 U.S. 601, 635), Mr. Chief Justice Fuller recognized that in cases of "gains or profits from business, privileges, or employments", income taxation "has assumed the guise of an excise tax and been sustained as such."

(See, also, dissenting opinion of Mr. Justice Jackson (158 U.S. 696, 697).)

The proposed law (H.R. 7835), as to all the manifold changes in its income-tax provisions makes a distinction between taxpayers dependent on an existing state of facts, a method of bookkeeping; a method which the taxpayer can only alter with the consent of the Commissioner (sec. 46). Hence void as not uniform.

"* * * a classification, to meet the requirements of the organic law must as applied to any subdivision of the State, be based upon natural or prospective conditions of such subdivision and not to the possibility of legislative action."

State, ex rel., v. *Perkins* (283 Mo. 161, 163).

A statute which depended as to its effect upon the uncontrolled discretion of a county court; held, not uniform in its operation.

State, ex rel., v. *Bailey* (308 Mo. 444; 452).

A law prescribing different methods as to fixing the salaries of prosecuting attorneys and circuit clerks, not uniform.

State, ex rel., v. *Hamilton* (312 Mo. 157, 171).

A statute is a general law, "when it prescribes a rule for future government in all such cities as may, in the course of time, reach the requisite population, and is not restricted by its provisions to a state of facts then existing, and not applicable to any other city which may in the future attain that population."

State, ex rel., v. *Wofford* (121 Mo. 61, 69).

"* * * statutes which were restricted in their appreciation to one or more counties or cities, with no provision by which those subsequently attaining the specified number of inhabitants, might enjoy the benefits or powers conferred by the act", held not uniform (131 Mo. 5).

A law applying to counties of a designated population which is "designed to apply to counties that may have the stated population at any time after the statute takes effect", held uniform.

Ex parte Loving (178 Mo. 194, 210); *Dunne* v. *Kansas City Cable Ry. Co.* (131 Mo. 1, 5).

"A mere arbitrary classification" is forbidden.

State v. *Logan* (268 Mo. 169, 177).

"* * * this act only applies to Columbia, and can never apply to other portions of the State although the same conditions may subsequently exist there", hence not uniform.

State, ex rel., v. *Williams* (232 Mo. 56, 74).

A law "which divides a natural class into two portions, making two classes out of one, and thus in effect arbitrarily enacts different rules for the government of each", held not uniform.

State v. *Thomas* (138 Mo. 95, 101, 102).

"If a law effects equally all persons who come within its operation, it cannot be local or special within the meaning of the constitution."

Waterman & Bridge & Iron Works (328 Mo. 688, 695).

"* * * the classification made by the legislature shall rest on a reasonable basis and not upon a mere arbitrary division made only for purposes of legislation" (328 Mo. 696).

See, also, *State* v. *McCann* (329 Mo. 748, 758, 759). *State, ex rel.*, v. *Buckner*, (308 Mo. 390, 401).

State, ex inf., v. *Southern* (265 Mo. 275, 286).

A law regulating the jurisdiction of justices of the peace by a differentiation based on whether the justice was a salary or a fee justice, held not uniform.

State, ex rel., v. *Pollock* (310 Mo. 620).

If it be contended that section 46 is void as an attempted delegation of legislative power, then the proposed law would produce most unjust results in its application to taxpayers of the same class and deprive the Government of considerable of the benefits of H.R. 7835, in many cases, for 11 months.

Amend H.R. 7835 by striking out all of sections 102 and 103, and inserting in lieu thereof the following:

"SEC. 102. In the event that the Commissioner shall find, subject to review on appeal to Board of Tax Appeals, under such rules and regulations as may be prescribed by the Commissioner, that any corporation, partnership, trust estate, or any form of organization whatever, however created or organized was formed or is being availed of for the purpose of preventing the imposition of the surtax levied in this title upon the stockholders, members, donors, or beneficiaries of such organization through permitting gains and profits to unduly or unreasonably accumulate, not in good faith for the usual or ordinary purposes of business, but for the purpose of preventing the imposition of surtaxes upon the stockholders, members, donors, or beneficiaries of such organization, instead of being divided or distributed, then the Commissioner, subject to appeal to Board of Tax Appeals, as hereinbefore provided, shall determine under the same rules, regulations, and laws applicable to like incomes, the amount of the undistributed surplus of gains and profits which the Commissioner shall find to have been unduly or unreasonably permitted to accumulate, not in good faith for the usual or ordinary purposes of business but for the purpose of preventing the impositions of surtaxes upon the stockholders, members, donors, or beneficiaries of such organization and advise such organization of his determination. Thereupon if within thirty days after such determination shall have become final, such unduly and unreasonably accumulated surplus as aforesaid, shall not have been distributed among the stockholders, members, donors or beneficiaries of such organization either in cash, or by an agreement on the part of such stockholders, members, donors or beneficiaries to include the same in their taxable income for the taxable year in which the commissioner may find the accumulation to have occurred, plus a 10 per centum increase in the amount thereof, then the Commissioner shall assess upon such organization, in addition to the other income taxes imposed by law, a further tax of 35 per centum of the net taxable income of said organization which shall become immediately due and payable."

NORMAL TAXES AND SURTAXES

The proposed law (H.R. 7835) makes a striking change in the rates as to normal taxes and surtaxes and the manner of their computation.

Under the present law there is deducted for the purpose of the normal tax all of the credits against net income provided in section 25. These credits include dividends from corporations, interest on Government bonds not wholly tax exempt, and family exemptions. The income tax is then computed at 4 percent of the first $4,000 and 8 percent on the excess.

But, under the present law, the surtax begins at $6,000, with a surtax of 1 percent up to $10,000, and the credits under section 25 are not deducted in computing the surtax.

Under the new law, the normal tax is a flat rate of 4 percent on all incomes and credit is given for the same deductions as under the present law, and the surtax begins at $4,000 with credit for family exemptions as provided in section 25 (b).

In case a single man has an earned income of $5,000, he is allowed under both laws an exemption of $1,000, leaving a taxable income for the normal rate under the present law of $4,000 at 4 percent or $160. Under the present law, a surtax is not charged on such income.

Under the new law, such a taxpayer pays $160 normal tax on $4,000, no surtax, and is given a concession of not less than $12 nor more than $16 on account of earned income. So a taxpayer of the class now under discussion can only save $12 or $16 under the new law.

A man whose taxable income is less than $4,000 can only save $16 or less, depending on the amount of the income and how much of it is earned.

A single man who has an earned income of $6,000 is given exemption of $1,000 under both laws. Taking $5,000 as his taxable income, the amount is the same under both laws, $240, less earned-income credit of not less than $12 nor more than $20.

The same result is approximately true of a single man, earned income $7,000, exemption $1,000, taxable income $6,000. Under both laws the tax is $320, less earned income credit of not less than $12 nor more than $28.

But a single man, earned income $8,000, exemption $1,000, taxable income $7,000, under the present law, pays

Normal tax:

$4,000, at 4 percent	$160
3,000, at 8 percent	240

Surtax:

$2,000, at 1 percent	—20
Total	420

Under the new law, the tax is—

Normal tax $7,000, at 4 percent	$280
Normal tax $3,000, at 4 percent	120
Total	400

A saving of $20 plus earned income credit of not less than $12 nor more than $32.

To bridge this jump of $20 on an income differing in amount only $1,000, the surtax under the new law on incomes between $4,000 and $6,000 should be 3½ percent, without charging the other percentages or computations.

An amendment to that effect is accordingly submitted.

Amendment no. 6 to H.R.7835 submitted by Edwin A. Krauthoff:

Amend H.R. 7835, section 12 (b) by striking out lines 12 to 14 on page 8 of the printed bill, and inserting in lieu thereof, the following:

"Upon a surtax net income of $4,000 there shall be no surtax; upon surtax net incomes in excess of $4,000 and not in excess of $6,000, 3½ per centum of such excess; $70 upon surtax net incomes in excess of $6,000; and upon surtax net incomes in excess of $6,000 and not in excess of $8,000, 4 per centum of such excess."

NEW TAXES

Amend H.R. 7835, by adding a new section thereto, to be numbered 617 (a) and to read as follows:

"Sec. 617 (a). There is hereby imposed upon the following articles sold by the manufacturer, producer, or importer, a tax equivalent to a 2 per centum of the price for which as sold: Transparent wrapping material, safety razors, razor blades, and toilet paper."

Amend H.R. 7835 by adding a new section thereto, to be known as "section 628," and to read as follows:

"Sec. 628. There shall be charged, in addition to the costs now imposed by law, as costs of administration, 1 per centum commission upon the fair value of any property passing by any decree or order of sale, reorganization or adjustment entered by any district court of the United States, or of any referee in bankruptcy thereof, either with or without sale, and a like amount upon all expenditures and disbursements by any officer of any of said courts in charge of any property subject to the jurisdiction of the court not arising from a sale thereof, to be assessed and collected under such rules and regulations as may be prescribed by the Commissioner: *Provided,* (a) That the sale price of any property sold under the decree of any court as herein provided shall be prima facie evidence of the value thereof; (b) In every case in which costs may be taxed as herein provided, an exemption of $100 in commissions shall be allowed."

CORPORATIONS EXEMPT

Mutual savings banks do yield a profit to the depositors. Building and loan associations do yield a profit to their stockholders.

Both should cease to be exempt from income tax, and pay an excise tax of say (*a*) no tax on first $20,000 of net income, (*b*) 1 percent on next $80,000, (*c*) 2 percent on the excess.

Organizations exempt under 101 (6), page 49, should pay similar tax on net income derived from property owned or held in trust by or for them not expended in the relief of the destitute or in the healing of the sick.

Page 49, line 6, the exemption here granted should be stricken out and a separate provision made to this effect:

"Corporations, trust estates, and any community chest, funds, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private share holder or individual shall be exempt from taxation under this title, except that each of the organizations hereinbefore specifically mentioned, as to that portion of their income not expended in the relief of the destitute or the care of the sick or orphans or the aged or in the prevention of such cruelty, and not received from dues, tuition, or voluntary contributions, in lieu of all taxes imposed by this title, shall pay an income tax upon such net income, to be computed as follows:

"On the first $20,000 of said net income or part thereof, no tax shall be levied;

"On the next $80,000 of said net income or part thereof, a tax of 1 percent shall be levied;

"On the next $100,000 of said net income or part thereof, a tax of 2 percent shall be levied."

SUITS VERSUS COLLECTORS

In order to relieve collectors of individual responsibility for collection of taxes claimed to have been improperly levied, the following amendment is proposed:

Amend H.R. 7835, by adding a new section, to be numbered section 278:

"SEC. 278. An action of the nature heretofore cognizable against an internal revenue collector to recover overpayment of internal revenue taxes shall hereafter be cognizable against the United States of America in the Court of Claims or in a district court of the United States for the district in which the taxes were paid.

"The procedure in such action shall be the same as with respect to other actions against United States of America of which such courts respectively have jurisdiction. In any such action now pending on appeal or otherwise, United States of America shall be substituted as party defendant in lieu of the present defendant."

Amend H.R. 7835, by striking out all of section 104.

The proposed law is retaliatory in its nature, and a symptom of the disease from which the world is suffering, and does not contribute to that international good will, essential to building up our foreign trade.

INSTALLMENT OBLIGATIONS

Amend H.R. 7835, by adding to section 44, the following:

"If such gain is derived from a sale or exchange of such installment obligations, in which sale or exchange and as a consideration therefor, the transferror thereof is compelled to guarantee the payment of such installment obligations, then the profit arising from such sale or exchange shall be taxable as, if, and when the installment payments are actually received by and paid to the holder of such installment obligations."

(The foregoing is self-explanatory and designed to cure an omission in the law.)

INCOME CREDIT

Under section 25 (a) (5) (A), an artisan having a place of business in which he has machinery installed, would have to earn $15,000 in profits, before he could claim more than $3,000 in earned income. The following is recommended:

Amend H.R. 7835 (sec. 25 (a) (5) (A), p. 30, lines 7 and 8) by striking out the words: "not in excess of twenty per centum of his share of the net profits of such business."

DIVIDENDS FROM FOREIGN CORPORATIONS

Under the proposed law, dividends from a foreign corporation are not deductible by a domestic corporation (23 (p)) by an individual (25 (a)), or insurance companies (203 (a) (3)).

This is a mistaken policy which should be corrected. We are endeavoring to restore world trade. We cannot do that by refusing to invest in foreign enterprises.

To what individuals does law apply?

Section 11 of the proposed law provides for a normal tax "upon the net income of every individual."

But the word "individual" is nowhere defined in the law.

Under regulations 77, income tax, Revenue Act, 1932, Bureau of Internal Revenue, it is stated the tax is levied on citizens of the United States, irrespective of their residence; that resident alien individuals are liable to the tax; and that in both instances, the tax includes income both within and without the United States, except as otherwise provided in section 116 (a).

Nonresident alien individuals pay an income tax on income derived from sources within the United States (secs. 211–216).

It is respectfully submitted these statements should appear on the face of section 11 so plain, that "he who runs may read."

Hence, amendment no. 4 is submitted.

Amendment no. 3 to H.R. 7835, proposed by Edwin A. Krauthoff.

Amend section 11, H.R. 7835, so as to make it read as follows:

"Sec. 11. There shall be levied, collected, and paid, subject to the provisions of sections 104 and 116 (a) and of the supplements hereto mentioned in section 4, upon the net income of every individual:

"(a) Who is a citizen of the United States, whereever resident, and without regard to whether such income is derived from sources within or without the United States;

"(b) Who is a resident of the United States, without regard to whether such income is derived from sources within or without the United States; and

"(c) Who is referred to in the supplements hereinbefore mentioned and in the manner therein provided; a normal tax of 4 per centum of the amount of such net income in excess of the credits provided in section 25."

Amend H.R. 7835, section 12, clause (b) (p. 8, lines 9–11) so that it will read:

"(b) *Rates of Surtax.*—There shall be levied, collected, and paid for each taxable year upon the surtaxes net income of every individual who is subject to a normal tax, to the extent that such income is subject to a normal tax, except as otherwise specified in paragraph (a), a surtax as follows:"

Dividends and interest on Government bonds

The charge made in the tax-rate structure in the old and the new rates is somewhat complicated.

Under the present law, the normal rate is 4 percent of the first $4,000 of the net income, and 8 percent on the remainder of the income over $4,000, in either case, in excess of the credits against net income provided in section 25. These credits as dividends from corporations, interest on Government bonds, and family exemptions.

So, under the present law, income in excess of $4,000, bearing an 8-percent rate, is credited with the three classes of credits just mentioned.

The surtax rate under the present law begins at $6,000 with a rate of 1 percent, but no exemptions.

The proposed law is built on a different plan: The normal rate is 4 percent flat, after taking off all three exemptions, and the surtax begins at $4,000 with a rate of 4 percent and credit is given for the personal exemptions only in figuring the surtax.

To illustrate: Married man, total income $22,500, of which $10,000 is derived from dividends and interest exempt from normal tax, family exemption $2,500.

His taxable income for the normal tax is $10,000 under the present law or $640 normal tax. The surtax is $645, total tax, $1,285.

Under the new law, his normal tax is $400, surtax $1,120, total $1,520, an increase of $235, or nearly 19 percent.

It must be remembered that in making corporate stocks or Government bonds less valuable for income-tax purposes, we are retarding national recovery.

Recommendation:

Amend H.R. 7835, section 12 (b), by changing lines 7 and 8 on page 8 to read:

"Amount of the net income in excess of one third of the credits, not including earned-income credit, provided in section 25 (a) and all of the credits against net income provided in section 25 (b)."

Contributions to charity

Corporations are often impelled to contribute to charity, especially in cases of charity drives for community chests. The proposed law permits a partnership to be charitable, or rather encourages it (sec. 183). The same rule holds good as to a corporation.

Recommendation

Amend H.R. 7835, page 23, line 20, section 23 (o) by inserting the words "partnership or corporation" after the word "individual."

Tax on corporations

Section 13 of the proposed law levies a tax upon "the net income of every corporation." The word "corporation" is not otherwise defined at this place in the act.

Recommendation

That H.R. 7835 be amended by changing section 13 (a) so that it will read as follows:

"*Rate of tax.*—(a) There shall be levied, collected, and paid for each taxable year upon the net income of every corporation:

"(1) Net exemption under section 101;

"(2) Except as otherwise provided in sections 102 and 103, 104, 201 to 207, 231 to 238, and 261 to 264;

"(3) As to a corporation organized under the laws of the United States, or any of its territories or the District of Columbia, or of any State, upon its entire net income wherever derived;

"(4) As to a corporation not organized as described in the preceding paragraph upon its entire net income derived within the United States;

"A tax of 13¾ per centum of the amount of the net income in excess of the credits against net income provided in section 26.

"(5) Section 26 of Revenue Act of 1932 is reenacted and made a part of this title."

The reason for the restoration of the clause stricken out from section 13 by the present bill and section 26, is this:

Under the present law, it is clear that corporations do not pay income taxes on interest received from Government bonds included in gross income. It is not intended to change this by the proposed law. But it is claimed the provisions stricken out are unnecessary for this reason:

(a) A corporation does not pay a surtax, but only a normal tax;

(b) In every case, Government bonds are exempt from normal tax;

(c) Hence Government bonds are wholly exempt from income taxation in the hands of a corporation under 22 (b) (4).

(d) Therefore section 26 may be repealed.

Again it is submitted the law should be plain and not involve such an argumentative explanation to make its meaning clear.

Amend H.R. 7835, section 23, paragraph (c) by adding a new subdivision:

"(5) Debts which have heretofore been discharged in bankruptcy or have been barred by the statute of limitations."

Explanation.—The Supreme Court of the United States has decided that money paid out by an individual in discharge of a debt barred in bankruptcy was not deductible from income. Hence the foregoing is submitted.

New taxes

Amend H.R. 7835 by adding a new section thereto to be known as section 629:

"The Attorney General shall classify the several referees in bankruptcy, having regard to all the circumstances, into four classes, known respectively

as classes A, B, C, and D. Each of said referees shall pay into the Treasury of the United States, to be credited as miscellaneous receipts, all fees collected by them during the calendar year 1934 and thereafter, in excess of the following amounts: Class A, $20,000; class B. $15,000; class C, $10,000; class D, $5,000."

Fictitious losses

Section 24 (a) (6) attempts to prevent fictitious losses by setting up a conclusive presumption of fraud as to family transactions, which may or may not be fraudulent, and leaving the door open to others of like nature—

A man may not sell at a loss to his sister and deduct the loss.

Suppose he sells to his sister's husband, his brother-in-law?

Recommendation

Amend H.R. 7835, page 27, lines 6 to 17, by striking out section 24 (a) (6) and inserting in lieu thereof the following:

"(6) (a) Loss from sales or exchange of property which the Commissioner shall determine, subject to an appeal to Board of Tax Appeals, under such rules and regulations as such Commissioner may prescribe, made directly or indirectly, not in good faith and as an ordinarily prudent man would have disposed of such property, but in a willful attempt to evade or defeat the imposition of any tax under this title, or the collection of any tax so imposed.

"(b) Such sale or exchange of property directly or indirectly (a) between members of a family or (b), except in the case of distributions in liquidation, between an individual and a corporation in which such individual directly or indirectly owns more than 50 percentum of the voting stock, prima facie, but not conclusively, shall not be deducted as a loss. For the purpose of this paragraph (c) an individual shall be considered as owning the stock owned directly or indirectly by his family; and (d) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants."

New taxes (bank checks)

Amend H.R. 7835 by striking out section 606 and inserting in lieu thereof the following:

"Sec. 606 (a). Section 751, Revenue Act of 1932, is repealed."

And by adding at the end of schedule A of title VIII of Revenue Act of 1926 a new subdivision to read as follows:

"(9) *Checks.*—(a) A bank which shall accept the benefits of this act and elect to be bound hereby shall not make any charge for the issuance, payment, collection, or receiving for credit of any check, draft, bill of exchange, or instrument in writing of any kind directing the payment of money which is recognized to be stamped as hereinafter provided.

"(b) Every instrument of writing described in paragraph (a), including such instruments issued by a national bank or member of Federal Reserve System, but not including such instruments issued by any other State or Federal instrumentality, which shall be payable in a city other than the city in which it is issued, or if presented for payment, deposit, or collection in a city other than the city in which payable and not previously stamped as herein required, shall have affixed thereto and canceled a stamp issued by the United States of 1 cent upon every $10 or fraction thereof, to be affixed:

"(1) In case of issuance by a bank or trust company, by the issuing bank or trust company.

"(2) In case of issuance by a drawer, not a bank or trust company, and transmission to another city to the payee, by the drawer.

"(c) In all other cases not hereinbefore described to by the drawer.

"(d) If not affixed as hereinbefore provided, by the holder thereof.

"(e) Any bank or trust company may accept the benefits of subdivision 9 of title VIII, Revenue Act, 1926, and elect to be bound thereby by an instrument in writing filed with the collector of internal revenue for the district in which such bank or trust company is located, and upon such acceptance being filed, shall be entitled, as compensation for their services in affixing or vending such stamps to purchase such stamps at 50 per centum of their par value. And such stamps shall not otherwise be sold in any district in which a bank or trust company is located which has adopted the provisions of this Act."

BRIEF OF ASSOCIATED GROCERY MANUFACTURERS OF AMERICA IN OPPOSITION TO CERTAIN PROVISIONS OF THE REVENUE BILL OF 1934

To the COMMITTEE ON FINANCE,
United States Senate:

The Associated Grocery Manufacturers of America is a national organization of the grocery manufacturing industry, embracing within its membership most of the substantial food and grocery manufacturing companies in the United States.

The revenue bill of 1934 as passed by the House of Representatives contains certain provisions which we feel should be eliminated or amended as hereinafter indicated. Due to the limited time devoted by the committee to oral hearings upon the bill we have not asked for an opportunity to present an oral argument in opposition to such provisions, but would like to have our views made part of the committee record and taken into account by it in its final consideration of the testimony offered during the course of the hearings.

For reasons set forth below we respectfully urge the committee to recommend—

(1) That the definition of capital assets set forth in section 117 (b) of the bill be amended to exclude therefrom property held by the taxpayer primarily for use in the course of his trade or business; and

(2) That the provisions of section 131 (b) of the bill, prescribing a limit upon the amount of the credit to be allowed in respect of taxes paid to a foreign country or a possession of the United States, be so amended as to allow such credit upon the basis of the taxpayer's net income from sources within such country or possession, or from sources without the United States, as the case may be, rather than one half of such net income.

With respect to the first point, section 117 (d) of the bill provides that losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges.

Without reference to the merit of this provision as a policy of taxation, it should be limited to cases involving capital assets held for investment or speculation as distinguished from property held primarily for use in the course of a taxpayer's trade or business. Such limitation can be accomplished by inserting the words "or for use" in the definition of capital assets set forth in section 117 (b) of the bill. As thus amended the section would read as follows:

"(b) *Definition of capital assets.*—For the purposes of this title, 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale or for use in the course of his trade or business."

We respectfully suggest that this amendment should be recommended by the committee for the following reasons:

(1) Sales of property held primarily for use in a trade or business are normal and necessary incidents thereof, and both gains and losses from such sales should be equally recognized in determining taxable net income. If net gains from such sales be included in taxable net income, then, consistently, net losses therefrom should be excluded. To tax net gains and prohibit the allowance of net losses from such sales is to disregard the primary purpose of an income tax, namely, the raising of revenue by taxation of persons in proportion to their ability to pay.

Unlike property held for investment or speculation, property held primarily for use in a trade or business is not purchased for the purpose of deriving a gain from its sale. Sales of such property are occasioned by developments in the particular trade or business and, however infrequent they made be, cannot be avoided as a normal incident of business operations. Losses as well as gains from such sales should accordingly be taken into account in determining the taxable net income derived from such trade or business as a unit.

(2) The gain or loss realized from the sale of property subject to depreciation or depletion (such as buildings, machinery, and equipment) held primarily for use in the course of a trade or business is in effect an adjustment or correction for excessive or insufficient annual charges for depreciation or depletion taken or allowed for the years during which such property has been held. Annual charges for depreciation or depletion are allowable as deduc-

tions from gross income under section 23 (l) and (m) of the bill and the accumulated amount thereof constitutes an adjustment reduction of the basis prescribed by section 113 (b) of the bill for determination of gain or loss upon sale or exchange of the asset involved. It is thus seen that taxation of the gain upon sale of the asset acts as a check upon excessive depreciation or depletion charges, and that the allowance of a loss sustained upon the sale of such an asset would likewise operate as an adjustment for insufficient annual charges. Disallowance of such loss in accordance with the provisions of section 117 (b) and (d) of the bill as passed by the House of Representatives would be to impose a heavier total tax burden upon the taxpayer claiming conservative deductions for depreciation or depletion than upon the taxpayer claiming excessive deductions therefor during previous taxable years.

It could be argued that depreciable or depletable property held for use in a trade or business is already excluded from the term "capital assets" by the provisions of section 117 (b) of the bill as constituting property "held by the taxpayer primarily for sale in the course of his trade or business", since the theory underlying the annual allowance for depreciation is "that by using the plant a gradual sale is made of it." (See *United States* v. *Ludey*, 274 U.S. 295.) The doubt whether such is the case, however, should be avoided by amending section 117 (b) of the bill as suggested above.

The effect of the suggested amendment would be consistent with the effect of section 112 (b) (1) relating to exchanges of property held for productive use in trade or business solely for property of like kind.

(3) The effect of the provisions of section 117 (b) and (d) as passed by the House of Representatives would tend to freeze industrial and commercial operations in locations which might develop to be unfavorable and to prolong the use of antiquated or obsolete factories, machinery, and equipment, since the owner, by selling the same upon a salvage or some similar basis, would in all probability sustain a substantial net loss rendering the tax upon ordinary or operating net income, separately determined, a heavy burden. For similar reasons the effect of such provisions would be to discourage investment in properties to be held primarily for use in new enterprises or operations. The consequent depressing effect upon the building trades and industries is self-evident. The suggested amendment would serve to avoid such effect to a substantial degree.

With reference to the limit prescribed by section 131 (b) of the bill upon the amount of the credit allowable in respect of taxes paid to a foreign country or a possession of the United States, it is respectfully suggested that the provisions of section 131 (b) of the Revenue Act of 1932 should be reenacted without change.

The purpose of the foreign-tax credit is to avoid double taxation of that group of taxpayers deriving income from sources without the United States, represented chiefly by exporters of domestic goods to foreign countries. Under the Revenue Act of 1932 such credit was subject to a double limitation based upon the amount of net income derived by the taxpayer during the taxable year (1) from sources within the foreign country imposing the tax for which credit was allowed, and (2) from all sources without the United States. Section 131 (b) of the bill as passed by the House of Representatives arbitrarily reduces the basis of this double limitation to one half of such net income in each case.

The arbitrary decrease in the amount of the foreign-tax credit would result in a substantial additional tax burden upon income derived from exports of domestic goods. The domestic taxpayer would be compelled to absorb practically the entire amount of such additional burden since, due to special or dumping duties in foreign countries, the amount thereof could in very few cases only be recovered through increase in sales prices.

It is our considered opinion that this arbitrary additional limitation upon the amount of the foreign-tax credit is unsound in principle, and that its enactment at this time would be unfortunate in effect. It is without question inconsistent with the desires and current endeavors of the administration to encourage exports of domestic products. It would, moreover, discourage and retard the progress of current efforts to abolish or minimize international double taxation.

In addition to the foregoing we wish, for the reasons indicated, to register our opposition to three other provisions of the bill as passed by the House of Representatives.

We feel that section 102, imposing an additional tax on personal holding companies, should be eliminated from the bill because (1) the rigid definition

of the term "personal holding company" prescribed by subsection (b) would be conducive to elaborate plans for tax avoidance and probable extensive litigation; (2) the purpose of the section is adequately covered by section 103 of the bill the provisions of which would be more susceptible of effective administration; and (3) the provisions of section 102 might result in an unreasonable burden upon an operating holding company not in fact availed of for purposes of avoiding surtax.

It is our opinion that the extra tax of 2 percent imposed by section 141 (c) of the bill upon affiliated corporations for the privilege of filing consolidated returns should be eliminated from the bill and, if not eliminated, should not in any event exceed the additional rate of 1 percent imposed for such privilege by the Revenue Act of 1932 as amended by the National Industrial Recovery Act. The basis of this additional rate of tax is wholly artificial, and the sole reason assigned for its imposition is the opinion that it should for the first few years result in an indefinite increase in revenue. It is conceded that the consolidated return, with intercompany transactions eliminated, reflects an accurate statement of the net earnings of affiliated corporations, whereas separate statements or reports of income do not. It is also admitted that the consolidated return simplifies administration of the income tax law. (See report of the Committee on Ways and Means dated Feb. 12, 1934, pp. 16 and 17; and report of its subcommittee dated Dec. 4, 1933, p. 10.) These are, we submit, cogent reasons for the elimination of that part of section 141 (c) of the bill imposing the 2 percent additional rate of tax upon net income reported in consolidated returns.

The burden of such additional rate of tax would be borne in large part by persons of moderate means. This is indicated by an analysis of the stockholders of record of two of the largest corporations in the country which shows that more than half of their stockholders own from 1 to 10 shares each, and that more than 94 percent own 100 shares or less. This analysis is unquestionably representative of large publicly owned corporations.

It is respectfully suggested that section 602 of the bill, imposing a tax of 5 cents a pound upon the processing of coconut and sesame oils imported into the United States, should be eliminated from the bill for the reason that such tax is in purpose and effect a prohibitive tariff. Without regard to the merits of such a prohibitive tariff, it should, if imposed, be levied as a tariff and subject to executive order and administrative regulation as such.

We appreciate that some of the changes and amendments suggested above would if adopted result in some decrease in estimated revenue. We feel, however, that the problem of increased revenue requirements should be approached, first, by establishing a sound base for taxation, and, second, by adjusting the rate of tax to be imposed. The order of these two steps should under no circumstances be reversed. The contrary policy of adopting artificial particular changes in the base of taxation, solely for the purpose of securing minor increases in revenue, is illogical and unsound in principle and unfairly discriminatory in effect. This fact cannot reasonably be ignored on the grounds of expediency.

Respectfully submitted.

ASSOCIATED GROCERY MANUFACTURERS OF AMERICA,
By CHARLES WESLEY DUNN, *General Counsel.*

NEW YORK CITY, *March 16, 1934.*

BRIEF OF THE AMERICAN FARM BUREAU FEDERATION ON CERTAIN PROVISIONS OF THE REVENUE BILL, H.R. 7835

By CHESTER H. GRAY, Washington Representative

MARCH 17, 1934.

I. TAX ON GASOLINE

For 5 years the American Farm Bureau Federation has opposed, at every opportunity, the entrance of the Federal Government into the field of gasoline taxation. This tax is, comparatively speaking, a new source of revenue and owing to the necessities in States in regard to securing more revenue the gas tax has been exploited beyond reasonable bounds. In addition to the State

gasoline taxes many municipalities have added an additional but usually smaller tax so that the point of diminishing returns has almost been reached.

There was an argument 2 years ago which was used then by the advocates of the Federal tax on gasoline. That argument was the one which started the gasoline tax in the States and among our cities, namely: The Government needed the money. No doubt that was true; but one commodity in general use by most of our citizens should not be made to bear more than its just portion of taxes levied by various units of government. Consequently, the American Farm Bureau Federation took a position several years ago that the Federal Government should keep out of the gasoline tax field. Now that the Government has entered this field the American Farm Bureau maintains that it should retire from it wholly, should get this revenue from other sources, and should leave the gasoline tax mostly for State uses.

One cannot consider the effects of a gasoline tax, heavy as that tax has come to be in most States, without realizing its correlated effects on the general use of the motor vehicle, whether for pleasure or profit. The cost of gasoline is naturally the biggest single factor making up the detail cost in the operation of a motor vehicle. The people of our Nation have built highways for use. The automobile industry is supplying us more vehicles of various kinds. The Federal Government should not now interfere with the joint use of motor vehicles and highways by adding to the cost of gasoline through the continued collection of a Federal tax thereon. Accordingly, it is recommended that section 617 of H.R. 7835 be stricken from the measure and, as a result of such action by the Senate Committee on Finance, the Federal Government will have retired from the gas-tax field.

II. TAX ON LUBRICATING OILS

For reasons which are similar to those presented by the American Farm Bureau Federation in favor of the Federal Government withdrawing from its imposition of taxes on gasoline the Federation also recommends that the tax on lubricating oils be discontinued in their operation under the present revenue act. Some who oppose this action state that the Government must have the money. A more sensible point of view, however, is to permit our citizens using greater quantities of lubricating oils, as well as of gasoline, so that in their daily transactions of business they may have a bigger turnover and at least an increased prospective profit upon which to pay taxes.

The tax on lubricating oils has a tendency to curtail business development, since the motor vehicle became prominent and with such curtailment of business comes a general slowing down in the tax income of the Federal Government.

III. TAX ON AUTOMOBILES, ETC.

In section 606 of the Revenue Act of 1932 certain taxes on automobiles and accessories are provided for. The automobile industry, in its production of motor vehicles for family and farm use, is supplying a long-felt need in American farm life. It is one of the businesses which appear to be emerging from the depression more speedily than are some others, even though its products are carrying extra Federal taxes. It seems unwise to continue taxing automobiles and automobile accessories, especially so when such a large portion of these products are bought by farmers, the purchasing power of whom is not capable of meeting the extra costs incident to the Federal taxes. It would be as reasonable to put a Federal tax on the corn binder or the potato digger as upon an automobile or an automobile accessory, for one is no more important in modern agricultural life than is the other.

Accordingly it is recommended that the taxes provided in section 606 of the Tariff Act of 1932 be eliminated.

IV. GRADUATED TAX ON CIGARETTES

At present a package of cigarettes, irrespective of price, is taxed 6 cents. This opposes the general principle which runs through the Federal-tax structure of having a tax varied according to the price of the commodity or in relation to the ability to pay. On cigars there is now a graduated tax; on individual incomes the tax plan is based on graduated rates; the same is true of the corporation-income tax.

The use of tobacco would be promoted by levying a slightly lesser tax on the 10-cent package of cigarettes because there are evidently greater numbers of our people who desire to purchase a cheaper package. The continuation of a 6-cent-per-package tax on a 10-cent package of cigarettes will be, obviously, an exorbitant procedure. Since a 6-cent tax on a 15-cent package of cigarettes is not nearly so extreme it will not decrease the consumption of the 15-cent package of cigarettes. If there is any one thing which characterizes the present program in agriculture it is to balance production with consumption. Accordingly the sale of the 10-cent package of cigarettes should be encouraged so as to develop an avenue of use for the tobacco produced by our farmers.

Accordingly it is recommended that for the 10-cent package of cigarettes that there be a tax of 5⅗ cents per package; that the 15-cent package of cigarettes be continued at the present rate of 6 cents per package; and that the cigarette packages which sell in excess of 15 cents per package be taxed at the rate of 6⅗ cents per package.

V. BANK-CHECK TAX

The American Farm Bureau Federation opposed the bank-check tax when it was first incorporated in the revenue bill of 1932. Inasmuch, however, as the pending measure (H.R. 7835) in section 606 proposes to terminate the bank-check tax on January 1, 1935, support to this action is given providing the date of termination is not extended beyond January 1, 1935.

VI. POSTAL RATES

In section 515 of H.R. 7835 provision is made to continue the revised postal rates until July 1, 1935.

Since the increase of 1-cent postage for each ounce or fraction thereof on first-class matter has been discontinued so far as local delivery is concerned, there is no logical reason why this tax should not be discontinued over the whole Nation. The first-class matter in the Post Office Department is the only class which shows year after year a profit. It, too, is the only class of mail matter which the average citizen directly patronizes. Any increase, therefore, in the first-class postal rates strikes directly at the average citizen who is not enjoying an income to permit the payment of higher postal rates. It has been demonstrated in the experience of the Post Office Department, not once but many times, that increases in postal rates decrease business and decrease revenues. This is being demonstrated again. The demonstration should proceed no further, and accordingly it is recommended that the increase of postal rates provided in section 1001 of the Revenue Act of 1932 be allowed to terminate on the date specified, July 1, 1934. This recommendation carries with it striking out section 515 of H.R. 7835.

VII. EXEMPTIONS ON FRUIT JUICES

Section 601 of H.R. 7835, by repealing paragraph 2, subsection A, section 615 of the Revenue Act of 1932 and amending paragraph 3, subsection A, section 615, Revenue Act of 1932, is approved. "Fruit juices" should be used broadly enough to include grape juice, pure apple cider, and other juices from fruits. No taxes should be levied upon "fruit juices" as are to be levied upon imitations of fruit juices.

ANNUITIES

STATEMENT OF ROGER HULL OF NEW YORK, NATIONAL ASSOCIATON OF LIFE UNDERWRITERS

Mr. HULL. I think I have a plan to consolidate the position of the annuity tax, and to save the time of the committee.

The CHAIRMAN. Will you state your name and representation?

Mr. HULL. My name is Roger B. Hull, of New York, and I appear here as counsel for the National Association of Life Underwriters,

composed of 21,000 leading life insurance agents in the country in 268 cities in 47 States and Hawaii.

We feel that we represent particularly also the policyholders and annuitants whom we serve.

I would, in order to save the time of the committee and to consolidate our position, ask leave first to file a brief, and secondly to present Judge Elliott, of St. Louis, in a very short statement, appearing as general counsel of the American Life Convention, composed of 126 life insurance companies, and then another very short statement of Mr. Guy W. Cox, of Boston, general counsel of the John Hancock Mutual Life Insurance Co., who also carried representation of all of the life insurance companies of Massachusetts.

I think the entire presentation will take about 12 minutes. We have been together, if the Chairman please, and consolidated our views.

The CHAIRMAN. Very well. You may file your brief, and we will hear first from Mr. Elliott for 5 minutes.

Mr. HULL. Thank you.

(Brief filed by Mr. Hull is as follows:)

BRIEF IN OPPOSITION TO PROPOSED CHANGE IN METHOD OF COMPUTING TAX ON ANNUITIES. SUBMITTED BY ROGER B. HULL, ESQ., 11 WEST FORTY-SECOND STREET, NEW YORK, N.Y., REPRESENTING THE NATIONAL ASSOCIATION OF LIFE UNDERWRITERS

SECTION 22 (B) OF THE REVENUE ACT OF 1934

Pursuant to leave granted by the chairman, I beg to present this brief before the Senate Finance Committee, as general counsel of the National Association of Life Underwriters. a federation of 263 local associations of life insurance agents, located in 47 States, the District of Columbia, and Hawaii.

As an appendix to my brief, I would annex a "Statement" which was to have been presented to the committee at the hearing by Mr. Henry Moir of New York, president of the United States Life Insurance Co., of New York, and for many years chief actuary of the Home Life Insurance Co. of New York. Mr. Moir's appearance had been recorded for the hearing, but, owing to his having been called as an expert in a case before the Board of Tax Appeals, which came on for hearing Monday morning, Mr. Moir was unable to be present.

I would request especially that the committee read Mr. Moir's statement, inasmuch as I believe it answers several of the inquiries propounded during the hearing by members of the committee.

THE PROPOSED CHANGE

Section 22 (b) (2) of the Revenue Act of 1934 proposed to tax annuities, from the beginning of the period of annuity payments, by arbitrarily labeling 3 percent of the purchase price as income and adding this 3 percent of the purchase price to the taxpayers' taxable income.

Payments received by annuitants are now taxed on the basis prescribed by section 22 (b) (2) of the Federal Revenue Act of 1932. which provides in part that there shall be excluded from income:

"Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income."

It is our opinion that if annuity payments are to be made subject to an income tax the principles of the 1932 Federal Revenue Act should be adhered to and should not be either supplanted or supplemented by any principles based on the new proposal which has been carried into H.R. 7835. Our opinion is based on a thorough consideration of the following facts:

DEFINITION AND DESCRIPTION OF ANNUITIES

Originally the term annuity meant a series of annual payments; in more recent years, however, it has grown to mean any series of payments made at specified intervals, usually yearly or oftener. Payment may be made contingent only upon lapse of time, as in the case of so-called "annuities certain", or it may be made contingent also on the existence of a specified life or group of lives jointly, as in the case of life annuities. Payments may commence at once, as in the case of immediate annuities or the commencement may be withheld until the lapse of a definite time, as in the case of deferred annuities, or it may be withheld until the failure of a given life or group of lives, as in the case of survivorship or reversionary annuities. Life annuities may run for a temporary period or for the duration of life. The consideration or purchase price of immediate annuities is invariably paid in a single sum but that for deferred contracts may also be paid in periodical installments. In the case of life annuities, the payment of these installments is usually made contingent upon the continued life of the annuitant, in the manner of payment of life-insurance premiums.

These various types of annuity contracts may be combined with each other or with various types of insurance contracts in an almost endless number of ways. For example, it will be found that the popular cash refund life annuity is a simple combination of the usual life annuity with a varying life insurance of sufficient amount to cover any deficiency which may exist at the time of the annuitant's death, between the total consideration paid in and the total annuity payments received, if any.

In what follows, unless otherwise specified, reference is had to the various types of life annuities as sold by a life-insurance company.

ANALYSIS OF THE ANNUITY PAYMENT

When the purchaser of a life annuity buys his contract, he converts a part of his capital to the extent of the consideration into a valuable contract calling for the redistribution of that capital and any earnings thereon in accordance with the agreed contractual provisions. He gives up all claim to his capital as such. In that respect, this transaction differs materially from the creation of a bank deposit or the investment of a sum of money in a bond or other security. The depositor has an immediate claim against the bank for the full amount of his deposit and the investor against the issuing corporation and these claims are readily reconvertible into the original capital. Not so with the annuitant; he has no means of immediate conversion. This difference is of primary importance.

The relation between the annuitant and the company is not that of trustee and *cestui qui trust* but is that of debtor and creditor by reason of the nature of the annuity contract. The annuitant's right to receive payments is absolute depending only on his continued existence. He has no concern with the income received by the company on the fund which he has helped to create. His rights are fixed whether the company earns 3 percent or 5 percent on its investments or nothing at all. The situation is much the same as the case of an owner who contracts for the erection of a building. Whether his contractor profits or loses on the project is of no consequence to him.

But if the company earns interest on its invested funds, why does not a part of each payment made by the company to the annunitant represent interest received? That is a logical question. Let us examine the facts.

The sums received from this annuitant and others like him are invested by the company in interest-bearing securities. From the total fund at the end of the year the required annuity payments are made and there remains a sufficient amount, as determined by actuarial calculations, to meet all future payments. This process repeats itself year after year until all the annuitants have died and the fund has become exhausted. Thus, over a long period of years, the capital represented by the original consideration, together with the interest earned by the residue of the fund from year to year, has been redistributed to these annuitants. Does it follow that each year's interest earnings of this fund are earmarked and are immediately and entirely used to meet the annuity payments then falling due, to be supplemented by a portion of the capital fund itself. Perhaps, but not necessarily so. It is not just as reasonable to conclude that the capital funds are first exhausted by the annuity demands before the accumulated interest earnings are resorted to? Mathematically, the

one theory is just as tenable as the other, as applied to the group. But even if it is conceded that all interest earnings are immediately distributed to the group as a whole, does it follow that any individual annuitant receives as a part of his annuity payment, to be termed interest income, a ratable portion of the previous year's interest earnings on the fund? Most certainly it does not. He receives his contract payment and no more. That represents income to him as an individual only if he has already recovered his principal through previous annuity payments. Bear in mind that he has no immediate claim whatever to a share in the remainder of the fund and can hope to recover his principal only by living to receive his annuity. Moreover, he may die prematurely after receiving only a small part of what he paid for his annuity contract.

The fallacy lies in concluding that the combined principal and interest theory of annuity payments, which is valid on the average or as applied to a large group, also holds when applied to the individual. Such a conclusion is not justified for the obvious reason that there is no average individual in a mortality sense. He is either wholly alive or undeniably dead, and the change in status occurs instantly at some definite time and not progressively over a period of years as is the case with the entire group.

It is submitted, therefore, that the conclusion with regard to life-annuity receipts that "such receipts are as a matter of fact part interest and part return of capital" is incorrect as applied to the individual annuitant.

LEGAL CONSIDERATIONS

Can Congress legally follow the recommendation "that an arbitrary rule be adopted that 3 percent of the amount paid for the annuity shall be deemed to be interest"? The cases indicate a negative answer to the question.

Bearing in mind that the constitutional amendment upon which alone rests the power of Congress to legislate as to taxation of income reads (amend. XVI): The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, * * *", it was established, commencing with *Eisner* v. *Macomber* (252 U.S. 189), which held a stock dividend nontaxable as income, that Congress may not tax as income that which is not income. In that case, after pointing out that it is essential to distinguish between what is and what is not "income", the Supreme Court said (page 207), "* * * we find little to add to the succinct definition * * * 'income may be defined as the gain derived from capital, from labor, or from both combined' * * *", and strongly emphasized that the part of the above definition "derived from capital" must neither be overlooked nor misconceived, saying: "Here we have the essential matter: Not a gain accruing to capital, not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and coming in, being 'derived', that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit, and disposal; that is income derived from property. Nothing else answers the description."

An excellent summarization of the Supreme Court decisions since then, reaffirming the constitutional limitation, is found in the United States circuit court of appeals (sixth circuit) decision in November 1933 (*Commissioner of Internal Revenue* v. *Independent Life Insurance Co.* (67 Fed. (2d) C. C. H. Fed. Tax Service, vol. III, p. 9396). The court there had before it the question of whether a revenue act provision (Rev. Act 1924, 245 (b)) requiring life-insurance companies to include in their gross income for taxation the rental value of space occupied by the taxpayer in its home office building as if same were income, as a condition to taking certain deductions, expenses in connection with the property, would or would not exceed the constitutional limitation, and the court held it would. The circuit court said: "It might be said, with a fair show of reason, that benefit in the form of actual rental value accruing to one who occupies his own building is in the nature of income from rents. But we may not adopt such conception here. We are requiring to follow the standard definition of income found in the sixteenth amendment and the interpretation thereof by the Supreme Court. The well-established meaning of income, in this connection, is found in *Eisner* v. *Macomber* (252 U.S. 189, 207 * * *).

In *Bowers* v. *Kerbaugh-Empire Co.* (271 U.S. 170, 174), the court said: "After full consideration, this court declared that income may be defined as

gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. *Stratton's Independence* v. *Howbert* (231 U.S. 399, 415); *Doyle* v. *Mitchell Brothers Co.* (247 U.S. 179, 185); *Eisler* v. *Macomber* (252 U.S. 189, 907). And that definition has been adhered to and applied repeatedly. See e. g. *Merchants L. & T. Co.* v. *Smietanka*, supra (518); *Goodrich* v. *Edwards* (255 U.S. 527, 635); *United States* v. *Phellis* (257 U.S. 156, 169); *Miles* v. *Safe Deposit Co.* (259 U.S. 247, 252–253); *United States* v. *Supplee-Biddle Co.* (265 U.S. 189, 194); *Irwin* v. *Gevit* (268 U.S. 161, 167); *Edwards* v. *Cuba Railroad* (268 U.S. 628, 633). In determining what constitutes income substance rather than form is to be given controlling weight, *Eisner* v. *Macomber*, supra (206).

Whatever might be said as to the power of Congress to require life-insurance companies to include in their gross income the actual or fair rental value of space occupied by them in their own buildings (a question not necessary here to determine) it is manifest to us that the amount required to be added to gross income under sec. 245 (b), before deductions may be taken, is not income when measured by the rule in *Eisner* v. *Macomber*, supra, and *Bowers* v. *Kerbaugh-Empire Co.*, supra. It does not represent actual gain. It is neither of exchangeable value nor is it severed from capital. It is not something received or drawn by the taxpayer for his separate use and disposal. It is simply an arbitrary figure, determined by a mathematical formula, to which must be added rents received from other tenants and from which must be deducted taxes, depreciation and all other expenses to reach a net income of 4 percent per annum of the book value (not actual value) of the building at the end of any given taxable year. It does not even purport to approximate the true rental value of the space occupied. It must be increased or diminished inversely, each year, to the increase or decrease of rents received. In *Bur-Waggoner Association* v. *Hopkins* (269 U.S. 110, 114) the court said: "It is true that Congress cannot make a thing income which is not so in fact." See also *Flint* v. *Stone Tracy Co.* (220 U.S. 108, 145).

It is submitted that what is said about as to "an arbitrary figure, determined by a mathematical formula", may well apply to the recommendation which was made to the Committee on Ways and Means that "an arbitrary rule be adopted that 3 percent of the amount paid for the annuity shall be deemed to be interest." It is submitted that the proposal should not be adopted, because of its doubtful validity under the sixteenth amendment and cases interpreting similar points.

"That which is not in fact the taxpayer's income cannot be made such by calling it income" (U.S. Supreme Court in *Hoeper* v. *Tax Commission of Wisconsin* (1931) 284 U.S. 206).

APPLICABILITY OF THESE ARGUMENTS

These arguments are applicable to all types and combinations of life annuities under which the annuitant forfeits his immediate interest in the company's funds. In particular it should be pointed out that they apply to the so-called "cash refund annuities." The refund feature provides sufficient insurance to reimburse the annuitant's estate on his death for the difference between what he has paid in and what he has gotten out but at no time does it give the annuitant any convertible claim to a share in the fund and under no circumstances does he or his estate receive by its operation, more than enough to return his original capital, and that settlement is made only at the termination of his contract by death.

INEQUITIES IN PROPOSED BASIS

Apart from the consideration supporting the opinion that the proposed basis for determining an annuitant's income is fundamentally unsound and legally invalid, the use of an arbitrary 3 percent rate applied to the amount paid for the annuity would bring about gross inequities in the taxation of annuitants. If the recommendation were followed literally, this rate would be applied to the purchase price irrespective of whether or not that amount was paid prior to or subsequent to the date of enactment and irrespective of whether or not the annuity payments began immediately upon purchase or were deferred for a period of years. The uniform use of the purchase price in this connection would of itself produce inequitable results. It is true that the use of this arbitrary rule would facilitate administration but this advantage can be ob-

tained only at the sacrifice of equity—a sacrifice so costly that it is believed the recommendations of the subcommittee could not be literally followed.

It is well to examine in a little more detail, however, the inequities that would be produced if the newly proposed basis were literally followed.

As between new and old contracts. In the case of an immediate life annuity, the present value of the future payments decreases with the increase in the age of the annuitant. An annuitant living at age 60, who purchased an immediate annuity 20 years ago would have had to pay a higher price for his contract than would be charged another annuitant now aged 60 who desired to purchase the same contract effective immediately. The value of these two contracts would be identical and yet the holder of the 20-year old contract would be receiving a considerably higher income return according to the proposed rule than would the holder of the newly purchased contract. On the basis of combined annuity mortality and 3 percent interest, this arbitrary income on the older contract would be 1.65 times the income of the newer. This criticism would also apply to annuities certain.

As between deferred and immediate annuities. The purchaser of a 20-year deferred life annuity in 1914 would have paid considerably lesss for his contract than a person of his same attained age would have to pay in 1934 for a contract providing the same future payments. Under the formula proposed therefore, the purchaser of the immediate annuity would be assessed with a larger annuity income than would the purchaser of the deferred contract, notwithstanding the fact that the future benefits would be identical in each case. This criticism also applies to deferred and immediate annuities certain.

As between ages for new life annuitants. The rate of return on an immediate life annuity as measured by the ratio of the yearly payment to the purchase price is higher at the older ages at entry than at the younger. This is because the more numerous forfeitures of principal resulting from the higher death rates at the older ages permit a more rapid annual distribution of the annuity fund at those ages. For example, on the assumption of the combined annuity mortality table with 3 percent interest, it is found that the rate of return varies from 5.30 percent for a man aged 40, to 8.76 percent at age 60, and increases to 21.39 percent at age 80. Obviously any tax based on 3 percent of the purchase price would bear little relation to this so-called "rate of return."

As between long-lived and short-lived annuitants. This is by far the most important criticism of the proposed method related as it is to the fundamental question of what constitutes income for an annuitant.. It can hardly be said in fairness that the man who purchases a life annuity for $20,000 and dies prematurely after having received but a few hundred dollars of the contract payments has profited by his investment. Under all such circumstances, a tax on any annuity income would, in fact, be a capital levy.

Compound annuities which change in status.—If the arbitrary 3 percent formula were applied in the case of complicated contracts such as joint two-life annuities payable to either or the survivor, in inequity would result unless some modification of the rule were made at the time one or the other of the two lives died. This is due to the decrease which takes place in the present value of future benefits at the time the annuity changes its status from a joint life and survivor annuity to a single life contract.

SOCIAL AND ECONOMIC DISADVANTAGES

Annuitants as a rule are thrifty but not wealthy. In the majority of cases, thrift and the desire to avoid the dependency of old age furnish the motivation for the purchase of these contracts. This is a laudable motive and one which should be encouraged and not discouraged by the imposition of inequitable and unreasonable taxes. Development in the individual of a sense of responsibility for providing for his old age in some form of systematic saving or investment is tremendously advantageous from a social and economic standpoint. The purchaser of an annuity is doing his part in the effort to stabilize the national income and to relieve the Government of the heavy expense of providing for the dependent and unemployed.

PRACTICAL DISADVANTAGES OF CHANGE

The present simple method of determining income from annuities is well established and easily understood and easily administered. On this ground

alone, it would be inadvisable to substitute for this simple method based on complicated considerations. Many of the annuity contracts now outstanding were purchased in the light of the existing law which provides that there shall be no income subject to tax until the total amount of invested principal had first been returned. Much dissatisfaction might be caused by a change in the formula affecting the basis of taxation of income on these existing annuities.

In addition, the great increase in the difficulties of administration of the law which this proposed change would bring about, should not be overlooked. Any attempt to remove even the more outstanding inequities of the proposed basis would produce inevitable administrative complexities. An understanding of the law would require a technical knowledge not possessed by one person in thousands. The complicated nature of the income-tax return would be increased to the disadvantage of both the individual taxpayer and the Treasury Department. This would furnish a striking contrast to the comparative simplicity of the present law.

Respectfully submitted,

ROGER B. HULL.

Here follows, as referred to in the opening paragraph of this brief:

BRIEF OF HENRY MOIR, PRESIDENT UNITED STATES LIFE INSURANCE CO., NEW YORK

For a good many years prior to 1913 the statement of this country believed that a tax on incomes would be one of the best means of producing revenue for Federal purposes. But the fourth section of the Constitution states:

"No capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken"—

and this proved an obstacle until the sixteenth amendment to the Constitution was ratified in 1913. Under that amendment—

"The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States and without regard to any census or enumeration."

This amendment clearly taxes incomes only and gives no authority to Congress to tax items of principal or anything but income.

When the first income tax acts were being discussed in Congress, the question of how properly to tax annuities was carefully and fully considered. When a purchaser invests $10,000 in the purchase of an annuity on his life and gets a return of $1,000 a year, it is well understood by all parties that each payment of the annuity returns part of the principal: at death of the annuitant no further payment is made. On the average the principal is returned in the course of making the annuity payments.

As a practical question, a separation of each individual annuity payment into interest and principal cannot be made. Some annuitants die in the first year after the annuity is purchased, perhaps after drawing only one annuity payment. The legislators and the Treasury Department in drawing the first income-tax rules wisely decided that, in order to avoid all possible error or misunderstanding, the entire amount of the early annuity payments would be treated as repayment of principal and therefore could not be taxed. But immediately after the total of these payments has equalled the original purchase price, and the principal has thus been repaid, all annuity payments thereafter will be treated as income. On the average this works out equitably for the Government and equitably also for the annuitant. For example, if 100 annuities were purchased at the age of 63, each costing $10,000 and each yielding an annuity of $1,000, then in 10 years the total of the principal payments would be repaid; after that time the entire annuity payments would be taxed in full. During the 10 years there would have died, according to a normal experience, about 35 persons; there would continue 65 others drawing their full annuities and commencing to pay income taxes on the full amount received each year.

I have procured annuity figures from three of the largest companies: these figures deal with payments under 33,000 annuity contracts furnishing nearly $14,000,000 a year in annuities. Please observe that this gives an average for each annuity contract of about $430 a year. This is a much smaller figure than most people suppose; but it is the present-day condition. Many annuities are bought by old folks who live with members of their family, and who need

the annuity to keep them in pocket money. All such are exempt from normal income tax anyhow. Some people buy more than one annuity, and the 33,000 contracts above indicated are held by probably some 19,000 people. The average payment to each person is about $800 a year—somewhat less. From one of the companies I was able to get a statement as to the number of annuities drawing as large an annuity as $5,000 a year. There was only 1 percent of the total drawing this larger annuity figure. In general it is an undoubted fact that annuities are bought to give a sure and unfailing source of income to old folks whose thrifty instincts make them seek a sure way of escaping absolute want.

The method adopted in the income-tax laws heretofore in force had been eminently fair, both for the Government and for the annuitant. It has been assumed by many purchasers that procedure was the fixed and definite policy of the Government. They have relied on this in their purchase and these old people are deserving of the most kindly consideration. It is well to keep faith with them and live up to the promises that have by implication been made.

If we analyze the new proposals, the situation is entirely different. If a man buys an annuity with $10,000 and get $1,000 a year, he will be asked to pay an income tax of $300 each year from the first year onward, $700 being exempt for a period of a little over 14 years when the $700 annually will have accumulated to the $10,000; thereafter a tax will be charged on the full amount. Under the existing rules the full annuity would be taxable after 10 years; under the proposed new rules only after 14½ years.

The 3 percent suggested is an arbitrary assumption. It may be reasonable in the first year or two; but if the assumption be logically carried out, and the $700 be treated as a repayment of principal, then in 10 years $7,000 of principal will have been repaid, the outstanding principal will then only be $3,000, as income on $3,000, and is therefore clearly partly principal. It cannot by any possibility be assumed to be interest or income on the unpaid portion of the principal. It seems to me clear therefore that the proposed plan is unconstitutional, as being a tax upon principal without being assessed in proportion to the census of enumeration of the population.

There is another interesting reaction to this proposed plan. It splits the annuity payments into smaller fractions. In all probability therefore it will bring about many more exemptions—total exemptions—from income tax which might otherwise not be available. The average annuity is a small amount. Probably most of the annuitants are completely exempt from all income tax. One company has nearly all of its annuities on the lives of clergymen: the average annuity payment is very small. Most of them are likely to be exempt. But whether exempt or not, the plan now proposed will undoubtedly increase the number of exemptions. It also delays the time when the full annuity payment will be taxable by about 4½ years on the average.

The proposal involves a much more complicated method—a method which is of doubtful constitutionality—and a method which will cause annoyance to annuitants who are now familiar with the simple and logical procedure which was adopted soon after the income-tax amendment was proclaimed.

Annuitants are proverbially long-lived. For the last hundred years this has been recognized and understood. So far as the death rate is concerned, they beat the insurance companies nearly all the time. There is one old historic case where they beat the British Government more than a hundred years ago to the extent of millions of pounds per annum, by living much longer than the Government calculations anticipated. The habit has continued to this day and we are continually having to revise our annuity tables so as to provide for longer life expectancy on the part of annuitants. If you continue the existing rules the United States Treasury will benefit from the improvement.

People certainly do not purchase annuities with any expectation of dying soon and thereby yielding a profit to the insurance company. Why then should the Government be in a hurry in the matter of taxation? The Government can afford to wait better than the annuitant can, and in the long run the Goverment benefits by existing rules. The present method is simple, is constitutional, is clearly understood, and has been held out to the annuitants as the logical and proper system of taxation. We as insurance advisers want to keep faith with the people, and you as trustee of your constituents also want to keep faith with annuitants who have been told of the present system without any suggestion that it might be changed. This procedure is all the more desirable in view of the fact that when you split the annuity payments

into two portions, attempting to tax $300 on a $10,000 purchase for the first 14 years and the full amount thereafter, you are likely to get a very slight increase in the immediate collections, while you are delaying the time when the full charge will be made against the annuitant from 10 to 14½ years. You will probably get less income tax in the long run by the new process than by the old.

There are, of course, some individual cases to which these remarks do not apply. Some men may have purchased an annuity with $100,000 and may be entitled to draw $10,000 for 10 years free of tax, but they will pay the full tax in due season. Such men are few and far between, and it is better that they should be entitled to the exemption under constitutional law and constitutional requirements than that the Government should lose in the long run by making more exemptions, by delaying the time when the full annuities will be taxed, and by adopting a principle which is of more than doubtful constitutionality and which may be beaten in the courts.

Some annuitants will have other independent income, so that, although the average is much less than the normal exemption, some of the annuitants will undoubtedly be taxed, but not anything like to the extent that one might at first suppose from observing the total amount payable in annuity payments each year. The annuitants represent a thrifty middle-class population who are making sure that their old age will be free from worry, and that they will have some small income which is completely reliable and which will be paid in all circumstances, irrespective of fluctuations in security values, rates of interest, and investment losses.

New York and other States have already adopted old-age pension plans as a social insurance plan at the expense of the State. The subject has also been discussed before Congress as a Federal movement. It is apparent that instead of discouraging the purchase of these small annuities, the Federal authorities should encourage them and help people to build up their own independent income for old age. This will save the State and the Government the expense of maintaining the old people, for the annuities purchased only average a modest maintenance allowance.

STATEMENT OF BYRON K. ELLIOTT, ST. LOUIS, MO., MANAGER AND GENERAL COUNSEL, AMERICAN LIFE CONVENTION

Mr. ELLIOTT. The pending revenue bill proposes a change in the method of taxing to the annuitant of his life annuities. The present law taxes a man on his annuity premiums, after he has received back what the annuity has cost him, and taxes him then on the entire annuity payments received after that time.

This new proposal contained in the bill as it now stands changes that and assumes that of the annuity payments the annuitant receives 3 percent on the cost of the annuity as interest, and therefore the individual annuitant should throw into his income an amount of the annuity payment equal to 3 percent on the cost of it.

There are certain reasons why we would submit that that is wrong in theory and could not be applied with any degree of equality to the individuals who are paying the tax, and would tend to discourage the sale of annuities, which are one of the principal means by which people can provide an income for their own old age.

In a life annuity the individual either will or will not receive an amount in addition to his purchase price. This is a fact which is definitely established and easily ascertained before the individual receives one cent of income beyond a return of his principal. He either lives long enough to profit from the transaction or he does not. And he has a good ground for objecting to this tax, in that he may, by an early death, never receive any profit from the transaction at all.

In these life annuities, whether of the pure or refund type, there is no certainty, nor any promise, that the individual annuitant will receive any interest at all unless and until he lives to receive back the amount paid for the annuity.

At a time when the Government is expending more and more money in old-age pensions, it would seem to be against public policy to interfere, without even a certainty of increase, with the execution of contracts by which the individual provides for his declining years.

We have the word of agents in the field, speaking through the National Association of Life Underwriters, that this new method would impede the sale of annuities. Many company officials have expressed a similar opinion. In a large measure, this effect upon the distribution of annuities is probably based upon the feeling that the individual would lay himself open to the chance of suffering a discrimination under the new bill.

The proposed new method would discriminate between individual annuitants in three ways. It would cause the man who dies before receiving back his principal to pay a tax without receiving any interests benefits, while his neighbor living to a ripe old age may have his principal back and be paying on only a small percent of his profits from the transaction. It would cause the immediate annuity purchaser to pay a larger amount on his annuity payments than the deferred annuitant would pay on the same sized annuity. It would not be equal as between the man who has received part of his payments and the man whose annuity is just commencing.

The new formula could apply with fairness only to that theoretical case which is the average of them all. Because this theoretical man enters the picture in the company's calculation of rates and payments, the bill would put all annuities in his shoes, confusing the technical principles of operating a life annuity company with the objects of taxing an individual upon his income.

Another section of the bill, providing for deductions from gross income, should receive reference here, section 23 (b).

That section, allowing deductions from gross income, disallows as a deduction interest on "indebtedness incurred or continued or the proceeds of which were used in connection with the purchasing or carrying of an annuity."

It is clear from this section that the interest on money borrowed to buy an annuity is not deductible. This is going to great lengths to discriminate against annuities. They are taxed in one section and treated as tax-free securities in the next. The unfairness in this situation is too obvious to need further comment.

We think the plan adopted in 1926 and continued in the 1932 Revenue Act, of including the annuity payment in gross income of the individual only after he has recovered what his contract cost, is more fair and equitable. It is based upon the fact of the receipt of income. If the individual receives anything more than he pays, the excess, and all of it, at the earliest moment it is ascertainable whether he will receive any profit from the transaction, then becomes subject to tax as income from any other source.

Senator COUZENS. What would you say with respect to taxing new annuities and letting the old ones go?

Mr. ELLIOTT. I would think, sir, that even in that case the annuitants should certainly be allowed to receive back the cost of the contract first, because, until he does, there is no way of telling whether he will ever receive anything more. A new annuitant may stand a loss just the same as an old one.

Senator COUZENS. But it would do away with those inequalities which you have spoken of?

Mr. ELLIOTT. Only some of them. You would not do away with the inequalities as between the purchaser of an immediate and a deferred annuity.

Senator COUZENS. He would understand what he was going into at least.

Mr. ELLIOTT. We are afraid that he would not go into it.

The CHAIRMAN. Thank you. Mr. Cox.

STATEMENT OF GUY W. COX, BOSTON, MASS., REPRESENTING JOHN HANCOCK MUTUAL LIFE INSURANCE CO.

Mr. COX. I represent the John Hancock Mutual Life Insurance Co., and the other Massachusetts companies, including the Massachusetts Mutual and the State Mutual, and the New England, and the Columbian and Berkshire, who have asked me to record their opposition to this feature of the bill.

This is brought about because we have had so many complaints from policyholders and annuitants that the insurance companies have not appeared to protect their interests. We did not appear before the House committee, except the Berkshire Life, which I think filed a brief, and we are here to put those companies on record to record their opposition to the bill, because we think it is an unjust law.

We think that the consensus of the civilized world, the consensus of opinion of the civilized world, has been previous to this proposal, that a man does not receive income from an annuity until he gets his principal back, and we do not see why it should be changed at this time.

The question of taxing of annuities is as old as any question of taxation, and why this sudden change? We think that the brief submitted will show you that it is probably, if anything is, unconstitutional; it is as unconstitutional by legislative fiat to declare something to be income which is not income, and which the courts have pretty plainly indicated is not income, and therefore we suggest that this tax will only cause litigation and probably no one will pay any considerable amount until the courts have settled the question, and so why introduce it at this time?

We think that that is the principal objection to this bill. You cannot, it seems to me, properly make income out of something that is not income.

I want to further point out that while annuities have been taxed in Massachusetts ever since Massachusetts was a State, it has been done as a tax on capital and not as an income tax. If you care to have that looked up or submitted that will prove to be the facts.

And I will point out to you that in all of the studies that have been made of taxation in Massachusetts during the last 10 years, every committee, every legislative committee or special commission has

recommended that that tax be changed so as to coincide with the present taxing methods of the United States and almost every other government.

I do not know whether I should say so, but a great many years ago, I was chairman of the Taxation Commission for Massachusetts that revised all of the laws and was chairman of the Constitutional Convention of Taxation, and so at some times during my life I have given a great deal of attention and study to the questions of taxation, and I think that anyone who does that cannot come to any other conclusion that an income tax is not proper to be assessed upon an annuity until the capital has been returned.

Senator REED. I would like to ask you a question. When the insurance companies figure the size of the annuity payment that can be made on the investment of a definite sum of money, they figure on two factors, do they not—first, the earning power of that capital sum; and, second, the expectancy of life of the individual?

Mr. COX. That is entirely correct.

Senator REED. In your own case, what do you figure to the earning power of the capital sum?

Mr. COX. Well, of course, that is fluctuating. We have considered that 4 percent was a proper amount, but they have reduced it slightly within the last year.

Senator REED. What is it now?

Mr. COX. It is 4 percent now. I think 4½, perhaps.

Senator REED. Then you would, in tabulating the amount of the annual payment, start with that 4 percent, and then you would also, considering the expectancy of life of the individual, figure out how long it would take him to get his principal back, and, of course, you have the diminishing earning from the fund, as the principal is paid back. That is right, isn't it?

Mr. COX. Yes; that is perfectly correct, but I think that it turns around the fact that the annuitant, as has been the concensus of opinion, I say, of the civilized world, up to the present time, that the income is not received until he gets back his principle.

Senator REED. That is the way the law at present treats it, but I am wondering wherein the law's injustice lies, to regard these payments just the same way, for the Federal Government, that the insurance company does; first, a return of the earning power of the money; and second, the payment of the principal.

Mr. COX. Because it is coupled with a forfeiture, and the man may never get back but one payment.

Senator REED. That is true, but any bondholder may find his bond defaulted before he gets his principal back.

Mr. COX. That is not to be expected properly in an investment, whereas in an annuity it is inevitable. It makes no difference how sound the annuity is. You introduce there an element or a factor of the value of the bond as an investment?

Senator REED. The point I am trying to make is that in this new act, the Federal Government is taking exactly the same system of thought that the insurance company is.

Mr. COX. Well, but for a different purpose. An entirely different purpose. They do not coincide.

The CHAIRMAN. You may file your brief.

Senator CONNALLY. When a man buys an annuity, he gets something more than even a half-way assurance that he is going to get his principal back. He takes the chance on getting more than his principal back.

Mr. COX. He does.

Senator CONNALLY. He gambles on getting more back, and the insurance company gambles upon his getting less.

Mr. COX. Well, if you want to put it that way.

Senator BARKLEY. All life insurance is based on that.

Senator CONNALLY. That is true, isn't it? Your company is gambling that you do not have to pay him as much as he has to pay, and he is gambling that he will get more than he has paid.

Mr. COX. I do not like to have an annuity called a gamble. I do not call it that. I call it a legitimate investment.

Senator CONNALLY. I grant you that it is legitimate. But if he lives a long time, he will get back the principal and he will get something else.

Mr. COX. Yes; and when he gets that back, he will pay the full income tax.

Senator CONNALLY. On that part of it only.

Mr. COX. He will pay the full income tax on that, over and above.

Senator CONNALLY. But where is the profit in the meantime? In the meantime, the company is making a lot of profit.

Mr. COX. Why, no. Most of the companies I represent, the John Hancock and others, are mutual companies.

Senator CONNALLY. It is just some charitable cooperative association?

Mr. COX. Yes.

Senator REED. I think you were wrong when you said that all over the world these annuities are treated——

Mr. COX. I said the concensus.

Senator REED. The concensus means getting together.

Mr. COX. That means practically all.

Senator REED. Here is the way Great Britain feels about it. I am quoting:

> The following kinds of interest are taxable in interest on money whether yearly or otherwise, or any annuity or other annual payment, whether received as a personal debt or obligation provided by any contract.

It treats the whole annuity payment as income.

Mr. COX. I must have been misinformed about that. I do not think annuities are taxed there until the principal is returned.

Senator REED. Perhaps my information is wrong.

Senator BARKLEY. Is there any difference between the principal of these annuities and the purchase of properties purchased for profit and held for a long time and rented? Would not the same theory be that the owner of the property should not pay any income tax on his annual income until he got his capital back?

Mr. COX. I think there is a world-wide difference between those two questions. Because we know that the man who purchases property for an investment, his estate will either receive it or he will; but in annuity the man's estate receives nothing after he is dead.

The CHAIRMAN. Thank you very much.

Senator LONERGAN. Can you tell us approximately the number of annuity contracts outstanding?

Mr. COX. I could not.

Senator LONERGAN. Can you give an estimate of the amount involved?

Mr. COX. I could not. I know that, for instance, the Massachusetts companies have not forced the annuity business. We have not made a bid to get a large amount of annuities, and even in the last year we have cautioned our agents about it—that our principal business was life insurance and not annuities. I think you will find more of the annuities in some other institutions, possibly, than life-insurance companies.

Senator LONERGAN. Can you tell us the average annual amount paid?

Mr. COX. I can tell you that our experience has been that we have almost no number of annuitants that pay over from $10,000 to $25,000 for an annuity, so that the returns are very small.

Senator LONERGAN. What does that average per year?

Mr. COX. That would average, roughly, $1,500 to $2,000.

Senator LONERGAN. Would you say most of these contracts call for payments of about $2,000 per year?

Mr. COX. I would say that that average would be fairly high.

Senator LONERGAN. Fairly high?

Mr. COX. Yes, sir.

Mr. HULL. If the Senator please, quite extensive inquiries were made as to the average amount of annuity payments, and it is between $400 and $500 a year, on the basis of rather an extended inquiry and questionnaire to a number of the annuity-writing companies.

Senator CONNALLY. Mr. Cox, do you know what is the salary of the president of the John Hancock Life Insurance Company?

Mr. COX. Yes.

Senator CONNALLY. What is it?

Mr. COX. If you will take 15 percent from $50,000, that is what the present salary is.

Senator CONNALLY. You say the company is not making any money?

Mr. COX. It is not making any money except for its policyholders, and except for its members. It is an entirely mutual company, and has been so for over 50 years.

Senator CONNALLY. The salary of the president is $50,000, and you have cut it 15 percent recently on account of the depression?

Mr. COX. Yes, sir. So as to give the annuitants and other people a little better break, if possible.

The CHAIRMAN. Thank you very much. At this point I ask that the following letters regarding the tax on annuities be inserted in the record:

MONTPELIER, VT.,
February 19, 1934.

Hon. WARREN R. AUSTIN,
United States Senate, Washington, D.C.

DEAR SENATOR: The revenue bill of 1934 (H.R. 7835) proposes a change in the method of taxing annuities which seems so objectionable as to warrant its elimination from the measure.

The present law does not tax the annuitant until he has received an aggregate amount of payments equal to the consideration paid for the annuity (where-

upon the whole amount of payments to the annuitant thereafter made are treated as income), while the method in the pending bill would require the annuitant to include in his gross income immediately a portion of the annual payments in the amount of 3 percent of the consideration paid for the purchase of the annuity.

The reason given in the committee report (p. 21) for making the change is that the taxes on annuities are "postponed indefinitely."

It is true that the payments are postponed, but it is equally true that they ought to be deferred until the annuitant gets back the principal sum which he paid to buy the annuity, as it is not till then that he begins to profit by his investment.

Considering the entire body of annuitants as a unit, the new plan might work equitably, but, taking the individual cases, the hardship imposed and the inequality of the burden imposed are clearly apparent.

For example, take the case of two people, both of age 63, who each put $5,000 into an annuity. Annuitant A dies at the end of the seventh year, while Annuitant B dies at 85, the end of the twenty-second year. Under the proposed amendment Annuitant A, who never got back the purchase price of his annuity but has actually suffered loss in both principal and income has been taxed on assumed income; while under the present law Annuitant A would pay no tax but Annuitant B would be taxed on the whole of the annuity income after the payments theretofore received by him had equalled the principal invested.

I venture to say that there is no provision in the present income-tax law and no other proposed amendment which taxes as income an investment which shows loss in both principal and income. If the suggested amendment is to be seriously considered, the estate of the annuitant who dies before the sums paid back to him in annual payments equal the purchase price should be allowed credit as an actual loss for the difference between the consideration paid for the annuity and the annual payments received.

* * * * * * *

As New England, with its thrifty population, is the place where annuitants are found in large numbers, I think you will find especial objection to this measure in that section of the country. * * *

Sincerely yours,

Fred A. Howland, *President.*

Boston, Mass., *February 23, 1934.*

Hon. David I. Walsh,
United States Senate, Washington, D.C.

Dear Senator Walsh: I note that bill 7835, Revenue Act for 1934, changes the method of taxing, for income-tax purposes, the payment made to annuitants under annuity contracts.

As this in many instances is a tax on return of capital, and hence a capital tax, I am objecting through you to this change in the revenue act.

To clarify my objections I will outline briefly the method of obtaining an annuity contract from an insurance company.

Say (A) desires to purchase an annuity from an insurance company. He is 70 years old, and for a price of $1.000 he can obtain an annuity of $120.38 per year.

He deposits the $1,000 with the insurance company and receives, as long as he lives, $120.38 per year.

From the date that he deposits the $1,000 with the insurance company he has no control over the $1,000 so deposited. He cannot surrender the contract and receive a cash payment back. In other words, he surrenders all right and title to the deposited $1,000. He has a contract which guarantees to pay him only $120.38 each year if he be alive.

If he dies during the first year, he receives nothing back. If he lives to receive nine payments, he receives back a total of $1,083.42, or his principal paid and $83.42 in addition. If he lives 15 years, or to age 85, he receives $1,805.70, or $805.70 in excess of principal paid.

Part of this excess he receives is capital paid in by other annuitants who have died before receiving their entire capital back, while part is interest earned on the fund accumulated by the insurance company from all annuitants. In other words, it is partly redistribution of capital and partly distribution of interest earned on the accumulated fund.

In order for A to receive back his capital paid in, he must live to receive the ninth payment, otherwise part of his capital is distributed among other annuitants who do live long enough to receive back more than the capital paid in.

The only way then for A to get his capital back, to say nothing of receiving any income on his capital investment, is to live long enough to get his total capital back in annual payments.

The present law taxes this total payment after the capital has been returned. The proposed change taxes 3 percent of the original deposit, or $30, as income even before the purchase price has been returned, and then the entire payments after the capital payment has been returned.

In other words, the present law, to a certain extent, taxes the redistribution of capital along with the interest income, but the proposed change not only does this but also taxes the return of principal, while it is being returned.

It would be difficult to get an equitable method of taxation for annuities as income, but I think we can agree with the idea previously expressed by the Secretary of the Treasury on this subject. See statement "Regarding the Preliminary Report of a Subcommittee of the Committee on Ways and Means" as follows (p. 16):

"(1) *Annuities.*—The Treasury concurs in the view that that portion of annuity receipts which represents interest should be currently subjected to tax. The Treasury does not believe, however, that the proposed plan makes a fair allocation between principal and income. For this purpose, unless a better allocation can be devised, it would seem better to substitute such a provision as appeared in the Revenue Act of 1924, section 213 (b) (2)."

May I urge you, therefore, to oppose any change in the present method of taxing annuity payments?

Sincerely yours,

WALTER I. KING.

KANSAS CITY LIFE INSURANCE CO.,
Kansas City, Mo., March 1, 1934.

Senator BENNETT CHAMP CLARK,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR: I am writing you regarding the Hill subcommittee recommendation relative to determination of income on annuities. A 3-percent income tax on annuity forms would be wrong from an economical standpoint where an annuity is paid for with a principal sum, the annuitant gives up all title to the capital thus investing in contrast to the situation which prevails when money is deposited in a bank, or any other depository institution. He is promised a definite income, irrespective of whether the insurance company loses or profits from the transaction. Moreover, should he die early, the entire capital sum is considered liquidated. In no case can the annuitant derive the profit unless he or she lives long enough to have first received back in annuities, an amount equal to the principal sum paid for the annuity. Therefore, a profit begins to accrue to the annuitant only when this particular point has been reached. It also follows that to impose an income tax upon annuity payments prior to the time when the annuitant has received back his principle, is altogether an uneconomical proposition. As annuities represent a profit they should, of course, be taxed, and according to my understanding, that is the ruling of the present income tax.

I presume the thought in the Hill report is based upon the actuarial explanation that annuity payments using averages, represent a return annually of part of the principal together with a certain amount of interest. This is true when the annuity account is averaged for a larger number of annuitants. But it is not at all the case with the individual annuitant. Ten thousand annuitants would receive annually a part of the principal and some interest. But the individual does not profit until he has received payments for a sufficient term of years to make them equal the principal paid for the annuity. Should he die prior to that time, the individual would have actually suffered a loss.

I believe that the subcommittee has based its consideration on an incorrect or incomplete understanding of an annuity contract, and that its conclusion with reference to annuity receipts that "such receipts are as a matter of fact part interest and part return of capital" is erroneous as applied to the individual annuitant.

I believe you are a Member of the Senate Finance Committee, and I am going to ask you to endeavor to have this provision taken out of the revenue bill. I am informed that this bill has gone to the House of Representatives and to the Senate. As I said before, I believe 3-percent tax on annuity forms of life insurance is absolutely wrong.

Hoping that you can see this bill will work a hardship on everyone buying an annuity for his loved ones.

Very sincerly,

ED. S. VILLMOARE, Sr.

ESV: B.

KANSAS CITY LIFE INSURANCE CO.,
Kansas City, Mo., February 27, 1934.

Senator BENNETT CHAMP CLARK,
Washington, D.C.

DEAR SENATOR: I enclose a brief memorandum which points out an apparent discrimination against annuitants and annuity contracts issued by life-insurance companies, in the revenue bill of 1934 (H.R. 7835), now in the Senate Finance Committee.

Under the old law, section 22 (b) (2), annuity payments under life-insurance endowment and annuity contracts are not income to the recipient until the total amounts received exceed the aggregate premiums or consideration paid for such contracts. The present bill provides that amounts received as annuities under endowment and annuity contracts shall be included in gross income, except that there shall be excluded the excess of the amount received in the taxable year over an amount equal to 3 percent of the aggregate premiums or consideration paid for the contract until the aggregate amount excluded from income equals the aggregate premiums or consideration paid.

Section 23 (b) of the pending bill excepts from the provision for deductions of interest from gross income, interest "on indebtedness incurred or continued, *or the proceeds of which were used* in connection with the purchasing or carrying of an annuity."

The words in italic are new in the present bill, and it seems clear from the wording of the section, that interest payments on any indebtedness incurred to purchase an annuity or endowment are not deductible, and it will probably be held that interest paid on sums borrowed on annuity contracts is not deductible from income.

It seems clear to me that these two provisions constitute an unwarranted discrimination against annuitant contract holders. If annuity or endowment payments are included in gross income, then it seems that interest on indebtedness incurred to purchase such contracts should be deductible just as any other interest. Accordingly, if the amendment to section 22 (2) of the bill is to stand, then it seems to me that the proposed amendment in section 23 (b), limiting the deduction of interest on indebtedness incurred in connection with the purchasing or carrying of an annuity, should be eliminated.

I do not think the elimination of both or either of the amendments would mean every much in the way of revenue to the Government, but I think the inclusion of both amendments will tend to prejudice the sale of endowment and annuity contracts, and will probably lead to quite substantial withdrawals from life-insurance companies of the present value of such contracts.

I think the advisor to your committee on this subject will confirm my view, and I will appreciate it if you will discuss it with him, and also with Senator Harrison.

Thanking you, I am,

Very truly yours,

FRANK W. MCALLISTER,
General Counsel.

MEMORANDUM

The following are the provisions in the new revenue bill affecting insurance companies:

1. Section 21 of the old law provides that amounts received under a life-insurance contract paid by reason of the death of the insured, whether in a

single sum or in installments, are not to be taxed as income to the recipient, except that if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments are to be included in income. This provision remains the same under the proposed law.

2. Section 22 (b) (2) of the old law provides that amounts received other than amounts paid by reason of the death of the insured and interest payments on such amounts under life-insurance endowment or annuity contracts, are not income to the recipient until the total amounts received exceed the aggregate premium or consideration paid for such amounts.

The proposed law has changed this section and provides that amounts received as annuities under annuity or endowment contracts shall be included in gross income, except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 percent of the aggregate premiums or consideration paid until the aggregate amount excluded from income equals the aggregate premiums or considerations paid. It will at once be seen that the advantage of insurance contracts existing under the previous laws, in having the amounts received exempt from tax until the total amount paid had been returned, has been eliminated to the extent of 3 percent of the total consideration of payment.

3. Section 23 (b) of the proposed law, which provides for deductions from gross income, is as follows:

"Interest: All interest paid or accrued within the taxable year on indebtedness, except (1) on indebtedness incurred or continued to purchase or carry, *or the proceeds of which were used to purchase or carry*, obligations (other than obligations of the United States issued after Sept. 24, 1917, and originally subscribed for by the taxpayer), the interest upon, which is wholly exempt from the taxes imposed by this title, or (2) on indebtedness incurred or continued, *or the proceeds of which were used* in connection with the purchasing or carrying of an annuity."

The words in italic are new in the proposed act, otherwise the section is the same as the present act. It seems clear from the wording of this section that the interest payments on any indebtedness incurred to purchase an annuity is not deductible from income and it might be urged that interest paid on sums borrowed on annuities is not deductible from income. There might be some reason for not permitting the interest to be deducted while income received on annuities was tax-free, but since such income has been taxed, as provided in the above section 22, then it would seem to be a rank discrimination against annuity contracts not to permit the interest to be deducted.

CHARITABLE AND OTHER CONTRIBUTIONS

STATEMENT OF ALLEN T. BURNS, NEW YORK, N.Y., REPRESENTING THE COMMUNITY CHESTS AND COUNCILS OF NEW YORK

Mr. BURNS. I am executive director of the National Association of Community Chests, of which there are some 400 in the country, and they wish to propose and request that section 23 paragraph (o)—page 31, I believe it is, in the draft of the bill—be amended so that corporation contributions shall be allowed the same right of deduction from taxable income as individual contributions. This, we believe from our experience, would do more to promote the administration's policy of encouraging private charity as well as public charity at the present time than any one thing that could possibly happen in the country.

Senator CONNALLY. Your attitude is that if a corporation gets a deduction, it would have a charitable urge, whereas if it does not get the deduction it would not have the urge?

Mr. BURNS. When the original provision was put in the bill in 1917 charitable contributions by corporations were almost unknown in this country. The war charities and community chests, the sequel

of war charities, have developed corporation contributions to a remarkable extent, to where, in 1929, with about 130 of our leading chests, they amounted to some $13,000,000 for some 54,000 corporations in the country.

The difference between the individual right and the corporation right did not come out as an especial difficulty as long as we were in prosperous days. Now that we are in less prosperous days, it becomes harder to get contributions, and this apparent discrimination in the law between a corporation's contribution and an individual's contribution has become more and more of an obstacle to our maintaining the generosity of corporations. It is because of our need of restoring charitable giving in this country that we believe such action as this by the committee and Congress would be a concrete evidence that the administration and the authors of the bill still believe that private charities should be maintained.

Senator GORE. Wouldn't that put them in competition with the Government?

Mr. BURNS. Apparently not, according to the President of the United States. The President of the United States has urged that private charity must go hand in hand with Government charity, and that they are supplements rather than competitors.

Senator GORE. Don't you think the Government's dealing has dried up the sources of private contributions?

Mr. BURNS. There is no question, the biggest factor and the difficulty in getting private gifts has been the immense appropriations by the Government; yet they were inescapable, in my judgment. I have appeared before committees of both Houses urging public appropriations in the emergency for the relief or the destitute. We do not believe, as the President does not believe, that public charity alone can meet the situation in this country. We believe that private charity must be maintained, whatever is the development, up or down, of public charity, and that there is need, at this time specially, when charitable contributions have decreased notably in this country, of doing something to encourage them.

Senator GORE. Can you give statistics as to the decline of private contributions?

Mr. BURNS. I can, so far as the community chests are concerned.

Senator GORE. You say you can?

Mr. BURNS. Yes.

Senator GORE. State them.

Senator REED. In other words, your position is that a corporation figures it can give just so much money to the community chests. At the present time it has to subtract 13¾ percent, because it will have to pay a tax on that?

Mr. BURNS. That is it.

Senator REED. And if we struck out these words "in the case of an individual", so it would apply to every taxpayer, then the community chest is going to get 13 percent more than it now does?

Mr. BURNS. Well, we have a good deal of evidence from both chests and corporations that that would be the case. I am not here to guarantee it, Senator Reed.

For two years after the depression began, charitable contributions went on increasing, Senator Gore. We increased some 23 or 24

percent. We did not begin to decrease until after 2 years of the depression had taken place. In other words, our contributions decreased for the first time for the year 1933.

Senator GORE. The curve started down in 1933?

Mr. BURNS. That is when the depression finally caught up with us. We decreased 22 percent in 1933 over the year 1932.

Senator GORE. That is, your contributions declined?

Mr. BURNS. Our contributions declined.

Senator GORE. That is the time the Government started in so generously to make these contributions to charity?

Senator COUZENS. In addition to that, there have been further reduced incomes.

Mr. BURNS. Of course.

Senator COUZENS. So it was not competition of the Government alone that caused the decrease in the contributions?

Mr. BURNS. To show the situation, even with that decrease, Senator Gore, as compared with 1928, before the depression, our contributions decreased only one tenth as much as taxable incomes in this country decreased between 1928 and 1932.

Senator BARKLEY. But if private charity had continued on the same basis or even been doubled, it would not have been sufficient?

Mr. BURNS. Oh, by no means, by no means. We are not here maintaining that.

Senator GORE. That is, it would not have been sufficient to constitute as much as the Government gave?

Mr. BURNS. Oh, by no manner of means.

Senator GORE. You do not undertake to assert that the Government did not contribute more than was actually necessary and more than would have been necessary if it had been left to private generosity?

Mr. BURNS. No; I am not trying to put the Government over as against private charity. I am saying that we are all looking forward to the time when these appropriations by Government can be greatly decreased, and charity by the Federal Government brought to an end.

Senator GORE. Oh, do you think it will ever be brought to an end?

Mr. BURNS. By the Federal Government?

Senator GORE. Yes.

Mr. BURNS. Yes; I think it will.

Senator COUZENS. I think you are mistaken about that.

Mr. BURNS. Well, that is anybody's guess, so I put in the word "decreased."

Senator GORE. You are an optimistic prophet; I hope you are right.

Mr. BURNS. I may say there is one thing that will greatly help them to decrease it, and that will be to encourage private giving.

Senator GORE. I have introduced an amendment here to impose a pretty heavy tax on bonuses given by corporations to their officers and directors. The theory underlying the amendment is that there is a fiduciary relationship between the officers and the directors of the corporation and the stockholders, and that they haven't any right to take the money that belongs to the stockholders and give it away to someone else. Now, do you think that a corporation has any

right, or ought to have the right to take the money of its stockholders and give it out by way of charity? Should that not be left to the people that own the money, that are entitled to it?

Mr. BURNS. We would be glad to make an argument.

Senator CONNALLY. Do not the directors represent the people that own the corporation? If they do, aren't they supposed to be the representatives of the stockholders?

Senator GORE. We represent the taxpayers, but in the squandering of millions and billions of dollars here the taxpayer does not have much to say about it.

Mr. BURNS. There has never been a serious suit brought during the depression or since the war——

The CHAIRMAN. Thank you very much, Mr. Burns. That was all?

Mr. BURNS. Yes. We would like to file this brief.

PROPOSAL TO PERMIT CORPORATIONS TO DEDUCT THEIR CHARITABLE CONTRIBUTIONS FROM THEIR GROSS INCOME IN COMPUTING NET INCOME FOR TAXABLE PURPOSES SUBMITTED BY COMMUNITY CHESTS AND COUNCILS, INC., NEW YORK CITY

This proposal is to strike out the words "in the case of an individual" from section 23 "deductions from Gross Income", paragraph (O) "Charitable and Other Contributions", page 31, line 23. This amendment to both the present law and pending bill would permit corporations only the same right of deducting charitable contributions as is now allowed to individual contributors.

I. BACKING FOR PROPOSAL

This proposal is made at the unanimous request of the 400 community chests of the country as the most effective single step possible in promoting that feature of the national administration's policy set forth by President Roosevelt in his broadcast of October 15, 1933:

"I have spoken on several occasions of the vital importance to our country that private charity in all that broad term covers, must be kept up at least to the levels, and I hope even beyond the levels, of former years. At this opening of the Four Weeks' 1933 Mobilization for Human Needs, I want not only to reaffirm what I have said before, but to stress the fact that the fine teamwork in the recovery program cannot be successful if an important horse is lying back in the traces."

Adoption of the proposal now made would be the best concrete evidence that the Administration means to promote private charitable contributions to its utmost.

II. DEVELOPMENT OF THE PROBLEM

The original provision allowing individuals to deduct their charitable contributions from taxable income was adopted in 1917 to promote charitable contributions for purposes connected with the war. While corporations were not allowed the same privilege as individuals, the practice of generous and wide-spread corporation contributions begin in the war and has continued ever since. In exceptional instances corporations have be allowed to deduct their charitable contributions from their taxable income under the provision of the present law that "all ordinary and necessary expenses in carrying on business" are deductable. Securing such deductions has frequently been at the trouble and expense of prolonged controversy with the Bureau of Internal Revenue and of much litigation. The necessity of such litigation is no inducement, but a barrier to charitable contributions by corporations.

There has been a long series of negotiations and legal contests by representatives of both charities and corporations over this moot point. The best, yet equivocal, result is in the ruling of the Internal Revenue Bureau of October 10, 1932, which declares:

"Although it was previously held that a showing of a direct benefit flowing to the corporation as a result of the contribution was necessary it is now held that a deduction will be permissable if the taxpayer corporation can show

that it reasonably contemplated a financial return commensurate with the payment and was motivated by such expectation of a financial return in making the payment."

This ruling refers to the past requirement that corporations produce evidence "that increased business did result."

This latest ruling was stated by the Bureau to be for the purpose of encouraging liberality among corporations, but the actual practice has been to leave the burden of proof on the corporations, or in other words to require a legal contest before the right of deducting charitable contributions can be established. Some corporations have made such legal contests with about a 50-50 result. Generally the expense of the contest equaled at least the saving bade in taxes by the litigant corporation. The upshot of the whole situation is that corporations in the main do not think it worth instituting proceedings before the income-tax authorities. They have bigger fish to fry than such contests or the saving in taxes is not worth the pains and expense. If every contributions means a controversy the corporations simply won't contribute.

Consequently, Community Chests and Councils, Inc., the federation of the 400 chests of the country, receives protests and requests from chests and corporations in sscores of cities from Boston to San Francisco. These protests insist that corporations are discriminated against in their charitable giving as compared with individuals and that a large additional source of charitable revenue would be provided if corporations could be given only the same right of deducting charitable contributions as is granted to individuals. Three illustrations are typical:

From the Cincinnati Chest ,apropos of an adverse decision of the Income Tax Unit against one of their corporate contributors:

"To test this matter out either by appeal to the Federal Commission or by suit in the courts would take so long as practically to prevent a large portion of corporations giving in the present mobilization and in next spring's campaign."

The Community Chest of San Francisco quotes as follows from a letter to them from the Westinghouse Electric & Manufacturing Co.:

"The Federal income tax law does not permit a corporation to deduct as expense payments made to organized charity. Individuals may make such deduction, and it seems unfair that corporations should not have the same privilege for all payments legitimately made. In subscribing to your fund we wish to advise you that the above-mentioned provision of the Federal income tax law will have a restraining influence on future payments which we make to your fund."

From the attorney of the largest corporate giver in Indianapolis:

"I make this last suggestion (right of deducting corporate contributions) because it is noticeable in our local solicitations that even our very wealthy corporations, best able to make substantial contributions, contribute but a few hundred dollars each. Possibly this may be due to lack of corporate power in many cases, but I am rather of the opinion that it is principally because no credits whatever are given against income-tax liability."

These quotations in substance could be duplicated from scores of community chests and their corporate contributors. The Internal Revenue Bureau has probably gone as far as it can under the present laws and yet leaves litigation facing corporations which are willing to give on an equal basis with individuals. No Executive order will solve the problem. The law should be changed.

As suggested above, there have been numerous conferences, suits, and developments of practice within the Internal Revenue Bureau on this rather complicated question and it is at the suggestion of the tax experts of the Treasury that this proposal is now laid before the Senate Finance Committee. As the question involves so much past action and policy of the tax units of the Treasury it is suggested that it be referred to them for further light and recommendation on the problem.

III. INTERESTS AT STAKE

The stakes of corporations in this matter have been a rapidly increasing item. The history and development of corporation contributions to charity are set forth best in a report of the National Bureau of Economic Research in 1930, Corporation Contributions to Organized Welfare Services. Before the World War corporation contributions were an exceptional occurrence in this

country. They were so exceptional that the omission of their right of deduction in the original income war taxes is not surprising. The war developed these contributions immensely and community chests, the sequel of war charity, have continued to secure these corporation contributions until they amounted to 22 percent of all contributions to community chests in 1929. At this rate corporation contributions to community chests have amounted to as much as $22,000,000 in a single year. At the present rate of corporation taxation, 13.75 percent, taxes have involved of from $2,000,000 to $300,000,000 in corporation contributions to community chests alone. The exigencies of the depression have also induced corporations to contribute in nonchest cities, where previously corporation contributions were almost negligible. Naturally corporations are resentful at this discrimination against them in the matter of taxing their pro bono publico expenditures as any of the rest of us would be. It has become harder and harder to persuade them both to make liberal contributions and to endure this discriminatory tax.

Private philanthropy has had a progressively more difficult task to hold up its end of the national charitable responsibility during the depression. It has needed every reinforcement and argument that could be made available. If, as the President constantly states, private charity is to persist and carry its share of the load of our less fortunate citizens, its approach to corporations for contributions ought to be eased rather than made more difficult. Instance after instance could be cited of where corporations this last year have withdrawn their contributions with the taxation situation as one of their reasons. Private charity cannot carry on without the help of the corporations to which it has become accustomed. When it is clear why Community Chests & Councils, Inc., the representative of the private charities in these 400 cities feels the necessity for doing its utmost to remove the barrier against continued corporation generosity.

The United States Treasury has the biggest stake in this problem. During the depression the Treasury has been called upon for contributions for the relief of the unfortunate as never before in the country's history. Direct appropriations for relief already amount to $1,750,000,000. It has been argued, and the President has taken the position that such expenditures are extraordinary and for the emergency only. How rapidly they can be decreased or finally ended depends materially on the encouragement given to private charity. The sum that the Treasury would lose in corporation taxes is as nothing compared with Treasury expenditures if private giving is not encouraged to resume in its old-time terms. The encouragement to corporate giving by the abatement in taxes should result in many times that amount of corporate contributions, and so in the ultimate easement of the Treasury in its contributions to the unfortunates of our country.

IV. SUMMARY

Community Chests & Councils, Inc., is in touch with more private giving than any group in the country. Both the preceding and present administrations have cooperated with and laid upon the community chests responsibility for maintaining the bulk of philanthropic contributions to welfare services during the depression. Our whole experience indicates that nothing would help us to discharge this responsibility still further and carry our end of the load more successfully than granting to corporations the same right of deductions of their charitable contributions as individuals have enjoyed for nearly 20 years. Such action by the Government would be proof positive of the statement made by the President to the country's philanthropic leaders last September:

"This work is an essential part of the Government's program. the program of the people of the United States to bring us back to where this country has a right to be."

We ask: (*a*) That in the pending law the words "In case of individuals" be stricken out on page 31, line 23, of the committee print.

(*b*) That in this connection the opinion of the tax specialists of the Treasury be sought.

TAXES WITHHELD AT SOURCE

STATEMENT OF B. C. DEY, REPRESENTING SOUTHERN PACIFIC RAILROAD CO.

Mr. DEY. Mr. Chairman and gentlemen of the committee, in the limited time it is difficult, perhaps impossile, to make an adequate and logical presentation of this question such as we would like to make.

At the outset I want to make it perfectly clear that our proposal does not reduce the revenues which the Government is lawfully entitled to collect to any extent at all. It does result in a tremendous administrative saving to the Treasury and to the railroads and other corporations having bonds of the class involved here.

The question I want to present is this matter of withholding at the source of the so-called "tax-free covenant bonds." It has been going on for 20 years, and it has cost hundreds of thousands of dollars to the corporations and to the Government, money that might well have been saved, and the fact is that if our proposal is adopted by you, in line with the recommendations made by the subcommittee of the House, the Government revenues which it is lawfully entitled to collect, will be substantially increased.

The CHAIRMAN. Your proposal is in your brief?

Mr. DEY. I have no written brief, and in my few remarks here all I can attempt to do is to put before you a practical picture of the administrative nuisance that exists in connection with this.

As you know, in the 1913 act many classes of income were required to be withheld at the source. In 1917 the thing had become such a nuisance that the Senate abolished it entirely, the House wanted to keep some of it, and they compromised on this one remnant with reference to the so-called "tax-free covenant bonds." I want to get at the outset right into the practical operation of this, because that is all I have time for.

Practically all bond coupons are presented to the banks. Very few, if any, come to the treasury departments of the corporations, the railroads, and others.

I represent here today—while I am connected with the Southern Pacific Co., I am speaking for the Railway Treasury Officers' Association, which consists of the treasurers of all of the railroads of the country, the same group that Judge Fletcher spoke for yesterday, only here for the treasurers who handle this particular matter.

You are familiar with the ownership certificate that the bondholder is presented with when he goes to the bank with his coupons.

The CHAIRMAN. Won't you put a copy of one of those in the record, so the stenographer's notes will show it?

Mr. DEY. I will.

(The certificate referred to is as follows:)

Form 1000, Treasury Department, Internal Revenue Service, revised June 1932)

OWNERSHIP CERTIFICATE

(To be used by a citizen or resident individual, fiduciary, or partnership in connection with interest on bonds of a domestic or resident corporation containing a tax-free covenant.)

DEBTOR CORPORATION

Name, ———; address, ———; name of bond, ———; date interest was due on the above bond, ———.

I certify that to the best of my knowledge and belief the information entered hereon is correct.

——— ———,
(Sigature of owner, trustee, or agent.)

——— ———.
(Address of trustee or agent.)
(A fiduciary must disclose the name of the estate or trust for which he acts.)

OWNER OF BONDS

Name, ———; address, ———; city, ———; State, ———; date paid, ———; amount of interest received.

Owners according to net income: 1. Individual or fiduciary whose net income does not exceed the personal exemption and other credits, ———, no tax paid by corporation. 2. Individual or fiduciary whose net income exceeds the personal exemption and other credits, or a partnership, $———, 2-percent tax paid by corporation.

NOTE.—If you discover at the close of the year that the interest was not entered on the proper line, you should prepare on or before February 1 of the following year an amended certificate on this form and forward it to the corporation which issued the bonds.

Mr. DEY. If he has no taxable income, the corporation is not required to withhold. The fact is when he goes to the bank with the coupons he does not know whether at the end of the year he is going to have a taxable income or not, so even if he has the capacity to fill out this form, which he has not ordinarily, he plays it safe and reports that he will have a taxable income, and then the corporation that has issued the bond from which those coupons are taken has to pay 2 percent. Ordinarily the bondholder who presents the coupon leaves it to the bank. All he does is to sign his name and the bank does the rest, and they do not even ask the one who presents the coupons whether he has a taxable income or not.

There are about 6,000,000 of these ownership certificates presented each year from about 2,000,000 bondholders scattered all over the United States. These ownership certificates are sent in to the corporations by the banks along with the coupons. When the corporation gets them it has to sort them and make up a complete detailed report, which it reports monthly to the Treasury.

The CHAIRMAN. In your opinion, if this suggestion were followed, would not the corporation rather than the individual bondholder receive the advantage?

Mr. DEY. The corporation would get a substantial advantage in two different ways. First, it would be rid of the nuisance which, as I say, costs a very large sum of money in the aggregate. It would no longer be required to pay the tax. That 2 percent, insofar as the bondholders are required to pay, would be shifted to them—those that have taxable incomes. To them would be shifted that burden, but it is extremely slight.

Take the Union Pacific. They made a check in 1931 of all of their outstanding bonds carrying this tax-free covenant clause. Sixty-four percent were owned by corporations, and of course they are not involved, because this withholding applies only to individuals, partnerships, and fiduciaries. Sixty-four percent of the Union Pacific interest was paid to corporations, so that is out of the picture. The

other remaining 36 percent was paid to 19,500 individuals, or paid for them. Of the 19,500, over 6,000, or almost exactly one third, had no taxable income, so they were out. Then came almost another one third of the 19,500 who had during the year on Union Pacific bonds of $100 or less, so that the burden that was shifted on the average to the individuals, to the second one third of the 19,500, was less than $2. Then there came an intermediate class, and finally we got down to the end, and there were only 588 out of the 19,500 that had an average burden shifted upon them of $20 or more, and those were people naturally of such wealth, because of the Union Pacific bonds alone they had to have an income of $1,000 in order to have $20 of the tax shifted to them, so that they were people who probably paid on the average at least $20,000 in income taxes, and there was shifted to that limited number of 588 out of the 19,500 bondholders an added burden of only $20 or more—among people, of course, to whom that amount of money was matter of no great importance.

Senator GEORGE. Why are these bonds issued with this covenant in them?

Mr. DEY. Before we had income-tax laws, prior to 1913—that is when they were issued. No railroad has issued any of them since. These issues we are talking about are rather old, but they have a great many years yet to run. They put in a clause or a covenant to the effect that the corporation issuing the bond would, if the Federal Government or a State or any municipality thereof should in the future require the corporation to pay a tax on the interest, that the corporation would then pay it. It was not a covenant that the corporation would pay on the bondholder's income in any event. There is no reason why the bondholder should not pay on his income, the same as every other person does. There is no reason why the corporation should pay it for them. So the covenant did not go, as many people commonly think, to an absolute agreement on the part of the railroad company to pay a part of the bondholder's income tax. The covenant did not become operative until the Government in 1913 passed the income-tax law and required the corporation to withhold.

What the corporation agreed to with the bondholder was this:

> You will get from me your full interest, and once I put it in your hands you pay the income tax on it, but if the Government should require me to pay directly to the Government instead of through you, then I will take care of that.

So it was the Government that really wrote this obligation into the bond, or, rather, made it become operative, by the act of Congress.

Now, we are asking you to do away with that and let the bondholder pay his tax on his own income.

Senator GEORGE. Is that on the theory that it would benefit the corporation in handling its bonds, by the insertion of this condition of the covenant or this provision?

Mr. DEY. I think that was the purpose of it; yes.

Senator GEORGE. I can see how it has become onerous.

Mr. DEY. The purpose of it was as between the corporation and the bondholder, to see that they received from the corporation—that is, the bondholer—the 4 or 4½ percent interest. It did not free the bondholder from being taxed through income taxes on his inter-

est at all, but it did protect him in getting the full amount from the corporation so that it could not withhold from him. But, as I say, we must not get the wrong impression about that covenant. In the absence of the law requiring the corporation to pay directly to the Government, the covenant would never have become operative. And, of course, there is no excuse at all in principle of withholding at the source on this one class of bonds and not on others. There are more bonds outstanding that do not have this clause than there are those that do have it.

In the case of the Southern Pacific Co., that 54 percent of our bonds do have this covenant in. They were issued prior to 1913.

These ownership certificates roll in to the corporation, and we have to have clerks and stenographers and all that sort of thing to sort them and to make up the form no. 1012, and here [indicating] for 1 year alone is the Southern Pacific Co.'s report that it makes monthly to the Treasury. I bring these here in order that you may see just what one corporation does and see the the amount of detail and typewriting that is done. The name of the corporation, the interest paid, the tax withheld, and so forth. And the name of every bondholder, his address, the amount of the interest paid, and the amount of the tax withheld.

Senator METCALF. How do you get the name of the bondholder?

Mr. DEY. On these certificates that come to us through the banks. I just wanted to bring it here so that you might see the thousands and thousands of dollars that are being wasted in administrative expense, and if you will save us that money, we will then pay to you, out of our increased earnings which result from that saving, $14.75 for every $100 that is saved. The Government will get that, and to that extent the revenues which the law contemplates shall be collected will be increased, and that will amount to a very substantial sum, when you take into consideration all of the corporations throughout the United States that have this class of bonds out.

The CHAIRMAN. How much does the Southern Pacific Co. deduct at the source annually?

Mr. DEY. Sixty-eight thousand dollars now, and then the administrative expense is a few thousand dollars on top of that. We will be relieved from that, it is true, but the burden that is shifted to the bondholders, as I said a few minutes ago, is practically nothing.

On the Union Pacific, let me repeat, for 1931, 64 percent of the bond interest was paid to corporations, which are not in the picture; 19,500 individual bondholders received the other 36 percent, and exactly almost one third of them had no income tax to pay, so they were out of the picture. And almost another one third of the bond interest of less than $100, and therefore had an individual burden of less than $2. Finally, you come down to the big bracket, and there were only 588 out of the 19,500 who had an average of $20 or more of burden that would be shifted to them under our proposal.

Let me read from a letter from the Treasury Department addressed to the Southern Pacific. When we went to them and tried to get them on their check-up to pay us back the money unlawfully collected because of the 16 percent of this $68,000 we pay every year which should not be paid, because the law does not contemplate it—the reason it is paid is because of the errors in these ownership cer-

tificates, where the man says, "I have a taxable income" when, as a matter of fact, he has not and will not have. Of course, we cannot tell at that time whether he is going to have one or not, and the banks play safe for their clients when they fill these things out.

I submit to you gentlemen—first, let me read this letter from the Treasury Department:

In this connection your attention is invited to some of the administrative problems confronting the Office in pursuing the policy requested by you. There are approximately 6,000,000 certificates, Forms 1000 and 1000-A, filed each calendar year for individuals residing in practically every locality of the country. These forms are executed by approximately 2,000,000 bondholders, resulting in numerous types of handwriting of varying degrees of legibility. Of these 2,000,000 bondholders a certain proportion change their addresses often from one collection district to another. The results are obvious; first, in the case of illegible certificates, precision in sorting is impossible, and in the second case, where address is changed, transmission of the certificates to the collection district where the return of the individual is filed cannot always be effected. The result of these two conditions makes a partially incomplete file of ownership certificates for many taxpayers. Were a voluntary refund attempted in such cases some of the debtor corporations involved would not receive the benefit of the proportion to which they were entitled.

They concede that they are collecting money that the law does not contemplate from all of the corporations, but they say that the administration difficulties are such that they cannot refund it. Now, they won't refund it even if we go out to the bondholder and get a statement from him, an amended certificate, unless he goes before a notary public and swears to it; and, of course, you cannot get your bondholders to do that. They are not going to pay even the notary fee. They pay no attention to you—they do not care.

Now, I want to submit this to you: Take these two Southern Pacific bonds. A week ago before I got into this question as the attorney for the Southern Pacific Co. I could not have correctly filled that form out, although these bonds are issued by the company I represent. I have handed these certificates to you already, and I submit—and I do not want to be considered impertinent when I say it—that there is not a man of this committee, notwithstanding all of your experience here in dealing with tax laws, that in an hour or for the rest of this day can sit down and—I will give you coupons from each of these bonds—and there is not one of you that can fill this little certificate out correctly unless you do it by accident.

The CHAIRMAN. We will concede your point on that. [Laughter.] Mr. Dey, you have had 15 minutes. Is there some other point you wish to discuss? The committee will take that up and consider your suggestion.

Mr. DEY. Well, of course, I have not gotten started on this thing, as I knew I would not when I began, but I want to call your attention to the amendment in the law as it now exists, made by the Ways and Means Committee of the House. As I say. the subcommittee recommended that we do what I am asking you to do. It went before the House committee, and never any full presentation of the question, I think, in the 20 years before the committees. We assumed that the main committee would do what the subcommittee recommended, but the main committee did this——

Senator COUZENS. Let us look at the record of that. We can do that.

The CHAIRMAN. I would suggest, Mr. Dey, because this is a rather important proposition, if you want to elaborate on anything which you have said, do it in the form of a brief and give it to the stenographer, and the committee will consider that proposition, because, as soon as we finish these hearings, we are going into executive session, and every one of these propositions is going to be considered very carefully.

Mr. DEY. I appreciate that. There are some things I could not put in the brief, such as this picture here, and that is really all I could hope to get before you.

INSTALLMENT BASIS

STATEMENT OF R. C. FULBRIGHT, WASHINGTON, D.C., REPRESENTING VARIOUS CLIENTS REGARDING SECTION 44, INSTALLMENT BASIS

Mr. FULBRIGHT. I represent several different classes of taxpayers here who are particularly interested in presenting just two matters to this committee.

One is a matter that has not been presented to either of the committees at all. I refer to the retroactive effect which comes out of the change which is made in section 117, dealing with capital gains in connection with section 44, which deals with installment obligations.

I have in mind this character of a situation of this character. For example, an office building is sold and installment obligations payable annually are taken, and those installment obligations that are yet unpaid, when they are paid or disposed of, they are under section 44, but taxed according to the current rate of tax. Ever since 1921 it has been the policy of the taxing authorities, and Congress, to fix a tax of 12½ percent on the capital gains and a deduction of 12½ percent on the losses. I shall not go into the history of that—you are familiar with it. You studied the British system at that time.

These concerns have been going ahead and making those sales of capital assets on the installment basis, and the installment basis has been permitted for quite a few years.

In your 1921 act you put section 212 (d) in, and made it retroactive, to legalize the practice that had already taken place in the Treasury Department.

Now, in the case such as I mention of the man who has gone ahead and sold this building and has yet unpaid installment obligations, may be taxed a much higher rate than 12½ percent. That would depend somewhat on his gross income. Now, in the provision that was originally suggested by the subcommittee over in the House, that would not have occurred in very many cases, because of the fact that it was graduated out over a period of years until it reached very low rates for the long period of time. The theory of it was to spread the gain over the period that the asset had been held. The principle was, I think, approved by the Secretary of the Treasury, but the exact modus operandi was not approved by him at that time, or any

suggestion. But what I wish to call attention to is a situation here that where a person has held an asset from 2 to 5 years and has disposed of it, and has these capital obligations, the installment obligations, if he has an income of $26,000, he would get the increase. If he has an income of $50,000, he would be taxed over 20 percent, reaching that rate on the capital asset; and even where they had been held 5 years, it runs over 20 percent, at $90,000.

The CHAIRMAN. It is your contention there ought to be another bracket in there? Is that it?

Mr. FULBRIGHT. That in a way would take care of it, if you put another bracket in. On the other hand, I have here a written proposal, which I will submit and not take the time of the committee, which would simply give to taxpayers in such cases the option as to those installment obligations which they had on hand on December 31, 1933, to pay the profit—not take a loss, but realize a profit—to return that income, based upon the face value of those securities, not upon any discount value or anything like that. In other words, you would give the taxpayer an option within a limited period of time, at the time of the effective date of this act on January 1, to pay his whole tax at this time based upon the full face value; and thereby the Government, of course, would get the tax now.

Now, here is the way this has been worked unjustly: In some cases these holders of these obligations have granted time to the debtors because of the depression conditions. The debtors were unable to pay. It would have been a hardship on them, or they might have had to be foreclosed or something like that, and where they have gone ahead and have extended time on it, and thereby helped the debtors to continue operations of their business—and I have a specific case just like that——

Senator REED. When you suggest payment, now, you mean at the 12½ percent?

Mr. FULBRIGHT. At the 12½ percent. I should have made that clear—pay now at the 12½ percent on the full face value, whether he ever collects them or not.

Senator GORE. That would relate mostly to real-estate installments, would it not?

Mr. FULBRIGHT. For the most part. The particular case that I had in mind was a case where an individual sold out an interest in a business in 1929. His basis of gain and loss relates back to 1913, and there is quite a substantial profit in there between 1913 and 1929, and yet the associates who bought him out have been unable to meet the payments from year to year and they have been deferred.

Senator GORE. Well, how would it do in that sort of company? I think it is a very strong statement, on the part of the taxpayer, that the tax would be paid if the collection had been made when it was due.

Mr. FULBRIGHT. That is what we are asking for exactly. The theory of the installment section, as you will recall, Senator Gore, is that the tax really became due when the sale was made and the notes were taken, but you are permitted to defer it under that section and pay on the tax as the installment obligations are paid or disposed of.

Senator CONNALLY. Mr. Fulbright, in other words, suppose a man is selling in 1929 with these deferred payments. Your proposal is

to let him settle them in the last taxable year, 1933, giving him an option of considering that a closed transaction and paying on all of the deferred installments at the rate of 12½ percent under the old law, rather than to drag those payments that have been deferred forward into this new act, when they would not have been under this new act otherwise?

Mr. FULBRIGHT. Precisely; and we are restricting that to cases where there is a profit; not a right to take a deduction and get out of taxes.

Senator CONNALLY. In other words, the Government would get the advantage of those lump-sum settlements just as though they had been made last year?

Mr. FULBRIGHT. That is correct.

The CHAIRMAN. All right.

Senator GORE. And these deferred payments were deferred out of leniency toward the debtor, although going forward under this bill, they get caught in these higher brackets. It that the idea—the higher taxes?

Mr. FULBRIGHT. Yes; because the way this operates, in the majority of cases the sale of capital assets, the rate will be reduced instead of increased, as I believe, under this bill, and it was not contemplated that it was going out to increase the taxes on past transactions.

Senator REED. Your case would be taken care of if we followed the recommendation of the House subcommittee and put in that other bracket.

Mr. FULBRIGHT. It would take care of a great part of it, Senator, I think.

The CHAIRMAN. What is the other proposition?

Senator CONNALLY. Mr. Fulbright, just before you pass from that, since the man made the contract under the existence of this law, and no doubt took into consideration the rate of tax that he was supposed to take, would it not be a distinct hardship, having settled on that basis, now to drag him forward into these new brackets, but would it not be fair for him to settle this thing rather as though it were a closed transaction?

Mr. FULBRIGHT. And I may say further that it was not the purpose of the House committee, as they point out, to increase the tax on any past transactions by reason of this, and yet this has just that effect. Now, the other proposition is a peculiar angle, the one angle of the personal holding companies' provision, section 102. I have not had an opportunity and will not have an opportunity to confer with the other gentlemen who are interested in that section. I represent a group of oil royalty companies, dealing in oil and gas royalties in the Southwest. In the Southwestern States all of the oil-producing States, that has the effect of constituting quite an industry. These companies are highly speculative in character. They have to maintain reserves. They have to reinvest their funds. They have to protect their investments, sometimes by offset sales, and in other ways. They cannot, as a practical matter, distribute their earnings as they get them. They are in a much similar situation to some of those rental companies, and I believe the real-estate people have petitioned you to leave rents out of that section. Now,

the companies that deal in oil and mineral royalties were in many cases companies where less than five families own a majority of the stock. There are usually 2 or 3 individuals that are the principal producers, or principal operators of those companies.

Senator CONNALLY. Disassociate those from the oil-producing companies. They are a different industry.

Mr. FULBRIGHT. Some of them have oil production, Senator.

Senator CONNALLY. Well, I know; but what I mean is they are not the big oil companies, as a rule.

Mr. FULBRIGHT. The big oil companies are engaged in exactly the same business, and when the big oil company goes into the market to buy an interest in a farmer's royalty—and which has been quite a relief to farmers in the Southwest in the past 4 years—that the big oil company is not hit by this penalty tax of 35 percent. It pays its 13¾ percent, or whatever the profit may be, but the small group of individuals that are in the same market buying and selling the same character of royalties will be penalized by more than a 40-percent tax under this definition, and I want to say this, I have had some limited practice before the Bureau of Internal Revenue for more than 20 years, since before they had the 1913 act, and I just want to call the attention of the committee to this fact, that ever since 1918 you have had a provision in the law to reach corporations that were availed of for the purpose of avoiding surtaxes. Now, originally in the 1918 act—may I have just a minute to give you a bit of history on that, because I think it is going to be very pertinent; there is going to be some other discussion here—I want to give you the history of it in the 1918 act. You incorporated a section, 220, which provided that, where a corporation was availed of for the purpose of avoiding a surtax on the part of its stockholders, the stockholders could be taxed as though it were a partnership, and on the distributive part of it, if it were distributed.

Now, that was passed in February 1919, the 1918 act, and at that time there was pending in the Supreme Court the case of *Eisner* v. *McCumber*, involving the right of Congress to enact a law which would tax stock dividends, and a great many people thought that that provision was unconstitutional, this provision, section 220.

In March 1920 that case was decided, and in it the Supreme Court pointed out that a stockholder had no right of property, as such, in the dividends of the undistributed accumulated surplus, rather of a corporation, whereupon we concluded—I think nearly everyone did—the text writers concluded that this section 220, in the 1918 act, was not constitutional. So far as I know, however, you put a penalty tax upon the corporation of 25 percent. The constitutionality of that tax was challenged, but it did not arise until along in 1927 or 1928, when the case went before the Board. There have only been 2 adjudicated cases under the 1921 act, and only 1 under the present law, which came in in 1924.

You have got ample authority now, because the courts last year have decided that those provisions were constitutional, and it was decided that this prima-facie presumption that you have put in in section 103 (and it is now in section 104) was lawful.

The Supreme Court denied a writ of certiorari in October. The road is clear for the Commissioner to go in and enforce the law, and

it should be enforced, and it will reach these companies, in all the cases where they accumulate those surpluses beyond the reasonable needs of the corporation.

Senator COUZENS. That is not the experience the Commissioner found in trying to enforce that. Enforcement of that act, in view of the argument of taxpayers, has been almost impossible.

Mr. FULBRIGHT. Senator, I do not think there has been a real effort made to enforce that act, if you want my opinion about it.

Senator GORE. You have to prove a purpose to evade the tax laws, do you not?

Senator CONNALLY. There is a presumption.

Mr. FULBRIGHT. No, sir. It is presumed in the law that where it is a holding company, or an investment company, or where the surplus is permitted to accumulate beyond the reasonable needs of the business, there is a prima-facie presumption that it is for the purpose of escaping the surtax, and the circuit court of appeals has upheld that, and the Supreme Court on October 9 denied a writ of certiorari in the case, so that is settled.

Now, in this section 102 there are all kinds of contingencies that might arise that would just automatically catch companies, not merely those who owe debts but you have cases of companies where their investments have so depreciated they cannot write them off for tax purposes, and to dispose of them, but their investments have so depreciated that the capital is impaired, and yet unless they went ahead and further impaired their capital by distributing their income, they might be penalized an extra 35 percent. I just wanted to call attention to the fact—and I have a written statement to submit here—that in the case of the oil royalty companies, the exception there, they did maintain an exception for dealers in securities and for banks, and so forth—would take care of the situation in the Southwest, but, after all, it is my opinion, and based upon a good many years of the observation of the administration of this law, that section 103 as now written is ample to take care of the situation, if the commissioners will enforce it, and I believe they will, since it has been upheld.

The CHAIRMAN. Thank you very much.

Senator CONNALLY. Mr. Fulbright, have you an amendment? Suppose the committee should determine not to retain that law, and wanted to make some change? Have you some amendment that would exempt that?

Mr. FULBRIGHT. May I file them?

The CHAIRMAN. You may file them. As I understand, you have a brief you want to file?

Mr. FULBRIGHT. Just a brief statement I want to file, to be made a part of my remarks.

(The statement referred to is as follows:)

PROPOSAL TO EXEMPT CORPORATIONS DEALING IN MINERAL ROYALTIES FROM THE OPERATION OF SECTION 102, H.R. 7835, WHICH IMPOSES A PENALTY TAX ON HOLDING COMPANIES

SUGGESTED AMENDMENT

It is suggested that section 102 (b) (1) be amended by excepting corporations realing in mineral royalties from the definition set forth therein. The present definition excepts banking and insurance corporations, and it is only

necessary to add corporations dealing in mineral royalties. The first three lines of section 102 (b) (1) read as follows:

"(1) The term "personal holding company" means any corporattion (other than a banking or insurance corporation) if"—It is proposed that the above portion of the section be amended to read as follows:

"(1) The term "personal holding company" means any corporation (other than a banking or insurance corporation or a corporation dealing in mineral royalties) if"—

STATEMENT IN SUPPORT OF AMENDMENT

Section 102 of H.R. 7835 would subject corporations which derive 80 percent or more of their gross income from royalties to a penalty tax of 35 percent, in addition to the regular corporation income taxes, in all cases where more than 50 percent of the voting stock is owned by not more than five individuals or five families.

In all of the oil-producing States of the West there has been developed quite an industry in recent years in connection with the handling of royalties on oil, gas, and other mineral properties. Many of the operating oil and gas corporations also buy and sell royalty interests in oil and gas leases and receive substantial income from royalties so purchased. Small groups of individuals have also formed royalty companies the sole business of which is to buy, own and sell royalty interests in such properties. Many of these companies are owned by a very small group of individuals. Sometimes one person will own the majority of the stock and will run the company while a few friends will hold the minority stock.

The development of the industry has been of very great benefit to the agricultural population in many sections of the Southwest during the present depression. Farmers who own lands in unproven oil territory will execute leases for a very small consideration. These leases will gravitate into the hands of operating oil companies. If any oil prospecting occurs in the general vicinity of such lands immediately there is developed a market for sales of royalty interests which have been retained by the farmers. The existence of the numerous royalty companies has developed keen competition for royalties in every section where any oil development occurs. The result is that the farmer will frequently sell half of his royalty for a substantial sum and retain the other half which would be sufficient to afford him a nice income in the event oil or other mineral is discovered in paying quantities upon the lands which he has leased.

The companies handling royalties exclusively are in competition with the operating oil companies which derive only a minor portion of their income from their investments in royalties. Perhaps the majority of instances of corporations which deal exclusively in royalties would come squarely within the definition of personal holding companies as set forth in section 102. Rapid and unforeseen developments in oil producing territories frequently make it necessary for such royalty companies to make additional investments or even to purchase and hold properties other than royalties to protect the interests which they have already acquired. No royalty company engaged in the handling of royalties as a business can afford to distribute its income in dividends as the income is received, nor would the deductions allowed under the proposed legislation be sufficient to permit such corporations to set up sufficient reserves to assure the successful continuance of the business. The only allowance proposed to take care of such contingencies is an arbitrary allowance of 10 percent of the adjusted net income which in most cases would be entirely inadequate.

The existence of such companies is not entirely confined to the oil industry in the Southwest. There are similar corporations which handle not only oil royalties but royalties of other mineral properties. Corporations of this character have been organized for the purpose of avoiding income taxes. The business in which they engage is highly speculative and hazardous and there are many good business reasons why such operations should be conducted by corporations rather than by copartnerships. Since these companies are in competition with the major oil companies, they would be placed in a position where they could not survive the competition. Unless the small companies can reinvest their earnings on the same basis as companies which conduct active operations the severe discrimination of the proposed tax law will simply put them out of business.

If legislation should be passed which would force such companies out of business, it would greatly impair the market, for oil royalties for the simple reason that under the era of cooperative action between the major oil companies, resulting from the development of industry codes, there will not be the competition for the purchase of royalty interests from the farmers which would exist if the small independent royalty companies continue in the market. It is the competition of these small independent and closely held royalty companies which has done more than anything else to provide an attractive market to the farmers for sales of undivided interests in their royalties throughout the Southwest.

In some cases the royalty companies have found it necessary to borrow substantial sums of money in order to protect their properties or conduct their operations. Since the corporations would get no credit under the proposed law for moneys paid on indebtedness previously incurred, they would have to earn approximately twice as much to liquidate their indebtedness because of the penalty features of this law under which more than 40 percent of their income would be taken as taxes, whereas their competitors engaged in the same business would be taxed at the rate of 13¾ cents. Section 103 of the proposed law contains ample provisions to protect the Government against loss of revenue from a misuse of oil-royalty companies as agencies to avoid taxation. The provisions of section 103 are very stringent and place the burden of proof upon the taxpayer. There is no question but what they can be adequately enforced, and in all cases where a royalty-holding company accumulates surplus beyond its needs it would be subjected to the penalty of a tax of 25 percent under section 103. Section 102 would force them to pay a penalty, even though they conducted active oil operations, unless the income from the oil operations was a substantial part of the total income. No matter what the requirements of their creditors might be or the necessities to protect their properties during the taxable year, they would, nevertheless, be characterized as personal holding companies under section 102 and subjected to heavy penalties. It seems unfair to pass legislation which automatically penalizes any enterprise which may have to utilize its income to pay off existing debt or to protect its existing property.

OUTLINE OF ARGUMENT OF PERSONAL HOLDING COMPANY LEGISLATION

(Hearing: History of legislation taxing corporate surplus)

Ever since the Revenue Act of 1818 we have had a provision in the law imposing additional taxes whether on stockholders or corporations where the latter are formed or availed of for the purpose of preventing the imposition of the surtax upon the stockholders or through the medium of permitting corporate gains and profits to accumulate instead of being distributed as dividends.

The first direct legislation on the subject was in section 220 of the 1918 act which was enacted February 24, 1919 (40 Stat. 1057). This provided that in such cases the stockholders should be subjected to the income taxes as though the profits had been distributed or in the same manner as in the case of partnerships. This section also provided that the fact that any corporation was a mere holding company or that the gains and profits were permitted to accumulate should be prima facie evidence of a purpose to escape the tax but it required that the Commissioner should first certify that the accumulation was unreasonable.

At the time this provision was enacted the case of *Eisner* v. *Macomber* was pending in the Supreme Court which case involved the constitutionality of the statute proposing to tax stock dividends of corporations. This case was decided March 8, 1920 (252 U.S. 189, 64 L. ed. 521) and it contained a number of expressions which led text writers and others to conclude that section 220 was unconstitutional. It will be observed that the section undertook to tax the stockholders on profits of the corporation whereas the Supreme Court held that the stockholders had no claim against the corporation as a going concern for any share of profits until the directors concluded that dividends should be paid and a part of the company's assets segregated for that purpose.

In order to remedy this situation and remove the doubt, Congress changed the provisions of section 220 in the Revenue Act of 1921, approved November 23, 1921, and fixed an additional tax of 25 percent upon the net income of the corporation in such cases but made a proviso that if all the stockholders should agree they could return their proportion of the income of the corporation in the

same manner as though it were a partnership and escape the penalty. It still required that the Commissioner issue a certificate that in his opinion the accumulation of the surplus was unreasonable for the purpose of the business in order to permit this finding to be admitted as prima facie evidence of the purpose to escape the tax. Apparently no cases arose under the 1918 act and there are only two reported cases involving the imposition of the tax under the 1921 Act. Neither of these cases were decided by the Federal courts until last year. The cases were:

R. C. Tway Coal Sales Co. v. *United States*, (3 Fed. Supp. 668, Western District of Kentucky, Jan. 7, 1933). This involved a question of fact and the court decided in favor of the taxpayer. The constitutionality of the statute was not discussed.

United Business Corporation of America v. *Commissioner*. The later case is the only one where the constitutionality of the statute appeared to be raised. While it involved the year 1921 the matter was pending in the Bureau until December 23, 1926, when the general counsel issued an opinion overruling the taxpayer's contention. The case was then carried to the Board of Tax Appeals and was not decided until April 30, 1930 (19 B.T.A. 809) and was appealed from there to the circuit court of appeals, where it was decided January 16, 1933, (62 F. (2d) 754). The court ruled that the statute was constitutional and on October 9, 1933, the Supreme Court denied a writ of certiorari.

In 1924 the law was enacted practically in its present form and the penalty made 50 percent and there has only been one reported case arising under this statute being the case of Williams Investment decided by the Court of Claims April 10, 1933 (3 Fed. Supp. 225).

So far as I have been able to ascertain the Commissioner during the period 1921 to 1933 prior to the decision in the Williams Investment case has not issued any regulations or instructions to revenue agents generally as to how they should investigate and as to how they should determine whether or not the corporations come within the provisions of this section of the act which is now carried as section 104. This may have been due in part to the fact that the constitutionality of the legislation was being questioned in the courts and in part to the exceedingly onerous penalty which imposed an additional tax of 50 percent upon the entire net income of the corporation even though a part of such income may have been distributed as dividends and without making any allowance for that part which had been paid to the Federal Government as taxes. In other words, it was strictly a piece of penal legislation and because of the drastic provisions and the belief of some that it was unconstitutional little effort was made to enforce it. The issue as to constitutionality of this character of legislation has now been settled and section 103 contains provisions which are certainly drastic enough and are unquestionably enforceable under the recent decisions.

PROPOSED AMENDMENT TO SECTION 44, H.R. 7835, TO ENABLE TAXPAYERS TO AVOID UNJUST INCREASES IN RATES OF TAX ON CAPITAL NET GAINS INCURRED IN CONNECTION WITH DISPOSITION OF INSTALLMENT OBLIGATIONS WHICH WERE ACQUIRED PRIOR TO JANUARY 1, 1934

Add to section 44, subdivision (e), as follows:

"(e) Any person holding on December 31, 1933, installment obligations received from the sale or other disposition of capital assets in accordance with the provisions of prior acts authorizing returns to be made on the installment plan, may in his original return or in an amended return filed within sixty days after the effective date of this Act report as income for his last taxable year beginning prior to January 1, 1934, the gross profit which would be realized by satisfaction at face value of all such installment obligations held by him."

STATEMENT IN SUPPORT OF PROPOSED AMENDMENT

It is the general purpose of H.R. 7835 to apply to the future and not to operate retroactively upon transactions occurring prior to 1934. Section 117 provides an entirely new method for taxing capital net gains and will operate prospectively. However, where taxpayers have heretofore sold capital assets on the installment plan and still hold unpaid installment obligations, this section will operate in some cases to increase materially the rate of taxes to be paid on capital transactions which took place under prior laws.

Beginning with the Revenue Act of 1921 taxpayers selling capital assets which had been held for more than 2 years have been permitted to pay income taxes upon the profits derived from such transactions at a flat rate of 12½ percent. Similar provisions have been carried in all subsequent revenue acts and there has been no agitation to make any material change therein.

In section 212 (d) of the Revenue Act of 1926, taxpayers were given the right to return their profits upon sales of capital assets made upon the installment basis, according to the year or years in which the installment obligations were paid or disposed of. This provision was made retroactive and has also been continued through all subsequent revenue acts. As a result of this settled policy of tax law many sales of capital assets were made where the assets had been held for longer than 2 years and installment obligations maturing over a series of years were taken in part payment therefor. The theory of the legislation as explained by its authors and as recognized in court decisions has been that while the taxpayer realized a profit at the time of the sale, nevertheless, he had been permitted to defer the payment of the taxes thereunder until the installment obligations were satisfied or disposed of. The present provisions of the law governing installment sales are embodied in section 44 of the Revenue Act of 1932. During the recent period of depression many of the holders of installment obligations, which had been given in part payment for capital assets, have permitted the makers of such obligations to postpone the maturity dates of such and have thus cooperated to prevent foreclosures and resulting business losses where the makers of such obligations were unable to meet the maturities.

In such cases taxpayers had little reason to believe that the fixed rate of 12½ percent upon the capital gains from such past transactions would be increased, nor does it appear that it was the purpose of the framers of the new rules under section 117 to increase the rate of tax on capital net gains growing out of transactions occurring prior to 1934. Section 117 provides for a sliding scale of percentages of gain or loss to be recognized upon the scale or exchange of capital assets depending upon the length of time for which the asset has been held. It provides that 40 percent of the gain or loss shall be recognized if the capital asset has been held for a period exceeding 5 years. As the bill is now drawn, a taxpayer having an income as great as $56,000 would be compelled to pay a sum somewhat in excess of this rate of 12½ percent on profits from sales of capital assets held more than 5 years. Persons having an income as great as $100,000 would have to pay a rate of 20 percent, and so on up.

A particularly hard case would arise where capital assets were sold and installment obligations taken during 1933. If the assets in question had been held only 2 years, then 60 percent of the gain would be recognized, and the rate would automatically be raised from 12½ percent to 30 percent in the case of persons having an income as great as $100,000. Of course, it is also true losses arising from such installment sales would be increased in the event they could be deducted from other gains.

The committee has recommended a change in the initial payment involved in sales of realty and casual sales of personalty by reducing it from 40 percent to 30 percent, but it is expressly provided that in case the sale or other disposition was in a taxable year beginning prior to January 1, 1934, the percentage of the selling price prescribed in the law applicable to such year shall apply.

It is respectfully suggested, therefore, that a similar policy should be followed as to the rates on the capital gain involved in installment obligations received in the sale or other disposition of capital assets in a taxable year beginning prior to January 1, 1934. This could be done by continuing the old rate of 12½ percent as to capital gain or loss in the case of satisfaction or disposition of such installment obligations under the terms of section 44 (d). It could also be done by permitting taxpayers holding such installment obligations to file an amended return for 1933 including all capital gains represented by installment obligations held by them on December 31, 1933.

Either of the above suggestions is justified by the general theory involved in the reporting of income on the installment method. This theory is that the income is in fact realized at the time of the sale, but that its postponement is permitted in view of the small amount of the initial payment and hardship which thus would arise in compelling an immediate payment of the entire tax. In the case of sales of capital assets the tax paid or due on gain from sales of capital assets prior to January 1, 1934, was 12½ percent. The indi-

vidual who was financially able to and was fortunate enough to elect to pay the entire tax at the time of the sale would have paid a tax of 12½ percent, whereas those unable to pay the entire tax and reporting income on the installment basis would pay amounts considerably in excess of 12½ percent. To place these individuals upon the same basis and to avoid the retroactive effect of the change in the capital gain section, insofar as it affects installment obligations, an amendment of the nature suggested above will be necessary.

A great many installment sales were undoubtedly made during 1929 with notes falling due in 1931 and 1932. With financial conditions being what they were, there was a general disposition to extend the maturity of these obligations so that in a great many cases the actual payment will now be made in 1934 or later years, and solely because of his leniency and desire to cooperate in extending financial assistance to debtors the holder of such obligations will be compelled to pay a very much higher rate of tax than if he had insisted upon payment upon the due date of his obligations. It is unfair to penalize such creditors in such fashion, and this is another reason for adopting the proposed change.

The equity of the principle urged here has also been recognized by Congress in connection with consolidated returns of corporations. Corporate groups filing a consolidated return once a year are required to follow the same practice in succeeding years, but if a material change is made in the regulations they are released from that obligation. That in effect is what is sought here, and it should in the interest of simple justice be granted.

Senator CONNALLY. Another question, Mr. Fulbright, regarding these royalty companies: Is it or is it not true that there are usually just 3 or 4 individuals who are more or less engaged in prospecting and taking hazards on buying leases and selling them again? Is it not a very hazardous business?

Mr. FULBRIGHT. Not only that, but in some cases there are numerous individuals who have small interests in those companies, who go out and take a half interest in a farmer's royalty.

Senator CONNALLY. That is what I mean.

Mr. FULBRIGHT. And he will take a small interest in the company. He becomes a part of it. He is a minor stockholder, and yet he is going to get soaked for 44 percent penalty tax.

Senator CONNALLY. Whereas the big oil company that has its productions on it would only pay 13¾?

Mr. FULBRIGHT. 13¾.

The CHAIRMAN. Thank you very much.

Senator GORE. Can you make a suggestion of an amendment to section 103 which might make it a little more effective and enforceable? You say it is inapplicable now, and that it has not been enforced.

Mr. FULBRIGHT. In section 103, as written. Now, under the bill, I think it avoids the hardship that was in old 104. Section 104 put a 50-percent tax on the total net income in addition to the tax they paid, even though a part of that income had been paid out as dividends. Now, the new section 103 has been corrected to provide a penalty tax of 25 percent, and it has been changed in a number of respects that I do not have time to discuss. In my opinion it is not so onerous as the old section 104, and it certainly, in the light of the court decisions in two cases, one by the Court of Claims and one by the Circuit Court of Appeals—I have forgotten which circuit—is constitutional and enforceable, and that presumption will be sustained in the courts. Now, when you put that presumption on the taxpayer, it then becomes the obligation of the taxpayer to prove that that surplus has not been accumulated or not necessary.

Senator GORE. I understand that, but you say it has not been enforced. That is the point you are driving at.

Mr. FULBRIGHT. I think probably because the constitutionality of the legislation was in question, for one thing, and another thing was that it was so onerous that they did not have the heart to enforce it.

Senator GORE. The law, you say, is 50 percent, and this new section 103 has just emerged in this bill; is that the point?

Mr. FULBRIGHT. Yes; 25 percent now, in addition to the 13¾ percent, of course.

CORPORATION RETURNS

STATEMENT OF J. C. SHUMBERGER, VICE PRESIDENT, CONTROLLERS' INSTITUTE OF AMERICA

The CHAIRMAN. Major Shumberger.

Senator CONNALLY. Mr. Chairman, is it the purpose to have a hearing on the gasoline tax? Some other gentleman asked me about that.

The CHAIRMAN. I think the committee feels that we should hear all of these gentlemen briefly on these various propositions. We were in hopes that the groups would select someone to present the matter briefly to the committee in order to save time. How much time do you want, Major Shumberger?

Senator BARKLEY. If the committee is going into hearings on all of these items, there are many groups of people in the country who would probably ask for hearings on the elimination of some form or other of taxation. We might consider that we will be here all summer.

The CHAIRMAN. There has been a request made by certain groups, as you will see on the calendar—there is not a great number—and I understand that for the most part they want to present briefs. Of course, the committee must consider whether or not they are going to take off or eliminate any of these taxes, but it seems that as many of these gentlemen are here from a distance, they should have the opportunity to present their brief with a short statement. It should not take any very great length of time.

Mr. SHUMBERGER. There is but one point to which the Controllers' Institute of America desires to call attention in its recommendations, and that pertains to the second signature on the Internal Revenue Report. My short statement will make this, I trust, very clear.

The Controllers' Institute of America recommends that section 52 of the Revenue Act of 1932 be amended so as to provide that a corporation return shall be sworn to by the president, vice president, or other principal officer, and by the controller or chief accounting officers.

The change suggested eliminates from section 32 of the act, which is incorporated practically verbatim in section 52 of the proposed House bill H.R. 7835, the affidavit of the treasurer or assistant treasurer and substitutes therefor that of the controller or chief ac-

counting officer, and it is recommended that section 52 be included in the new bill to read as follows:

SEC. 52. Corporation returns—(a) Requirement: Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice president, or other principal officer, and by the controller or chief accounting officer.

It is believed that this recommendation is constructive in that it will permit the Government to immediately contact the "inside man" of a corporation, who under present day conditions is responsible for the building of the accounts of the corporation in compliance with the internal revenue laws and regulations affecting income taxes.

It is the controller of a corporation who now prepares the corporation return, but it is the president, vice president, or other principal officer, and the treasurer or assistant treasurer who signs and swears to it. And it is in line with the present policy of the Treasury Department to place responsibility where it belongs to require that the officer who prepares a corporate return also sign and swear to it.

Under the suggested amendment, the return would be sworn to by the controller, if the corporation had one, by the treasurer as chief accounting officer, if he performed the duties of the principal accounting officer, or by such other officer as actually performed the duties of the chief accounting officer and prepared the return.

The original language of the law providing for the signature of corporation returns was based upon conditions that existed in the year 1913. Since then Government requirements have expanded and corporations have grown to enormous size in the United States, requiring in many instances a staff of accountants and auditors who are under one responsible head. This is the man who should be required to sign returns of income and this is the man who will be required to sign returns of income under the proposed change in the law as above suggested. There is submitted herewith as a supplement to this statement an article entitled "The Duties of a Controller as a Corporate Officer", which appeared in the American Bar Association Journal of January 1934.

Senator COUZENS. Is this controller appointed by the board of directors, the president, or other officer of the corporation?

Mr. SHUMBERGER. In the bylaws suggested herein, appointed by the board of directors.

Senator COUZENS. It would not be much effect if he is just an appointee of the president, and not an appointee of the board of directors.

Mr. SHUMBERGER. No. This article clearly sets out the duties of the modern controller, both in connection with the activities of the Federal Government as well as with modern business, and I ask that it be printed as a part of this statement.

The Controllers Institute of America is composed of more than 300 controllers of many of the largest corporations of the country representing varied industries. Such an amendment as proposed will be in keeping with the policy, expressed in many quarters, that the responsibility for the correctness and completeness of the income-

tax return to the United States be placed upon the proper corporate officials.

Attention is called to the requirements of the National Securities Act, enacted during the year 1933, which requires that the controller or principal accounting officer sign the registration statement filed with the application for permission to issue new securities.

Reference is also made to the requirement under the Interstate Commerce Act, as amended, that the annual reports to the Interstate Commerce Commission be first sworn to by the officer of the railroad company having control of its accounting, and then by its president or other chief officer. This annual report includes statements of revenue and expenses, income accounts, and so forth, the same character of statement as the income-tax return. Yet the income-tax return of the railroad company must now be sworn to by a different official.

In conclusion, it is submitted that the recommendation made by the Controllers Institute, if adopted will first, afford the responsible official or employee of the corporation, namely, the controller or chief accounting officer, the opportunity of signing and making affidavit to the income-tax return for which he is primarily responsible, and, second, it will afford a vital advantage to the Government in the audit of the income-tax returns of corporations and the investigation of the accounts from which such returns are made, and enable it to place its hand directly upon the person within the corporation who is responsible for the income-tax return and its contents.

The CHAIRMAN. Thank you very much.

Senator CONNALLY. You do not change the fact that the principal officer of the corporation should still sign it and swear to it.

Mr. SHUMBERGER. No. The first signature is for the president or principal officer. The second signature as it appears today requires——

Senator CONNALLY (interrupting). I know. You represented the controllers. Why do they want this added responsibility? To give a little more dignity to their office?

Mr. SHUMBERGER. No, sir. That may appear rather singular. I have been personally controller of the Lehigh Portland Cement Co. for 17 years. Fifteen years of that period—this was the largest cement manufacturing company in the world—I carried powers of attorney for all of this time to overcome this very thing. It has been tremendously embarrassing for me to go to my president and ask him to swear to a return which I personally was not permitted to sign.

Senator CONNALLY. Are you appointed by the board of directors?

Mr. SHUMBERGER. I am a director and vice president of the Controllers Institute.

Senator BARKLEY. That happens to be in your case, but in most cases that is not true.

Mr. SHUMBERGER. I am appointed by the board of directors.

Senator BARKLEY. All controllers do not happen to be vice presidents and directors.

Mr. SHUMBERGER. No.

Senator BARKLEY. They might not even be financially interested in the company.

Mr. SHUMBERGER. That is very true.

The CHAIRMAN. Thank you very much.

(The article submitted by Mr. Shumberger in connection with his statement is as follows:)

THE DUTIES OF A CONTROLLER AS A CORPORATE OFFICER

(By G. Kibby Munson, member of the District of Columbia Bar)

The importance of the controller in present-day American business management is instanced by the requirement in the Securities Act of 1933 that a registration certificate to be filed with the Federal Trade Commission before sale of securities must be signed by the issuer's "comptroller[1] or principal accounting officer" in addition to other of its principal officers. However, the lawyer who has tasks in connection with corporate activities will find little help from his usual sources in determining what should be defined as the controller's duties, for that corporate office and its duties are comparatively new, at least in the United States.

Even Bouvier's Law Dictionary, Rawle's third edition (1914, for example, makes no mention of the controller as a corporate officer, only that he is "an officer of a State, or of the United States, who has certain duties to perform in the regulation and management of the fiscal matters of the government under which he holds office."

The controller as an accounting officer in government has had a long existence, and the act first establishing the United States Treasury Department[2] created an auditor and a Comptroller as the accounting officers of the Treasury. The Comptroller General of the United States now exercises the powers and duties held by the Comptroller of the Treasury when the act of June 10, 1921 (c. 18, sec. 301-304, 42 Stat. 23-24, 31 U.S.C., sec. 41-44), abolished his office.

There is also the office of Comptroller of the Currency, in the Treasury Department, first established by the act of June 3, 1864 (c. 106, sec. 1, 13 Stat. 99), but the duties of these and other governmental accounting officers, Federal and State, are those that are specifically imposed upon them by constitutional or statutory provision. The prescribed duties meet the peculiar needs of government, however, and are not, as a rule, adapted to the requirements of business management.

During the World War a number of Government-owned private corporations were employed as Government instrumentalities. The control over the financial transactions of these private corporations, although undoubtedly influenced by governmental practice, was exercised "in accordance with commercial practice, by the board or the officer charged with the responsibilities of administration."[3]

Perhaps the most prominent of those war-time corporations was the United States Shipping Board Merchant Fleet Corporation,[4] incorporated under the laws of the District of Columbia.

This corporation, in its bylaws, provided for the election by the trustees of officers of the corporation, including a "General Comptroller."[5] The bylaws set out the duties of that officer, and those duties as they appear in the bylaws at the present time are as follows:

"SEC. 5. (*a*) The general comptroller shall be responsible for the formulation and administration of the general accounting policy of the corporation.

"(*b*) It shall be the duty of the general comptroller of the corporation to account to the president for all income and for all disbursements of the Merchant Fleet Corporation, as shown by the records of the comptroller's office.

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[1] There appears to be no uniformly accepted spelling, but "comptroller" seems to be more common in governmental use, and "controller" seems to be more common in business.

[2] Act Sept. 2, 1789, c. 12, 1 Stat. (superseded. See *United States* v. *Gilmore* (7 Wall. 491, 493, 19 L.ed. 282).

[3] *United States ex rel. Skinner & Eddy Corporation* v. *McCarl* (275 U.S. 1, 7, 72 L.ed. 131, 135).

[4] Originally United States Shipping Board Emergency Fleet Corporation, which was organized on Apr. 16, 1917, pursuant to specific authority conferred by the original Shipping Board Act, Sept. 7, 1916, ch. 451, sec. 11, 39 Stat. 728, 731, 46 U.S.C. 810.

[5] The set-up of the General Comptroller's office is to be found in "The United States Shipping Board, Service Monographs, U.S.Gov't. no. 63", by Darrell Hevenor Smith and Paul V. Betters, pp. 151-157, published by The Brookings Institution.

"(*c*) The general comptroller shall be responsible to the president for the bookkeeping and accounting methods, and for the proper recording of the assets, the liabilities, the income, and expenditures of the corporation.

"(*d*) The general comptroller shall be responsible for the certification and approval of the receipts and disbursements.

"(*e*) The general comptroller shall render to the president currently a balance sheet and income and profit and loss statement reflecting the condition of the Merchant Fleet Corporation, and currently such other statistical information as may be required.

"(*f*) Reports and information required from time to time having to do with the accounting of the United States Shipping Board Merchant Fleet Corporation shall be supplied by the general comptroller to the president. The general comptroller, with the treasurer, shall compile for the annual report a statement to reflect the accounts and finances of the United States Shipping Board Merchant Fleet Corporation.

"(*g*) The general comptroller is authorized to delegate signatory power to a deputy or deputies, or to such other assistants as he may from time to time find necessary to do, and shall file with the secretary of the corporation a copy of all such authorizations which shall by him be reported to the board of trustees."

The duties of the general comptroller were formulated back during the war and remain substantially as they were first adopted. Subsequent events, however, have led to the imposition upon that officer of additional duties not included in the bylaws. For example, when the bylaws were drawn the Federal Government had no Director of the Budget, and perhaps that accounts for the lack of provision in the bylaws for the preparation of an annual budget. Since that time, however, the general comptroller and the treasurer have served as the budget committee for the Merchant Fleet Corporation.

Another duty that is now of considerable importance has grown out of the recent depression. Shipping companies were heavily indebted to the Merchant Fleet Corporation and the United States Shipping Board under purchase and construction loan agreements, and as the depression deepened many were unable to meet their obligations. The Comptroller General of the United States soon began to apply the principle of set-off by withholding money due for transporting the mails. As this had the effect, however, of quickly forcing a complete default, and in some cases the probable extinction of the debtor, a compromise was effected whereby these shipping company debtors gave over control of their finances to the Merchant Fleet Corporation and the United States Shipping Board as creditors in return for continued payment of compensation for carrying the mails. This made it necessary for the Fleet Corporation's general comptroller to perform continuous audit of the affairs of the various shipping company debtors as the basis for the Government's exercise of general control and supervision of their finances. The auditors assigned to this work found an entire lack of uniformity in accounting practice among these companies, and they have been for some time engaged in putting modern uniform systems of accounting especially adapted for ocean transportation in several of those companies.

The authority given the general comptroller to delegate signatory power to a deputy or deputies, while still in the bylaws, is no longer used. For a time, under this provision, one deputy had entire charge of all the accounting for large sums of money spent in connection with ship construction, another in connection with housing, and so on. Each had the full signatory power of the general comptroller in his own field without any coordination of their activities. This proved very unsatisfactory in practice and in 1921 or 1922 these powers were revested in the general comptroller and the offices of the deputies were abolished. Today the general comptroller has assistants, who can act for him in his absence, but their duties are to assist him in the centralized control of all the accounting of the Corporation.

The recently created Tennessee Valley Authority,[6] another Government-owned private corporation, has not yet adopted its bylaws, but its directors early recognized the need for a controller as a separate and distinct officer of the corporation, and he was one of the first officers to be selected. The drafting of that corporation's bylaws is under consideration at the time of writing, and the experience of the Merchant Fleet Corporation and of other Government-

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[6] Tennessee Valley Authority Act of 1933, May 8, 1933, c. – –, 48 Stat.

owned corporations is being studied so that the studies of its various officers may be so carefully stated as to fully provide for the proper carrying on of its activities. It has been rather definitely determined, however, that the controller will be directly responsible to the board of directors, and that he will have charge of all accounting, auditing, finance, and budget-control work. Under this arrangement he will have reporting to him one or more executive accountants, a chief auditor, a treasurer, and a budget supervisor. The provision that the treasurer should be subordinate to the controller is an unusual one, and it is just another example of the diversity of responsibility that may be the controller's.

As a result of the unstandardized and widely divergent thought and practice, confusion has prevailed with respect to the duties, responsibilities, authority, and rank of the controller.[7] To remedy this situation the Controllers Institute of America, an organization composed of controllers of corporations, has made a survey of corporate practices and has this summer recommended the use in corporate organizations of certain forms of bylaws covering the duties of a controller. To quote from the recommendation of the Controllers Institute:

"Developments during the past few years, when many corporations have been subjected to close scrutiny and some to severe criticism, have conclusively proved that the old-time conception of some heads of corporations that a controller is merely a needless luxury is a thing of the past.

"On the contrary, the Controllers Institute is firmly of the opinion that the greater latitude allowed and powers granted to a controller of the right type, the greater will be his contribution to successful and profitable management. To this end, the Controllers Institute believes that the controller should be elected by the board of directors and attend its meetings as well as those of the executive committee, if any; if not as a member, at least in an ex-officio capacity.

"The institute further believes that it is desirable to define the duties of the controller in the bylaws of corporations with some degree of detail, possibly even to a greater extent than in the case of other officers whose duties may have become more generally recognized from long-established custom. By doing so, the danger of overlapping responsibilities as between the controller and other officers or possible neglect of important corporate activities due to failure to properly assign the duties will be greatly lessened."

Those recommended forms, while primarily intended to cover the duties of the controller of a manufacturing company, its advocates assert, can, with some slight modifications, be readily adapted to a wide variety of corporations, associations, or other types of organizations. After first recommending the inclusion of the controller as an elective officer, it is urged that where there is a provision that one person be permitted to hold two or more offices, that provision should not apply with respect to the offices of controller and treasurer, which should be kept separate.

The forms covering the duties of the controller are commended by the Controllers Institute to the attention of the lawyers engaged in drafting or revising corporate bylaws as follows:

"SHORT FORM

"The duties of the controller shall be to maintain adequate records of all assets, liabilities, and transactions of this corporation; to see that adequate audits thereof are currently and regularly made; and in conjunction with other officers and department heads, to initiate and enforce measures and procedures whereby the business of this corporation shall be conducted with the maximum safety, efficiency, and economy. He shall attend all meetings of the board of directors and of the executive committee, and he shall report to the president and/or the board of directors as said board of directors may prescribe. His duties and powers shall extend to all subsidiary corporations, and so far as the president may deem practicable, to all affiliated corporations.

[7] See Corporation Treasurer's and Controller's Guide, by William H. Crow (Prentice-Hall, Inc.), ch. I, History, Nature, and Scope of Offices, and ch. III, Classification of Duties.

"DETAILED FORM

"(Statement of specific duties to be set forth in a bylaw when it is desired to set forth the controller's duties in detail. [Any one or more may be included as occasion requires.])

"The controller is specifically charged with the following duties:

"1. The installation and supervision of all accounting records of the corporation.

"2. The preparation and interpretation of the financial statements and reports of the corporation.

"3. The continuous audit of all accounts and records of the corporation whenever located.

"4. The compilation of production costs.

"5. The compilation of costs of distribution.

"6. The taking and costing of all physical inventories.

"7. The preparation and filing of tax returns and the supervision of all matters relating to taxes.

"8. The preparation and interpretation of all statistical records and reports of the corporation.

"9. The preparation, as budget director, in conjunction with other officers and department heads, of an annual budget covering all activities of the corporation, for submission to the board of directors prior to the beginning of the fiscal year. The authority of the controller, with respect to the veto or commitments or expenditures not authorized by the budget, shall from time to time be fixed by the board of directors.

"10. To ascertain currently that the properties of the corporation are properly and adequately insured.

"11. The initiation, preparation, and issuance of standard practices relating to all accounting matters and procedures and the coordination of systems throughout the Corporation, including clerical and office methods, records, reports, and procedures.

"12. The maintenance of adequate records of authorized appropriations and the determination that all sums expended pursuant thereto are accounted for.

"13. To ascertain currently that financial transactions covered by minutes of the board of directors and/or the executive committee are properly executed and recorded.

"14. To maintain adequate records of all contracts and leases.

"15. To approve for payment (and/or countersign) all checks, promissory notes, and other negotiable instruments of the Corporation which have been signed by the treasurer or such other officers as shall have been authorized by the bylaws of the corporation or from time to time designated by the board of directors.

"16. The examination of all warrants for the withdrawal of securities from the vaults of the Corporation and the determination that such withdrawals are made in conformity with the bylaws and/or regulations established from time to time by the board of directors."

It remains for the future what the further developments in this field will be. The lawyer in corporate practice may very well find other or different ways of applying desirable principles in making sure that corporations know at the time that the right thing is being done instead of relying on the old-fashioned practice of only having an auditor report afterward whether it was correctly done.

TAX ON PERSONAL HOLDING COMPANIES

STATEMENT BY HARRY J. GERRITY, REPRESENTING THE NATIONAL ASSOCIATION OF BUILDING OWNERS AND MANAGERS

The CHAIRMAN. Now, gentlemen representing the personal holding companies; is there someone who can represent that group?

Mr. GERRITY. Mr. Chairman, I represent the real-estate interests, the National Association of Building Owners and Managers. Mr.

Sidney B. Moskovitz represents the New York group. I would only like a few minutes. Mr. Moskovitz will only take a few minutes.

Senator WALCOTT. On what section is that?

Mr. GERRITY. Section 102.

The CHAIRMAN. Do I understand that you want an amendment in here that will take care of some of these obligations that are maturing, and so forth, on mortgages?

Mr. GERRITY. Yes, sir.

The CHAIRMAN. I might say for your information that the committee has considered that quite at length, and we are considering the proposition now. If you can file a brief on that, it would be very well.

Mr. GERRITY. I would be very glad to, and I would like to file this statement on behalf of the National Association of Building Owners and Managers.

The CHAIRMAN. Very well.

(The statement referred to is as follows:)

BRIEF OF HARRY J. GERRITY, REPRESENTING THE NATIONAL ASSOCIATION OF BUILDING OWNERS AND MANAGERS

We are opposed to the provisions of section 102 of the bill H.R. 7835, as passed by the House on February 21.

This section imposes an additional income tax of 35 percent upon so-called "personal holding companies", for 1934 and succeeding taxable years.

This is not a new proposal. The House passed a similar tax provision back in 1928. It was rejected by this committee after it had aroused a storm of protest. Your committee restored section 104 as it exists in the present law.

But section 102 is even more drastic than the amendment which passed the House in 1928. The rate of tax then proposed was 25 percent, now it is 35 percent.

Besides, the rejected 1928 proposal levied the 25 percent additional tax only in the event the undistributed profits exceeded 30 percent of the net income; while the provisions of section 102 allows an exemption of only 10 percent for contingencies.

The present provision would work an injustice to real-estate corporations which are engaged in the active business of operating and managing office and apartment house buildings.

The National Association of Building Owners and Managers represents through its membership approximately $6,000,000,000 of present-day values in real estate. We have local associations in 42 cities throughout the United States and associate members in 90 additional cities. We represent the owners of all the large office buildings and apartment houses in the major cities of the country.

We have no objection to the law as it stands today. But at least a majority of all large commercial buildings are owned by corporations, and they would come under the definition of a "personal holding company" as contained in section 102, because all of the income is in the form of "rents", and the stock in a great many is held by five persons or less.

These are "operating" companies, engaged in a legitimate business, and they are not "holding companies" in the ordinary sense. We do not feel that they should be penalized by this additional tax, or forced to change their present method of conducting business in order to escape it.

Office-building corporations are no different from other business corporations whose stock is closely held, and whose income is derived from manufacturing or trading, for example. The income is in the form of "rent", and that is what brings them under section 102. When it is realized that building-owning companies must, in many instances, use all of their available earnings toward the amortization of mortgages, or toward providing sinking funds to meet mortgage maturities, and for reconditioning, replacements, and other unusual but essential purposes, it is clear that the inflexible provisions of section 102 are singularly harsh in their application to corporations owning and operating buildings.

The prudent office-building corporation must retain part of its annual net income, if any, for replacements, betterments, or new installations. These expenditures are nondeductible under section 24 (a) (2) and (3). Because buildings are long-lived assets the annual depreciation rate is low, so that the depreciation reserve is not sufficient in amount or otherwise available for contingencies. Whilst section 102 does allow 10 percent of the adjusted net income as exempt from the 35 percent additional tax, even this added to the depreciation allowance, is not sufficient to cover the sinking-fund requirements for amortization of the mortgage, or to take care of improvements or remodeling. There are other items, such as special-assessment or local-benefits taxes, which are not deductible from net income, but which must be paid out of the 10 percent for contingencies.

The House report (H.Rept. 704), which accompanied the bill, states (p. 12) in part:

"Thus a corporation which falls within this section because of the nature of its business and the number of its stockholders can always escape this tax by distributing to its stockholders at least 90 percent of its adjusted net income."

Assuming an office-building corporation falling under section 102, with net income of $100,000 for 1934 solely from rentals, with no losses from sales or exchanges of capital assets, or contributions or gifts, and no dividends paid the tax computation under section 102 would be somewhat as follows:

Net income from rents	$100,000.00
Less income tax at 13¾ percent	13,750.00
Adjusted net income	86,250.00
Less 10 percent for contingencies	8,625.00
Undistributed adjusted net income (90 percent)	77,625.00
Tax at 35 percent under section 102	27,168.75
Balance	50,456.25

The total taxes would be $40,918.75, $13,750 corporation income tax and $27,168.75 personal holding-company tax. This is over 40 percent of the net income and leaves only $59,081.25 of current statutory net income, out of which would have to be paid special benefit taxes, costs of additions or betterments, and other capital expenses, not deductible in computing the net income, and, most important of all, the setting aside of amounts required to pay off the mortgage on the building. This 59 percent is not sufficient, we believe, because in past years there have been large deficits, and if there is income earned this year or in 1935, a large part of it is required to meet the mortgage amortization for past years, and could not possibly be paid out in dividends if the ownership of the property is to be preserved and protected.

Our statistics show that more capital is required to be invested in office buildings in proportion to the net return than in any other business or industry. The ratio is about 10 to 1—that is, for every $10 invested there is an annual return of about $1 in income. The January vacancy survey shows 27.57 percent vacancy in 1,900 buildings in 35 cities in the United States. Somewhat between 20 and 30 cents out of every dollar of rent income is paid out in State and local taxes.

No office buildings or other real-estate corporation could distribute 90 percent of the adjusted net income in order to escape this tax, as suggested in the House report. That would be ruinous, even if it were possible to do it. Such a declaring of dividends is impossible for the reasons which we stated. And even in the case of such a corporation which has no mortgage indebtedness, we do not feel that a reasonable accumulation of earnings or profits to meet the needs of the business should be subject to a penalty in the form of this additional income tax. These corporations are not, and never have been, regarded as holding corporations in any real sense. If they are at any time availed of to prevent the imposition of surtaxes upon their stockholders, they can readily be reached under section 104 of the present law and under section 103 of the pending bill. There is no need to include them under section 102, and it would be inequitable and unwise to attempt to do so. The conservatively managed real-estate corporation would be penalized by this proposed tax.

We do not pretend to pass upon the merits or necessity of section 102, or its desirability for plugging up the so-called "loopholes" in the existing law. All we do say is that, in our judgment, Congress should not include within its

scope those actively operated and well-recognized forms of conducting business such as real-estate corporations, which own or operate or manage office and apartment-house buildings. Section 102 expressly exempts banking or insurance corporations. We recommend that real-estate corporations also be specifically exempted in the definition of what constitutes a so-called "personal holding company." I thank you.

Mr. GERRITY. I would like to make one other suggestion, if I may, that is not in my statement. I would recommend the elimination of section 145, which is the tax withheld at the source on tax-free covenant bonds. I think it might be eliminated from this law in the interest of simplification. The Government would not lose any revenue as a result.

The CHAIRMAN. Thank you very much.

Mr. GERRITY. Thank you.

The CHAIRMAN. Mr. Moskovitz.

STATEMENT OF SIDNEY B. MOSKOVITZ, OF NEW YORK, REPRESENTING THE NEW YORK REAL ESTATE BOARD AND FORTY-SECOND STREET ASSOCIATION

Mr. MOSKOVITZ. Mr. Chairman, I represent the New York Real Estate Board and the Forty-second Street Association. I do not know whether you want to hear me at length on the effects of the inclusion of the word "rents" in this proposed section 102.

The CHAIRMAN. I suggest to you that you put the brief in the record, because it is one of the things the committee is considering.

Mr. MOSKOVITZ. And I also have certain specific amendments to the section in my brief.

The CHAIRMAN. Yes, sir; we will be very glad to get it.

Mr. MOSKOVITZ. I will submit one brief on behalf of the Forty-second Street Association and another brief on behalf of the real-estate board.

The CHAIRMAN. Thank you very much.

MEMORANDUM ON BEHALF OF THE FORTY-SECOND STREET ASSOCIATION SUGGESTING AMENDMENTS TO SECTION 102 OF THE PROPOSED REVENUE BILL OF 1934 NOW UNDER CONSIDERATION BY THE COMMITTEE ON FINANCE OF THE SENATE OF THE UNITED STATES

I appear on behalf of the Forty-second Street Association, which is composed of the owners of property on Forty-second Street in New York City.

The complaint of those upon whose behalf I appear here is directed to that portion of section 102 of the proposed revenue bill of 1934 which proceeds to define a personal holding company as "a corporation in which at least 80 percent of its gross income for the taxable year is derived from rents, royalties, dividends, interest, annuities, and gains from the sale of stock or securities.

It is clear from the report of the Committee on Ways and Means of the House of Representatives dated February 12, 1934 (H. Rept. 704, p. 11), that the sole purpose of section 102 is not particularly to provide increased revenue for the Government but to make it extremely unprofitable, and in fact prohibitive, for persons with large incomes to transfer their personal holdings in stocks, bonds, or income-producing property to corporations which do not distribute the income, and thus permit the said persons to avoid the payment of surtaxes.

If section 102 applied only to cases of tax avoidance through the "incorporated pocketbook", we believe there would be no legitimate objection to it. But the bill in its present form brings within its provisions great numbers of corporations formed and maintained for the ordinary conduct of proper business enterprises, without regard to any purpose of avoiding surtaxes upon

its stockholders, to which we submit this bill was never intended to apply. This is particularly true of corporations actively engaged in the real-estate business.

The use of the word "rents" in the definition of a personal holding company will serve to bring within clause A of subdivision b of section 102 practically all of the real-estate corporations of the country which are deriving income from operation of their properties either through ownership in fee or ownership through a leasehold. Probably a majority of the real-estate corporations of the country are so owned by individuals or families that they would come within clause B of subdivision b of section 102. Corporate organization for the purpose of operating and managing real property is necessary in order to avoid many of the complications which would occur under real property law were the title of the properties taken and held by individual natural persons.

It is clear from the nature of the income specified in subdivision A that the income sought to be made applicable to the payment of surtaxes is unearned income, such as dividends, interest, annuities, etc. Of course rents may at times be classified as unearned income as is the case of an owner of a very valuable parcel of land who has leased it for a long term on a net rental basis: that is, the lessee pays all the taxes, interest, carrying charges, etc., in addition to a large ground rent which represents pure profit to the owner. But to the ordinary corporation, which owns and operates real estate upon the basis of a fee or a leasehold estate, rents represent earned income and, according to the testimony of experienced real-estate men, hard-earned income, particularly in these times. Income received from ownership and active operation of real estate is earned income just as much as the receipts of an incorporated department store or an incorporated manufacturing plant. The operation of real estate today requires close personal attention together with an investment of a large amount of capital; and we do not believe it was the intention of the framers of section 102 to discriminate against corporations which own and operate real estate in favor of other businesses in corporate form which require no more effort, ingenuity, work, or capital from their participants than real-estate corporations.

To avoid a prohibitive tax upon the legitimate operations of bona-fide real-estate corporations engaged principally in operating real estate for themselves upon the basis of a fee or a leasehold ownership, but to properly tax those persons who transferred and will transfer their real estate to corporations for the purpose of avoiding surtaxes, we suggest that section 102 be amended by inserting in clause b, subdivision 1, at page 54, lines 8 and 9, after the words "or a corporation whose principal business consists of owning and operating a building or buildings or leasing and operating a building or buildings."

Not only does th einclusion of "rents" in clause A of subdivision (b) result in the unjustified discrimination against corporate real-estate organizations, but section 102 itself, if left unamended, as a practical matter, will destroy and force into receivership those real-estate corporations which are required to amortize mortgages upon their property or meet sinking-fund requirements by retiring bonds which they may have issued or repay substantial loans.

It will be argued, no doubt, by the proponents of section 102 that it would be a simple matter for any corporation which might fall within the classification of a personal holding company as defined by section 102, to escape this tax by distributing to its stockholders at least 90 percent of its adjusted net income. This argument, however, ignores certain important factors in the operation of an ordinary active real-estate corporation. Many corporations normally have annual sinking funds requirements or are required to amortize their mortgages or repay large loans. These payments take precedence over distributions to stockholders so that the corporation which is faced with making such payments is left without funds to distribute to its stockholders even though it may show some net income on its tax return.

Amortization of mortgages, sinking-fund requirements, and repayment of loans, of course, are not deductible in arriving at net income of the corporation owning or leasing the particular property.

Thus a corporation which heretofore has been able to meet sinking-fund requirements or amortize its mortgage now being compelled to pay an additional 35 percent tax upon its adjusted net income will have no other recourse but to default upon its obligations and face the usual drastic effects of foreclosure. As a matter of fact, there will be a premium upon bondholders to take over the operations of the parcel of property upon which bonds have been issued.

in order to avoid payment of the prohibitive tax of 35 percent upon undistributed net income. Likewise, if a real-estate corporation had made a legitimate loan from a bank in the sum of $100,000 for example, it would be necessary for the corporation to earn approximately $160,000 in order to pay this loan.

Recent years have been most serious and disastrous for the real-estate business. Great losses have accumulated. Corporation after corporation finds itself with a large impairment of its capital. In some cases there is even shown a complete loss of stockholders' equity and impairment of principal of bonds, yet bondholders have often been disposed to remain quiescent in the hope of improvement through which bond values might again be restored. Such corporations cannot pay future earnings as dividends but must apply them to make a good impairment of capital. In many cases such corporations must take all expected earnings for several years in order to pay past-due real-estate tax liabilities. In other cases such earnings must go to meet liabilities to bondholders.

In addition, another feature which serves to impair dividend-paying ability of a real-estate corporation, even though it may show taxable income, is the fact that it may at any time be subjected to improvement assessments by the local authorities. Such assessments are not deductible in computing taxable income, yet they take the funds which otherwise might be available for dividends.

Likewise, accounts receivable may be classed as accrual for computing taxable income but are not cash available for distribution to stockholders. Here again a corporation might be penalized because it was unable to make dividend distribution.

Real estate, as everyone knows, has been taxed and is being taxed by all local authorities to the hilt and there is no question that the average real-estate corporation is barely able to survive, if it survives at all, under the heavy burden of local taxation.

The arbitrary imposition of a 35-percent tax, in addition to the 13¾-percent normal Federal tax will undoubtedly make it impossible for real-estate corporations to survive under such a burden.

In order to avoid the extinction of real-estate corporations and to provide a method whereby legitimate debts of a corporation may be repaid without the corporation's being subject to a prohibitive tax of 35 percent upon such repayment, we suggest that a new paragraph to section 102 (b) (3), page 56, lines 10 and 11, be added as follows:

"(g) Amounts required for amortization of mortgages existing January 1, 1934, or replacements thereof or substitutions therefor, on real property or leasehold estates therein, and for payment of any other bona fide indebtedness theretofore or thereafter incurred for carrying charges or in operating real property or leasehold estates therein."

If the committee feels, however, that broader language is preferable in amending this section to correct the present omissions in the bill, we suggest tht addition of the following paragraph to section 102 (b) (3), page 56, after "(g)" above, as follows:

"(h) Such sums are properly set aside or appropriated to meet the reasonable needs of the business."

SIDNEY B. MOSKOVITZ.

MEMORANDUM PREPARED ON BEHALF OF THE REAL ESTATE BOARD OF NEW YORK, INC., SUGGESTING AMENDMENTS TO SECTION 102 OF AN ACT TO PROVIDE REVENUE, EQUALIZED TAXATION, AND FOR OTHER PURPOSES (H.R. 7835) NOW UNDER CONSIDERATION BY THE COMMITTEE ON FINANCE OF THE SENATE OF THE UNITED STATES

Section 102 as now drawn imposing a tax on personal holding companies would seriously affect, and to a large extent destroy, the legitimate operations of bona fide real-estate corporations engaged wholly or principally in buying, selling, and hold real estate for the corporation itself. Such corporations in the State of New York are many and are, in almost all cases, owned and controlled by one or two, or three individual operators and investors. Corporate organization, as the holder and manager of real property, is necessary to avoid many of the complication which would occur under real property law, were the title to the properties taken and held by individual natural persons.

These real property holding companies of necessity are compelled by proper financing and ordinary business prudence to accumulate, out of their income,

large sums against the day when a mortization must be paid on mortgage indebtedness or mortgage indebtedness must be fully paid off or refinanced. This income cannot safely or prudently be distributed year by year to the stockholders as dividends. Many of these companies have, in recent years, suffered great capital losses, so that their balance sheets now show substantial deficits and impairment of capital. Under such circumstances, no dividends can be declared out of current income until such deficits and capital impairment are made up. Lastly, many of these companies are financed by moneys loaned to them on short-term notes or open book accounts, which moneys must be returned promptly out of income.

Section 102, as now written, would impose an additional tax of 35 percent upon all the income of these real-estate corporations (except 10 percent thereof) legitimately, properly, and necessarily accumulated for the purposes aforesaid.

To obviate this gross injustice to such corporations, and without in any way impairing the purpose which we believe Congress had in mind in suggesting section 102, we respectfully submit and ask for the following amendments:

Between lines 10 and 11 on page 56 of the said printed bill we suggest adding to subdivision 3 of section 102 the following paragraph, to be designated paragraph "G":

"G. Such sums are properly set aside or appropriated to meet the reasonable needs of the business."

Amend the parenthesis in lines 8 and 9 on page 54, found at the beginning of subdivision 1 of subparagraph (b), known as "definitions", so that the said parenthesis will read as follows:

"(Other than a banking or insurance corporation, or a corporation wholly or principally engaged in the purchase and sale of, and holding title to, or leasing real estate for itself.)"

Respectfully submitted.

REAL ESTATE BOARD OF NEW YORK,
G. ALLEN,
Vice Chairman of the Internal Revenue Act Committee of Said Board, and by Direction of Said Committee.

STATEMENT OF F. G. AUSTIN, OF THE WHITNEY REALTY CO., DETROIT, MICH.

Mr. AUSTIN. Mr. Chairman, I am barred from making any statement whatsoever, as Mr. Gerrity yesterday was heard on the same subject that I wanted to talk on, although I wanted to talk about my own company in particular. I am not a lawyer, but just a plain ordinary business man.

Senator KING. You wish to speak in connection with what provision?

Mr. AUSTIN. In connection with section 102. Our company, the Whitney Realty Co., plainly was not organized to evade taxation, although it is owned by a family. It was incorporated in 1904, and we have been operating ever since 1904. Our largest dividends were not paid until after 1915. We have been building it up.

Senator KING. We did not get the business.

Mr. AUSTIN. Real-estate investments.

Senator KING. Oh, yes—in Detroit?

Mr. AUSTIN. In Detroit; yes, sir.

The CHAIRMAN. What you wanted was some provision there that might take care of these obligations as they come?

Mr. AUSTIN. Well, I do not see how we can progress by paying all of our money out into dividends without borrowing money. They charge us 35 percent on all that is left in. Take, for instance, in 1915, we built a building on a site. The building before that cost $200,000, in 1886. It was obsolete in 1915. All the depreciation

which you will reasonably allow there would be $200,000. That site demanded a larger building. We built a $1,800,000 building on it.

The CHAIRMAN. Mr. Austin, let me suggest to you that you see our expert, Mr. Parker, and go over this particular matter with him.

Mr. AUSTIN. I shall be very glad to. I do not want to take up your time.

The CHAIRMAN. Mr. Parker will see you and talk to you about this particular matter.

Senator GORE. Have you worked out a definition that would differentiate these concerns that are organized as havens of refuge from taxation?

Mr. AUSTIN. Have I?

Senator GORE. Yes.

Mr. AUSTIN. No; I have not, Senator. I am not a lawyer. I am a plain business man, vice president and general manager of our company.

Senator GORE. There isn't any doubt that so far as organization in this country is concerned, many companies are organized to escape and defeat taxation. Now they should not be permitted to succeed in that attempt.

Mr. AUSTIN. That is very true. I agree with you.

Senator GORE. There may be others that are legitimate, that are not organized for that purpose. If we can differentiate between them, that is worthy of consideration.

Senator COUZENS. Mr. Austin, have you ever tried, with any of your counsel, to work out a better definition of the personal holding company, as you have determined it to be?

Mr. AUSTIN. No; I have not, Senator.

Senator COUZENS. I think it might be well to see if you can get a better definition of what you are trying to arrive at in the way of a personal holding company.

Mr. AUSTIN. I will do that.

The CHAIRMAN. Mr. Austin, I suggest that you talk to Mr. Parker. He is our expert on such matters.

Mr. AUSTIN. I will be glad to.

MEMORANDUM SUBMITTED BY NATIONAL ASSOCIATION OF REAL ESTATE BOARDS WITH RESPECT TO SECTIONS 102 AND 117

To the honorable Finance Committee:

The National Association of Real Estate Boards is a national organization composed of persons, firms, and corporations engaged in the business of buying, selling, and handling real estate. Members of this organization are particularly interested in certain provisions of H.R. 7835 now pending before your honorable committee, and beg to submit the following statement:

SEC. 102. TAX ON PERSONAL HOLDING COMPANIES

This is an entirely new provision without precedent in our prior income-tax laws. The nature and purpose of this new taxation is set forth in the report of the Committee on Ways and Means of the House of Representatives, dated February 12, 1934 (H.Rept. no. 704, p. 11) in part as follows:

"Perhaps the most prevalent form of tax avoidance practiced by individuals with large incomes is the scheme of the 'incorporated pocketbook.' That is an individual forms a corporation and exchanges for its stock his personal holdings in stock, bonds, or other income-producing property. By this means the income from the property pays corporation tax, but no surtax is paid by the individual if the income is not distributed.

"In regard to personal holding companies, your committee recommends that they be defined as any corporation 80 percent of whose gross income for the taxable year is derived from rents, royalties, dividends, interest, annuities, and gains from the sale of stock or securities, and whose voting stock to the extent of more than 50 percent is owned by not more than five individuals at the close of the taxable year. In computing the number of individuals who own the majority of the voting stock of a corporation it is proposed to count as one all members of a family in the direct line as well as the spouse and brothers and sisters.

"It is recommended that a tax of 35 percent be levied on the 'undistributed adjusted net income' of such corporations."

This 35 percent tax would be on the net undistributed adjusted income of said corporation for the year after the payment of the corporation income tax of 13¾ percent, so that over 45 percent of its income would have to be paid out by way of taxes to the Federal Government.

Without questioning the worthy purpose of the committee to reach and prevent tax avoidance through what it calls the scheme of the "incorporated pocketbook" and without trying to argue as to relative number of corporations which would be brought within the provisions of this section which have been "in fact formed for the sole purpose of avoiding the imposition of the surtax upon the stockholders" it must be recognized that the provision as drafted will bring within its provision great numbers of corporations formed and maintained for the ordinary conduct of proper business enterprises, without regard to any purpose of avoiding surtaxes upon its stockholders. This is particularly true of corporations engaged in the real-estate business.

It does not seem possible that it is the intention of the committee when using the word "rents" to mean such rents as would be collected from numerous tenants by the ordinary real-estate corporations operating buildings.

The use of the word "rents" in the definition in section 102(b) will serve to bring within clause (A) practically all of the real-estate corporations of the country who are deriving income from ownership or operation of their properties. Probably a majority of the real estate corporations of the country are so owned by individuals or families that they would come within clause (B).

The committee has assumed that it will be a simple matter for any corporation which falls within this class to escape this tax by distributing to its stockholders at least 90 percent of its adjusted-net income, viz, its net income subject to tax, plus nontaxable dividends and interest and less Federal income taxes, contributions, and losses on sales of exchanges of capital assets which would not be allowed as a deduction from taxable income. This ignores certain important facts in the situation:

1. Recent years have been most serious and disastrous for real-estate businesses. Great accumulations of losses have been piled up. Even real estate corporations which have been fortunate enough to have rents which would cover operating expenses have then had deficits brought about through heavy real estate taxes paid or payable and by interest charges on bonds and mortgages. Corporation after corporation finds itself with large impairment of its capital stock. In some cases there is even shown a complete wiping out of stockholders' equity and impairment of principal of bonds, yet bondholders have often been disposed to carry along in the hope of improvement of the situation under which their bond values might again be restored where the management has succeeded in holding their confidence that it is doing everything possible to work out the situation.

Such corporations cannot pay out future earnings as dividends but must apply them to make good impairment of capital. In many cases such corporations must take all hoped for earnings for several years in order to pay past-due real estate tax liabilities. In other cases such earnings must go to meet liabilities to bondholders.

Yet this proposal, regardless of such situations, would arbitrarily impose a 35-percent tax in addition to the 13¾-percent normal Federal tax. It is hard to see how such corporations could hope to survive under such a burden.

2. Another situation is that in which many corporations normally stand where bonds carry annual sinking fund requirements or where mortgages must from time to time be paid. Those payments take precedence over distributions to stockholders and the corporation which is faced with making

such payments is without the funds which it can distribute to its stockholders, even though it may show some net income on its tax return.

3. Another feature which serves to impair dividend-paying ability of a real estate corporation even though it may show taxable income, is the fact that it may at any time be subjected to improvement assessments by the local authorities. Such assessments are not deductible in computing taxable income, yet they take the funds which otherwise might be available for dividends.

4. Accounts receivable may be accrual for computing taxable but are not cash available for distribution to stockholders. Here again a corporation might be penalized because it was unable to make dividend distribution.

Other cases might be mentioned to show the unfairness and injustice of applying any such rule as this to real estate corporations, but the instances mentioned are so generally characteristic of the real estate business at the present time that mention of other reasons seem superfluous.

If any such provision is to be included in the law, it should not bring such real-estate corporations within its terms. We do not try to say exactly how this could best be done. Perhaps it might be by omission of the word "rents" from the definition; perhaps by specific provision that this should not apply to any corporation whose income was principally derived in the normal course of its operations from holding, sale, or leases of real property.

However this may be done, there should be left no question of subjecting the usual real-estate business of the country to any such tax as this, with the disaster which it would bring to real-estate owners and operators, to investors in real-estate bonds and mortgages, to the market for capital goods, and to the revenues of our governments.

SECTION 117. CAPITAL GAINS AND LOSSES

This section is likewise a departure from all prior legislation in its drastic provision (sec. 117 (d)) that "losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges."

The definition of capital assets in section 117 (b) is so broad that it would include real estate, as well as other property held by the taxpayer for use in his business as distinguished from "property held by the taxpayer primarily for sale in the course of his trade or business."

There seems no reason or fairness in a proposal to tax all gains without allowing deduction for all losses. It is true that under this rule losses realized in a year in which there were equal gains could be offset against such gains and in effect allowed as deductions. If, however, a gain is realized in December of one year and a loss in January of the next, the gain would be fully taxed in addition to any other income which might exist in that year, whereas the loss would not be permitted as a deduction from other income of the year when there was a loss.

The rule as written is so drastic that apparently if income should be realized from rents during the early part of the year and then the property should be sold at a loss, the Government would tax the entire income from rentals, but would disallow the deduction for loss on that same property.

We believe the general rule of taxing gains but disallowing losses is not fair and just.

If, however, any such drastic rule as this is to be adopted, it should be made clear that it is not to apply to such property losses as arise in the normal course of business.

For example, there may be a loss due to termination of a lease before its specified expiration date. We feel confident that the section was never intended to class such a loss as one falling within the provisions of section 117, and thus be disallowed as a loss on sale or other disposition of capital assets.

Again, there may be physical property employed in the business which becomes obsolete and is sold or otherwise disposed of. There should be no ground for any possible question as to such items coming within this clasification. It would be most unfair if the wording were such that there might be a contention, for example, that walls and partitions which might be taken down in connection with tenants' leases, if sold or otherwise disposed of, could fall within this classification. Similarly, there should be no question that full losses would be allowable if machinery and equipment are taken out and disposed of in connection with new installations. Without attempting to state the exact wording which might be used, we urge that if any such rule

as this is adopted, it should in one way or another be made clear that it does not apply to deny to taxpayers the right to full deduction for losses on physical property employed in the ordinary conduct of the taxpayer's business.

A further point of criticism against the section as written is that it does not permit the deduction of capital losses against gains which may be derived by a taxpayer from the retirement of its own obligations. This point was covered in section 23 (r) of the Revenue Act of 1932 with respect to the limitation on stock losses there imposed. The corporation which by sales of some of its assets at a loss is thereby enabled to retire its bonds by repurchase of them at less than their face value should certainly not be put in the position where it would be taxed on a gain derived from retirement of its bonds without being able to offset this against losses arising from the sale of its assets. We submit that section 117, if adopted, should include a provision similar to that of section 23 (r) of the 1932 act, perhaps by adding at the end of section 117 (d) the words "(including gains which may be derived by a taxpayer from the retirement of his own obligations)".

Respectfully submitted.

NATIONAL ASSOCIATION OF REAL ESTATE BOARDS,
By HUGH POTTER, *President.*

STATEMENT AND TELEGRAM FROM JOHN D. JACKSON, NEW HAVEN, CONN.

The CHAIRMAN. Mr. John D. Jackson, of New Haven, Conn.

Senator LONERGAN. Mr. Jackson is not present because of illness, and I am filing the following statement and telegram at his request:

I urge an additional exception in the definition (*b*) of a personal holding company, such as the exception of banking and insurance corporations, of "a corporation used in aid of a manufacturing, industrial, printing, or mercantile business, the assets of which consist entirely or principally of real estate and/or machinery rented to and used by such a business."

Such a corporation is in no sense a personal holding company and should not be arbitrarily classified as such in the bill merely because of limited ownership. It is essential that such a corporation should have the use for business purposes and acquisition of physical property of more than 10 percent of its net income derived from rents, and a tax at the rate of 35 percent on such use in aid of industry is unjust and, in effect, an actual prohibition of the use of the corporation's moneys in aid of industry and in necessary expansion, and in some cases would interfere with the liquidation of existing obligations. There is no fair reason for taxing the earnings of such a corporation at a higher rate than the earnings of industrial corporations generally.

[Telegram]

NEW HAVEN, CONN., *March 15, 1934.*

HON. AUGUSTINE LONERGAN,
United States Senate:

The Register, an evening and Sunday newspaper, privately owned by me for many years, and unincorporated, outgrowing its cramped quarters and equipment, required several years ago a new building and new machinery involving a large total outlay. I made the outlay for the machinery personally in order to provide for land and building. A real-estate company was formed to acquire land and erect a building, I subscribing for a part of the stock, and the Courier, Inc., a smaller morning paper which I and my family more recently acquired, having no building of its own, having moved several times, and having in view a possible future building on part of the land, subscribed for the remainder of the stock. The balance of the cost was borrowed on a mortgage loan on the land and building during construction, which loan was first refused by a commercial bank and a savings bank on the ground that they did not loan on a factory plant, and was finally secured from a trust company which loaned trust funds, with an agreement that the Register would lease the new building and that the mortgage should be amortized steadily over a few years out of the rental, which is now being done. It would seem that the real-estate company which was formed solely for the purpose of providing facilities and protection for the two papers as present and future needs may develop and, holding no bonds or stocks and having no intention of owning any, should not be defined as a holding company merely because of limited ownership, when it is, in fact, an industrial undertaking. The two papers have had different traditions and policies, have independent operating forces, and it is important from

a business and advertising standpoint to preserve them as separate entities, unless economic conditions render that impossible.

JOHN DAY JACKSON.

The CHAIRMAN. At this point I ask that the following letters addressed to Senator Walsh be inserted in the record:

THE MACALLEN CO.,
Boston, Mass., March 1, 1934.

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D.C.

DEAR SENATOR WALSH: I have just had brought to my attention section 102 of the revenue bill, H.R. 7835, which I understand has passed the House. A copy of the bill which I have is, I think, one of the first drafts, and I am not aware of any House amendments that may have been made on this section.

I am astounded, on reading this paragraph, to find that it is not aimed at what is popularly known as "personal holding companies", but will vitally affect, if not ruin, any small business corporation in which the stock ownership is limited to a small number of persons. As you know, the section provides that in addition to all other taxes a tax of 35 percent shall be levied on the undistributed net income of corporations in which not more than five individuals own more than 50 percent of its voting stock. The word "individual" is then defined to mean a family, including in this term brothers, sisters, spouse, ancestors, and lineal descendants. The act then provides that the undistributed net income referred to means net income, less 10 percent of said income, and dividends paid during the year, the purpose of the act being to force companies to pay out all but 10 percent of their annual earnings no matter what their condition may be.

This company was founded about 40 years ago by a small group of men, and having at the present time about 40 stockholders. It started in a small way and has been built up through the years so that at the present time we own a factory in south Boston where we employ approximately between 200 and 250 people. The land, factory, and its equipment have all been bought and paid for out of the earnings of the company, and in addition during this period of about 40 years the company has been able to lay aside a surplus in order to carry it through the lean years and to provide for future growth, at the same time always paying reasonable dividends on its capital stock and moderate salaries to its officers. On its manufacturing operation last year the company barely broke even, there being no profit whatever for the stockholders. In the 3 previous years, owing to the depression, the company was operated at a substantial manufacturing loss, with the result that its surplus has been seriously depleted. We have, however, during this period kept the factory running and our help employed.

If the proposed bill had been in effect during the life of this company, it could never have accumulated any surplus, and probably would long ago have passed out of the picture. Looking into the future, if the bill becomes law it will be impossible to replace the inroads that have been made upon its surplus, and if we should continue to operate at a loss it might well be necessary to liquidate the company rather than to continue, thus throwing our employees out of work, which is the last thing we wish to do.

This act is peculiarly vicious in that it would have a deleterious effect upon small independent companies by prohibiting the accumulation of a surplus and such companies would be unable to survive through depression periods and their employees would be thrown out of work. A surplus, of course, during such a period is largely cut into in order to keep the plant in operation, which fund in a sense makes insurance against unemployment of those employed in the plant as well as providing for financial growth of the company. Obviously the bill prohibits thrift and frugality and violates all sound business principles as no company can exist for an extended period when forced to pay out all of its earnings and is forbidden to accumulate a surplus. That any such result is intended by this legislation seems inconceivable, and I cannot urge too strongly that the provisions of this section which apply to companies similar to ours be deleted from the proposed legislation.

If there is to be a hearing before the Senate Finance Committee I should greatly appreciate an opportunity to be heard.

Very truly yours,

THE MACALLEN CO.,
THOMAS ALLEN,
President.

ROPES, GRAY, BOYDEN & PERKINS,
Boston, March 2, 1934.

HON. DAVID I. WALSH,
United States Senate, Washington, D.C.

MY DEAR SENATOR WALSH: I take the liberty of calling your attention to a point in the revenue bill of 1934 now before the Senate Finance Committee.

Section 102 imposes a penalty tax of 35 percent on "undistributed adjusted net income" of "personal holding companies." There is no quarrel with its purpose. However, as now drawn, section 102 works very harshly in one situation which apparently was overlooked.

If the corporation uses its income to pay its debts that is not considered "distributed" and it is penalized 35 percent. So, also, if it uses the net income to redeem preferred stock.

This applies to a great many small corporations not at all of the type featured in the Senate hearings about the New York bankers.

Perhaps the best way to get at it is by an illustration, which I think is typical of many innocent situations.

Some years ago a real-estate friend of mine would occasionally buy a property and get some of his friends to put in money with him, forming a corporation for the purpose. The friends were not the same in each case, so there was a different corporation each time. I went into two or three of these, but I am not bragging about it now. The subscribers received debentures or preferred stock for their money, with some common stock.

Section 102 will hit most, if not all, of these small companies because their income is derived from rents, and of each company 50 percent of the stock is held by less than five persons.

If one of these companies uses its income to pay down its mortgage or to pay its debts it will be stung with the 35 percent penalty.

It has a little leeway under the present form of section 102, but not much. The leeway is limited to its depreciation reserve plus 10 percent of the adjusted net income. But that is not enough to satisfy creditors in these days.

"Undistributed" income ought to mean income which might be distributed to shareholders but instead was retained by the company. In the case of these companies, certainly, it seems to me quite unfair to charge 35 percent extra on what they pay creditors.

The following suggestion would cover this point. At the same time it should accomplish the general purposes of the Act. Subdivision (2) of subsection B of section 102, beside the deductions there allowed, might also allow to be deducted such further portion of the adjusted net income as is actually paid out during the year on the principal of debts or encumbrances or in retirement of preferred stock. Perhaps there should be deducted also so much of it as is paid out for the retirement of common stock. Any security-holder who receives money for his security or stock of any class would pay a tax on his gain as a part of his general income tax.

This letter has become longer than I intended, for which I apologize.

Respectfully,

WILLIAM H. BEST.

WARNER STACKPOLE & BRADLEE,
December 16, 1933.

HON. DAVID I. WALSH.
United States Senate, Washington, D.C.

MY DEAR SENATOR WALSH: May I ask your good offices on one matter in connection with the framing of the proposed amendments to the income tax law recommended in the preliminary report of the subcommittee of the Committee on Ways and Means.

I refer to personal holding companies and to the proposed definition as—"any corporation 80 percent of whose gross income for the taxable year is derived from rents, royalties, dividends, interest, annuities, and gains from the sale of securities, and whose voting stock to the extent of more than 50 percent is owned by not more than five individuals at the close of the taxable year."

The purpose of the proposed amendment is obviously to prevent the avoidance of the surtax by individuals, but the effect of the definition would be to penalize a type of investment company in which the voting stock in rela-

tively small amount is held by a few individuals for the purpose solely of providing continuity of management as in a permanent investment trust and without any purpose or effect of avoiding surtaxes on the voting stockholders who own only a very small participation in the investment funds.

I represent three investment counsel corporations of Boston, in which, for purposes of management, a small number of shares of voting stock is held by members of the firm of Scudder, Stevens & Clark, one of the leading firms of investment advisers in Boston. The voting stockholders participate in dividends on exactly the same basis as the large number of nonvoting investment stockholders and their participation in dividends and their proportionate interest in the investment funds is less than 1 percent, yet under the proposed plan the large number of nonvoting stockholders would be penalized by a 35-percent tax on the undistributed adjusted net income merely because of the voting control of the small number of voting stockholders.

I believe that there are a substantial number of investment companies in the same or a similar position.

In the case of such a company, if a prosperous year should lead to large capital gains on changes of investments the tax might be a heavy one because capital gains ordinarily are not and should not be paid out in dividends and with respect to such gains the company cannot properly reduce the tax by distributing the capital gains.

While in the case of a real personal holding company or "incorporated pocketbook" the owner may doubtless control dividends as he chooses and may well be prevented from using such machinery to avoid surtaxes, the type of company to which I have referred is, I submit, entirely foreign to the evil toward which the proposed legislation is directed and would be seriously penalized.

I hope that in any legislation of the character recommended the special tax will be imposed only on companies when not only 50 percent of the voting rights but 50 percent of participation is owned by not more than five persons.

Very truly yours,

JOHN G. PALFREY.

BOSTON REAL ESTATE EXCHANGE,
Boston, Mass., March 8, 1934.

Re H.R. 7835, section 102

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D.C.

DEAR SENATOR WALSH: In behalf of the Boston Real Estate Exchange I wish to call to your attention the detrimental effect of section 102 of the proposed Revenue Act of 1934 upon Massachusetts real-estate corporations and unincorporated real-estate trusts with transferable shares. Briefly summarized the section proposes a 35-percent tax upon the "undistributed adjusted net income" of "personal holding companies." The definition of what constitutes a "personal holding company" in section 102 (b) (1) is so drawn as to include many small real-estate corporations and Massachusetts trusts.

The purpose of the tax proposed (sec. 102) was described by the preliminary report of Subcommittee of the House Committee on Ways and Means to be to prevent tax avoidance by individuals with large incomes—apparently principally those who formed holding companies to hold investments and securities without distributing in dividends the income from those securities. The committee comments:

"It is believed that the majority of these corporations are formed for the sole purpose of avoiding the imposition of the surtax upon the stockholders."

Real-estate corporations and trusts (which are treated by the revenue act on the same basis as corporations) are formed not for the purpose of tax avoidance but because business convenience and necessity requires that undivided interests in blocks of real estate be concentrated in a corporation or a few trustees. The necessity for this frequently arises where many members of a single family (or of a business group) have interests as tenants in common in a large parcel of real estate. As you doubtless know, there are in Boston a very large number of real-estate trusts, many of which were organized prior to 1913 when the first Federal income tax (adopted after the income-tax amendment) was enacted.

It is not reasonable to treat a small real-estate operating company actually engaged in business on the same basis as a security holding company incorpo-

rated for tax avoidance purposes by an individual. A small real-estate company actually engaged in operating a building must in prosperous years accumulate from income reserves (beyond usual depreciation allowances) for repairs, amortization of mortgages, replacements, improvements, and contingencies. What amounts should be reserved for these purposes varies, of course, in different cases and can only be determined as a matter of business judgment. At the present time reserves for contingencies accumulated prior to 1929 are exhausted in many cases by actual losses in operation of buildings and the payment of constantly increasing taxes. The reduction in the value of properties (and this reduction in market value has been very pronounced in Boston) has caused mortgagees to demand substantial reductions in the amount of mortgages. All possible net income from business properties should be reserved to meet this situation and prevent foreclosure for a good many years to come. Even properties which have no mortgages in many cases would now have no means of meeting operating expenses, taxes, and replacements unless in more prosperous times they had refrained from increasing dividends and built up suitable reserves.

Section 102 as it now reads would apply even to a corporation or trust with an impaired capital if such a corporation or trust had in fact in any year an "undistributed adjusted net income" within the technical meaning of the section. Many real-estate corporations or trusts, upon the basis of the present market value of their real estate and other assets, really have an impaired capital although their balance sheets do not show it because the book value of their real estate has not been written down to market or because the loss in value of the real estate has not been realized by an actual sale. Such corporations and trusts in most instances must devote the whole of their income to the reduction of indebtedness, and in any event, as a matter of sound business practice, they should not distribute in dividends any of their income while in substance their capital is impaired. It is obviously unfair and improper to subject them in any year when they earn enough to have an "undistributed adjusted net income" to an income tax of 35 percent in addition to the ordinary income tax imposed upon corporations and trusts under the revenue act. I urge you, therefore, if possible, to obtain a revision of section 102 so as to exempt entirely bona fide corporations and trusts actually engaged in the business of leasing or operating real estate.

If this is not possible, I suggest that such corporations and trusts be given a deduction in computing "undistributed adjusted net income" for all amounts actually paid or credited by them from income during the taxable year in payment of obligations of the company not incurred for the purpose of tax avoidance. In any event, it seems to me that section 102 should be made inapplicable to any corporation or real-estate trust which has an actually impaired capital taking its assets not at book value but at their current market value.

Very sincerely yours,

E. D. Brooks,
President of the Boston Real Estate Exchange.

P.S.—I have just received from the New York Real Estate Board a draft of amendments to the act which they are submitting as a method of avoiding the threatened hardship to real-estate corporations and trusts outlined above. I submit a copy for your information.

[ENCLOSURE.]

P.P.S.—I am reminded by this bill of the old German nursery tale of the farmer who didn't know how to keep the storks from trampling down his grain because if he went into the field to drive them out he would trample more grain than the stork. He asked a learned man what to do. The learned man advised him to take a large gate from its hinges and have six men carry him into the field on it to drive out the storks.

Alternative Proposition of New York Real Estate Boards

SUGGESTED AMENDMENTS TO SECTION 102, REVENUE ACT OF 1934, H.R. 7835, NOW BEFORE SENATE COMMITTEE ON FINANCE

1. In section 102 (b) (1), page 54, lines 8 and 9, after the words "(other than a banking or insurance corporation", insert the words "or a corporation whose principal business consists of owning and operating a building or buildings or leasing and operating a building or buildings)."

2. Add a new paragraph to section 102 (b) (3), page 56, lines 10 and 11, as follows:

"(G) Amounts required for amortization of mortgages existing January 1, 1934, or replacements thereof or substitutions therefor, on real property or leasehold estates therein, and for payment of any other bona fide indebtedness theretofore or thereafter incurred for carrying charges or in operating real property or leasehold estates therein."

3. Add a new paragraph to section 102 (b) (3), page 56, after "(G)" above, as follows:

"(H) Such sums as are properly set aside or appropriated to meet the reasonable needs of the business."

NOTE.—While this provision is important in the interest of business recovery, it is not as essential as the preceding paragraphs "1" and "2."

CAPITAL GAINS AND LOSSES

STATEMENT OF HERBERT S. WOOD, WASHINGTON, D.C.

The CHAIRMAN. The committee will give you 10 minutes, Mr. Wood. You have a brief, haven't you?

Mr. WOOD. I have in print, in the Congressional Record of March 6, a discussion of this problem.

The CHAIRMAN. Have you already appeared before the House Ways and Means Committee?

Mr. WOOD. No, sir. I appear on behalf of Senator Murphy of Iowa, to explain an amendment that he plans to offer to this bill.

The amendment is to section 117, relative to capital gains and losses. The capital gains tax is undoubtedly the largest of the leaks in the tax structure. The proposed provision of this bill does not stop the leak. It may check it, but it does not stop it. Unless the provision is amended, this bill will largely fail of its main purpose of stopping tax leaks.

I have some careful estimates of the amount of the relief that is granted under this capital gains tax. In the years 1925 to 1929, during the big stock market boom, that relief amounted to $750,000,000. A careful estimate shows that out of that $750,000,000, not more than one quarter was justified by the principle laid down by the Ways and Means Committee as the basis of capital gains provision in this bill. The other three quarters can best be described as a subsidy to successful stock speculators. On the same gains, section 117 of the present bill would grant unjustified relief to the amount of about a billion dollars, more than was granted in the years 1925 to 1929——

The CHAIRMAN (interrupting). Do you like the old provision better than this one?

Mr. WOOD. No, sir; this provision is much better than the old one. The difficulty is they are both intolerably bad.

The CHAIRMAN. Do you suggest some amendment to this?

Mr. WOOD. I am offering, on behalf of Senator Murphy, a suggested amendment which I will explain after a brief discussion of the situation.

There is nothing in the nature of this income that warrants any special consideration from the taxing authority. It is, as I have

said, speculative income—property income. It is for the most part derived from dealings in stocks and bonds. The general feeling would be that it should bear the highest rate of taxation. Stock speculation does not need a Government subsidy or deserve it. The only circumstance that warrants special consideration for capital gains and losses is the fact that they tend to be accumulated in certain years in large amounts, and in other years are missing. The result is that the taxpayer goes up into the higher surtax brackets in the 1 year in which he gets a gain, and because he goes into the very high surtax brackets he pays a much higher tax than he would pay if that gain were distributed evenly over the years during which the property was held. If a man with an ordinary income of $10,000 makes a capital gain of $100,000 this year, he will pay more than twice as much tax as he would pay if he had earned that $100,000 in five equal annual installments of $20,000. That is the condition which justifies relief—the only condition which justifies relief.

I think all of the investigations of this subject by committees of this body have come to that conclusion, that the other arguments in favor of special relief are all unsound. This one should control. The relief granted should not be more than is necessary to prevent the excessive tax that would be imposed on the man realizing in 1 year more capital gains than he has realized during the other years in which the property was held.

Perhaps, before going on I should point out that the capital-gains tax, as carried in the present bill and in past laws, applies not merely to profits derived from the sale of property. A very large amount—no one can say how much, but a very large amount—of the income subject to the reduced rate is actually dividends, current earnings of business that are by manipulation brought into the class of capital gains. For example, many of us have been surprised by the great prevalence of the practice of splitting up capital stock by means of stock dividends. The prime purpose of most of those splittings is to enable the recipient of the stock dividends to hold them for 2 years and then sell them and pay 12½ percent on the proceeds, instead of the full amount of the surtax that he would have had to pay if the dividends were distributed currently in cash.

Most of the reorganizations have had such a similar purpose. The benefits of reorganizations have been mostly derived through the 12½-percent rate. Your present bill endeavors to cut off some of those reorganization benefits. It does nothing to stop the reduction of taxes by means of stock dividends. I doubt if it can do so. I doubt if it is practicable.

Senator KING. Then that is an evil which we must suffer.

Mr. WOOD. No, sir. It is quite possible to amend the law so as to carry out the principle that the Ways and Means Committee has laid down, and not to grant any relief except where relief is due. I am submitting an amendment which is intended to do that.

Senator KING. Then, if I understand you, the Ways and Means Committee has announced a correct principle.

Mr. WOOD. The Ways and Means Committee have suggested that the tax on capital gains should approximate the tax that would have been paid if the gains had been realized evenly over the period dur-

ing which the property was held. That is perhaps a reasonable principle. While it is not always true that the gains have accrued evenly, nevertheless it is reasonable to assume that the gains had accrued evenly during the years the property was held, and should be so taxed.

Senator GORE. A more reasonable assumption than that the profits had accrued in the 1 year?

Mr. WOOD. Yes, sir. But the present bill goes far beyond the amount of relief that is warranted under that principle. It grants at least three times as much relief as is warranted, according to the very careful estimates that I have made on the subject. I think I could satisfy your experts that those estimates are sound.

It does so because of three fundamental defects. In the first place, it grants the same relief to all taxpayers regardless of the amounts of their income. If we take the case I cited a moment ago of a man with a capital gain of $100,000 this year, imposed upon a $10,000 ordinary income, he would pay twice the tax that he would pay if the $100,000 was spread out. But if you take a man with a $1,000,000 income to begin with and pile up any amount of capital gains on his initial $1,000,000 income, he would not pay 1 cent more if they were realized in the 1 year than if they were spread over 10 years. He is in the highest surtax bracket anyhow, and nothing that can happen in the realization of his additional income can make him pay a higher or lower tax on it unless some special favor is granted him.

Nevertheless, this bill extends to him relief to the extent of 60 percent if he has held the property 5 years or more, 60 percent of the tax he would otherwise pay, a wholly undeserved relief. If we take a man with an ordinary income of a million dollars who had a $5,000,000 capital gain—rather uncommon in these days, but fairly common in the years 1925 to 1929—he would pay on his capital gain a tax of $3,150,000 under the straight rates without relief, regardless of when he realized the gain. He suffered nothing because of the concentration of his capital gain in 1 year. As a matter of fact, if we consider that his tax accrued during the years when the property was held, he should have paid it during those years, and he would really have saved $300,000 odd of interest, at 5 percent, by deferring the tax until the gain was realized. Nevertheless, this bill, if he has held the property 5 years, would grant him relief to the extent of $1,890,000 out of the $3,150,000 that he should pay.

The situation with respect to a man with $100,000 ordinary income, who had a $500,000 capital gain, is not substantially difficult.

The CHAIRMAN. Well, under the old law, though, he would be entitled to a greater relief than that?

Mr. WOOD. Under the old law he would get a greater relief. The question I am raising——

The CHAIRMAN. Even if he held it but 2 years and 1 day?

Mr. WOOD. Yes, sir. The point is, that the tax should be drawn in accordance with the principle that the Ways and Means Committee has laid down. It should go no further.

Senator REED. How about the taxpayer in all this? Who is going to make him sell, or would you add that as a further provision?

Mr. WOOD. Well, Senator, the Joint Committee on Tax Revision, as I believe you will remember, cited some statistics from the Couzens report, which purported to show that the high tax rates in the years 1917 to 1921 prevented the taxpayers from selling their property, and that beginning with 1922, when the tax rate was cut, the gains from the sales mounted up until they reached the peak in 1929.

Senator REED. Don't you agree with that?

Mr. WOOD. No, sir. I think that is a mistaken interpretation of the facts. I have obtained from a book by Willford I. King, an expert of the Bureau of Economic Research, an estimate of the changes in the total value of all securities in the United States for these years, and it shows very plainly that those years in which the selected taxpayers of the Couzens report—some 5,000 of them—showed losses, were the years in which the total value of all securities in the United States was declining at a very rapid rate. I have the exact figures here.

Senator GORE. What were the years, do you remember?

Mr. WOOD. 1917 to 1920, inclusive.

Senator REED. Would you say 1920 was a year of low values?

Mr. WOOD. It was a year of declining stock values, according to Mr. King's very careful statistics. I will give you the exact figures, if you wish them.

Senator REED. That is not necessary. We will get them.

Mr. WOOD. The declines in those years were from one to thirty-three billions annually, so that the figures cited in the Tax Commission's report really, as I see it, show nothing except that in the years of declining values the taxpayers realized losses and in the years of rising values, like those from 1922 on, the taxpayers realized gains. I doubt if any other interpretation can correctly be placed upon those statistics. The great amount of gain realized has been during the great boom in stock values, and if we have another recovery, as we may reasonably hope, we will get another such great realization of profits. Stock prices won't have to go so high as they did then, because they started lower. The men who bought when the stocks were down in the subcellar in 1930, 1931, and 1932 will build up new fortunes, and the Government under this bill would help them build the fortunes by exempting them from the taxes that would be imposed on any other kind of income except income from these gains.

The CHAIRMAN. I gather, then, from what you say, that it does not make any difference how high the surtaxes may go, that it does not retard capital investments.

Mr. WOOD. Oh, no, sir. I think that probably, as a general theory, it is true that high surtaxes do retard all business transactions, but I say also that normally they retard one class of transactions as much as another, and that there is no public interest in the realization of profits on investments, in the liquidation of investments, that warrants giving them favored treatment. That is what this bill does.

Senator REED. What would you do about the losses, Mr. Wood?

Mr. WOOD. I have no criticism of the provision of the present law regarding losses. On its face it is unjust. It is warranted only by the fact that the taxpayer has so large a degree of control over the

time when he takes his losses that the Government is almost helpless to protect itself against his spreading over 10 years or more losses that actually accrued in 1929, 1930, or 1931. Therefore it is necessary to do something to protect the Government against the loss of revenue due to the improper—let us say the inaccurate, the incorrect—timing of those losses. They are timed at the taxpayer's own discretion; therefore, I think the Government is perhaps warranted in taking such a step as the one that is taken in the present bill.

Senator REED. Do you think the taxpayer owes a duty to the Government to sell a security at such a time as to yield the greatest tax?

Mr. WOOD. No, sir. I think, however, most of the losses that taxpayers suffer must of necessity be taken for tax purposes in the years in which they actually occur. This particular class of losses is exempt from that requirement. Most of us who had stocks in 1929 are still holding onto them in the hope that some day they will come back. We will sell them at some future time at a real profit as compared with their present value, but we will take a loss as compared with the cost, and if we are in the high-tax brackets we may time our sales so as to offset those losses against our other high taxable income. So that this special provision, preventing the deduction of losses from ordinary income is, I think, warranted; if that is the question the Senator is asking. It has nothing to do, however, with the question I am talking about, which is the taxation of the net gains, over and above losses.

Senator GORE. What do you think of the English plan of excluding both?

Mr. WOOD. Oh, I think it is extremely bad in every respect. It has no justification in equity whatsoever. I doubt if it has any justification in fiscal policy. It is an extremely bad precedent that has had an unfortunate influence on our treatment of capital gains, although we have not actually followed it. We have adhered to the principle that these gains should be taxed, even if they bring in no revenue. They should be taxed, because we should not subsidize the successful speculator at the expense of the unsuccessful.

Senator REED. Now, I am struck by that remark, that even if they bring in no revenue, you would favor this method of taxation.

Mr. WOOD. Yes, sir. The tax is on individual income, not on the total income of the United States.

Senator REED. Then you would write this bill in order to punish a group of citizens rather than to raise revenue?

Mr. WOOD. Oh, no, sir. This bill would actually raise revenue because by your provision excluding losses you have assured that the Government can lose nothing by this capital-gains tax. It must gain. As a matter of fact, it has gained ever since 1922.

Senator GORE. This adopts the rule of "Heads, the Government wins; tails, the taxpayer loses", does it not?

Mr. WOOD. The present bill does adopt the rule that "Heads, the Government wins; tails, the taxpayer loses", by denying a deduction of losses except from gains. But that is not the subject that I came to talk about. I came to talk about the taxation of the net gains themselves.

Now, the second defect in the pending bill is that the tax imposed is the same on all taxpayers, regardless of whether their gains are unusual or not. Many large taxpayers realize gains year after year. They are entitled to no relief when the gains are substantially equal in amount from year to year. If their gain is substantially the same year after year, they pay the lowest possible tax that could be paid on that much income under the regular tax rates. There is no reason why we should throw back to them any part of their tax when they are already paying the minimum that they could properly pay. This bill, nevertheless, will hand them back 60 percent if the property has been held 5 years or over, 40 percent if it has been held 2 to 5 years, and 20 percent if it has been held 1 to 2 years.

Senator CONNALLY. Elaborate on that a little Develop that a little further.

Mr. WOOD. Taxpayers who have capital gains of about the same amount year after year but haven't an exceptional gain in any year are not entitled to any relief. Most of the very big investors are in that class, making sales year after year and making gains every year during prosperous times. If this year's gains are not greater than the average for 4 years before, the property having been held 5 years before sale, then the taxpayer has no just claim to relief. It is only the exceptional gain that could bring him up into the higher surtax brackets. Therefore any relief provision embodied in this bill should be applied only to the exceptional gain, to the excess of this year's gain over the gains during the time when the property is held.

Now, that provision will meet administrative objection. It involves difficulties; but, speaking as a man with wide experience in solving such administrative difficulties—I was formerly assistant chief of the Bureau of Efficiency and have installed many accounting systems in Washington, and have also had wide experience in the Bureau of Internal Revenue itself, under Commissioner Roper in 1918 and 1919—I can assert with some positiveness that that provision is capable of successful administration. I would stake my reputation on that. It would cost some money, but if it is objected to on that ground, I would ask the Bureau of Internal Revenue to submit an estimate of the cost, and lay that estimate down alongside an estimate the amount of money that is involved in the tax. The cost would not exceed 1 percent of the amount of money that is involved in the tax, in my judgment.

Now, the third defect is that, quite apart from the fact that most of the tax relief granted by section 117 of this bill goes to these two classes of taxpayers who are not entitled to any relief—the ones having very large incomes and the ones having a comparatively steady flow of gains—the percentages of capital gains to be included in taxable income (which I understand you gentlemen have considered lowering), are, nevertheless, much too low. I have made a great many computations which I will submit for the committee's record, and say that in ordinary cases of $20,000 ordinary income and $50,000 capital gains, taxpayers who under this law are permitted to include 60 percent of their gains ought to include from 73 to 84 percent. The taxpayers who are permitted to include 40

percent ought to include from 64 to 74 percent. I will submit those computations for the committee's consideration.

Senator CONNALLY. You say you think we have allowed much too liberal a provision?

Mr. WOOD. You have allowed much too liberal a provision.

Senator CONNALLY. We haven't done it yet.

Mr. WOOD. The bill as it now stands would do so.

Senator GORE. You have considered the plan submitted 2 or 3 years ago by which they took a year at a time? You are familiar with the period over 10 years? You are familiar with the plan, are you not?

Mr. WOOD. Over 10 years?

Senator GORE. Yes.

Mr. WOOD. I have seen a good many plans, Senator. I do not know whether I have seen the one you refer to.

Senator GORE. The gains realized within a single year were to be taxed in another.

Mr. WOOD. Oh, the plan to base the tax on the average income of several years? I think that is impractical.

Senator GORE. A plan to tax the gains 100 percent if not held over 2 years, and 90 percent of the gains——

Mr. WOOD. I think that plan is unsound, no matter what percentages are used, for the reason I pointed out, that it gives the recipients of large incomes relief that they are not entitled to. And I point out that most of the capital gains are in those large incomes. Out of seven billion and one hundred and some million of capital gains realized in the taxable years 1925 to 1929, over six billions occurred in incomes of $100,000 or more. Therefore this capital-gains provision is, in the main, a provision for the relief of the very wealthy taxpayer, and he is the taxpayer who, as I have pointed out to you, is entitled to no relief.

Senator COUZENS. What have you to say in connection with the agitation that these high capital-gains taxes raise the market price of securities to such a point that there is no exchange of the securities, and therefore the price is over made?

Mr. WOOD. I think, Senator, the fact is directly opposite. This relief that has been granted puts a premium on the purchase of stocks and bonds, to be held for 2 years and sold after that time. It creates an inducement to buy by relieving the profits from a large part of the taxes they would otherwise bear. That inducement has a far greater effect in raising prices than a higher tax would have by preventing sales. We, as I say, are subsidizing the successful stock speculator, making it particularly advantageous for men to get their income from that source rather than other sources.

Senator COUZENS. I would like to have that understood. It seems to me if there is no stock for sale and the seller is not selling stock because of the high capital-gains tax, then the price is run up to an inordinately high price and there are no transactions.

Mr. WOOD. I think, Senator, there has been no evidence that men will not sell. The statistics that I referred to from the joint committee are, I think, misinterpreted. I do not believe an examina-

tion of all the evidence shows that they indicate what they were interpreted to indicate. I will submit for the record a comparison of the gains and losses with the actual fluctuations in stock and bond values.

Senator COUZENS. Let me ask you this, then. Isn't it an economic principle that if an article is scarce the price goes high?

Mr. WOOD. Oh, undoubtedly.

Senator COUZENS. Then if it is not scarce; if the seller won't sell because of the high capital-gains tax——

Mr. WOOD. But the gain is only on sale.

Senator COUZENS. If you take all his profit, under a capital-gains tax—I am just arguing this question——

Mr. WOOD. Yes.

Senator COUZENS. Isn't he likely to sell?

Senator REED. Don't we all know cases and have the experience of men who have refused to sell for that reason?

Mr. WOOD. Undoubtedly, Senator. I have been in tax practice for 15 years now and I have had many such cases. For the most part they refuse to sell because they are looking forward to a reduction of the tax. If they have a profit and are not looking forward to a reduction of the tax, they will take their profit. If they expect to make more by the reduction of the tax then they could make by selling now and investing in other securities, then they may hold back.

Senator GORE. It is really the high tax then that freezes it in their hands, isn't it?

Mr. WOOD. That has been urged repeatedly.

Senator GORE. Your own statement that they are looking forward to a reduced tax—if that is true, then they are refusing to sell because the tax is high.

Mr. WOOD. I think that that point can be maintained only if supported by evidence that it has happened. I do not find in the records any adequate evidence that it has happened in large amounts. In individual cases it has happened undoubtedly.

Senator GORE. But your admission was to the effect that they held and did not sell because of the prospect of reduced taxes.

Mr. WOOD. Some do. I do not think that it is true as a general rule. There is no statistical evidence to support the contention that it is true as a general rule.

Senator GORE. Do you think, on the other hand, that they do unload on a falling market in order to avail themselves of the losses in their tax returns?

Mr. WOOD. Oh, undoubtedly.

Senator GORE. But you do not think the motive works both ways?

Mr. WOOD. I think there is some deferment of realization of profits. The point is that I do not think that is a very serious matter.

Now, replying to Senator Couzens' question, I would like to give one bit of statistics to show how much the relief granted by this tax has resulted in deferring sales. In the year 1929, of the total taxable income of people having $5,000,000 or more, 74 percent was realized by the sale of property held 2 years or more, 74 percent

and a fraction. Only 6½ percent was from the sale of property held less than 2 years. The inducement to hold on at least 2 years was so great that that class of taxpayers did not sell short of 2 years, although as a whole the profits on the short-term investments were as great as the profits on long-term investments. If we come down the line to the small taxpayers, where the tax inducement was comparatively small, we find that the profits from sales of short-term investments exceeded those of long-term investments. It is only when we get up among the fellows who get the most benefit from this law that we find that three quarters of all their incomes came from the sale of property held 2 years or more and only 6½ percent from the sale of property held for shorter terms.

Senator GORE. Does not that prove this theory? They did not sell those, that they held less than 2 years, on account of the high tax.

Mr. WOOD. On account of the tax.

Senator CONNALLY. Waiting to get the advantage of having held 2 years.

Mr. WOOD. That is it.

The CHAIRMAN. Now, Mr. Wood, we thank you.

Mr. WOOD. Senator, I would like to explain just briefly——

The CHAIRMAN. Well, you have had twenty-odd minutes, Mr. Wood.

Mr. WOOD. I am one of the few witnesses here——

Senator CONNALLY. He is worth it, gentlemen.

The CHAIRMAN. Well, go ahead, but I hope that you will finish your statement because the committee has to get along.

Mr. WOOD. I will just state the principle of this amendment. The principle of this amendment is that the relief shall be applied only to the exceptional gain—the excess of the current year's gains over the gains for the period during which the property is held. And second, that the tax shall be, for property held 5 years, 5 times the tax that would be imposed on one fifth of the gain; for property held 4 years, 4 times the tax that would be imposed on one fourth of the gain, and so on.

Senator KING. Is that the amendment you suggest?

Mr. WOOD. That is the amendment. That would give, in all cases, relief substantially in accordance with the principle on which this bill is supposed to be founded, no more and no less.

Senator COUZENS. Well, that is in your amendment?

Mr. WOOD. That is in my amendment which I will submit.

Senator KING. May I ask one question, Mr. Wood? In your investigations which you have made from Professor King and others, did you discover what proportion of these capital gains resulted from the sale of stocks and bonds, and what proportion from other operations, real estate, and so on?

Mr. WOOD. No, sir. I haven't those figures. I have, personally, no doubt that the great volume of the gains are from stocks and bonds and a comparatively small amount from real estate and improvements.

The CHAIRMAN. Thank you, very much.

Senator CONNALLY. You have got the amendment embodying that, have you?

Mr. WOOD. I will submit that for the record.

EXHIBIT I

AMENDMENT TO BE PROPOSED BY MR. MURPHY, OF IOWA, TO H.R. 7835, ENTITLED "AN ACT TO PROVIDE REVENUE, EQUALIZE TAXATION, AND FOR OTHER PURPOSES"

Section 117 (a) and (b) are amended to read as follows:

"CAPITAL GAINS AND LOSSES

"SEC. 117. (a) *Tax in the case of exceptional capital net gain.*—In the case of any taxpayer, other than a corporation, who for any taxable year has an ordinary net income (as defined in subsection (b) of this section) not exceeding $100,000, and who realizes an exceptional capital net gain (as defined in subsection (b) of this section), the tax under this title shall be determined, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, as follows:

"(1) A partial tax shall first be computed on the ordinary net income at the rates and in the manner as if this section had not been enacted.

"(2) To this amount shall be added an additional tax on the exceptional capital net gain, equal to—

"Five times the additional tax that would be imposed, at the rates and in the manner as if this section had not been enacted, on one fifth of the exceptional capital net gain if the capital assets sold or exchanged by the taxpayer at a gain in the taxable year have been held by him an average of five years or more.

"Four times the additional tax that would be similarly imposed on one fourth of the exceptional capital net gain if the said capital assets have been held by the taxpayer an average of four years.

"Three times the additional tax that would be similarly imposed on one third of the exceptional capital net gain if the said capital assets have been held by the taxpayer an average of three years.

"Twice the additional tax that would be similarly imposed one one half of the exceptional capital net gain if the said capital assets have been held by the taxpayer an average of two years.

"The entire amount of the additional tax that would be similarly imposed on the entire exceptional capital net gain if the said capital assets have been held by the taxpayer an average of one year or less.

"(3) The Commissioner (with the approval of the Secretary) in prescribing the method of determining the average number of years for which capital assets have been held, may limit the number of years that shall be counted in the case of a capital asset held for more than five years. He may also extend the method prescribed by this section for computing the tax on an exceptional capital net gain to cases in which the said average number of years, between one and four, is determined in whole numbers and fractions thereof.

"(b) *Definitions.*—For the purposes of this title—

"(1) 'Capital assets' means property held by the taxpayer (whether or not connected with his trade or business) but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale in the course of his trade or business.

"(2) 'Capital gain' means taxable gain upon the sale or exchange of a capital asset.

"(3) 'Capital loss' means loss upon the sale or exchange of a capital asset.

"(4) 'Capital net gain' means the excess of the taxpayer's capital gains for the taxable year over (A) his capital losses for the taxable year and (B) such deductions allowed by section 23 for the purpose of computing net income, as are properly allocable to or chargeable against the capital assets sold or exchanged.

"(5) 'Exceptional capital net gain' means the amount by which the taxpayer's capital net gain for the taxable year exceeds the average amount of his capital net gains for that number of immediately preceding taxable years (not exceeding four) which is equal to one less than the average number of years during which the taxpayer has held the capital assets sold or exchanged by him at a gain in the taxable year: *Provided, however*, That the excess so determined shall not be considered an exceptional capital net gain unless it exceeds twenty percentum of the taxpayer's ordinary net income.

"(6) 'Ordinary net income' means the taxable net income less the exceptional capital net gain.

"(7) The additional tax that would be imposed on an exceptional capital net gain or any fraction thereof means the difference between (A) a tax computed on the ordinary net income and (B) a tax computed on the sum of the ordinary net income and the exceptional capital net gain or fraction thereof."

Section 117 is further amended by adding at the end thereof the following subsection:

"(g) The Commissioner may, with the approval of the Secretary, direct that a taxpayer who reports an exceptional capital net gain shall compute and pay his tax as though this section had not been enacted. In that event the Commissioner shall cause the tax to be recomputed as promptly as practicable and shall immediately credit or refund any overpayment indicated by such recomputation."

Exhibit 2

Computation of Tax in Case of Exceptional Capital Net Gain

A. Average number of years during which capital assets sold at a gain have been held

Date when each asset was—						Time each asset was held			Amount of gain realized	Amount of gain multiplied by number of years asset was held
Acquired			Sold or exchanged							
Year	(a) Month	Day	Year	(b) Month	Day	(c) Years	Days	(d) Years and tenths	(e)	(f)
1									$	$
2										
3										
4										
5										
6										
7										
8										
9										
10										
11 Total										

12. Average number of years (line 11, col. f, divided by line 11, col. e) .... $........
13. Average whole number of years (dropping fractions not exceeding 0.5, but counting fractions exceeding 0.5 as 1) ....
14. Average whole number of years less 1 ....

B. Average amount of capital net gains for number of immediately preceding taxable years entered in line 14

Taxable year		*Amount of capital net gains*
15. ------	--	$----------
16. ------	--	----------
17. ------	--	----------
18. ------	--	----------
19. Total	--	----------
20. Average (total, line 19, divided by average number of years less 1, line 14)	--	----------

C. Exceptional capital net gain for taxable year

21. Capital gains (line 11, col. e)----------		$----------
22. Capital losses (from schedule C of income return)-	$----------	
23. Average capital gains of prior years (line 20)---	----------	
24. Deductions chargeable against capital assets sold or exchanged in the taxable year (schedule C)--	----------	
25. Total of lines 22, 23, and 24----------	----------	----------
26. Exceptional capital net gain (line 21 minus line 25)----------		----------
27. Net taxable income (from income return)----------		----------
28. Ordinary net income (line 27 minus line 26)----------		----------
29. One of exceptional capital net gain (line 26 divided by line 13)----------		----------
30. Ordinary net income plus one of exceptional capital net gain (line 28 plus line 29)----------		----------

D. Computation of tax

Items	On ordinary net income (from line 28)		On total from line 30	
	(a)	(b)	(c)	(d)
31. Income subject to tax........		$........		$........
Less—				
32. Personal exemption........	$........		$........	
33. Credit for dependents........	....		....	
34. Total lines 32 and 33........		....		....
35. Income subject to surtax (line 31 minus line 34)........		....		....
Less—				
36. Dividends on corporate stock........	....		....	
37. Interest exempt from normal tax........	....		....	
38. 10 percent of earned income........	....		....	
39. Total lines 36, 37, and 38........		....		....
40. Income subject to normal tax (line 35 minus line 39)........		....		....
41. Normal tax at 4 percent........		....		....
42. Surtax (per surtax schedule)........		....		....
43. Total tax (line 41 plus line 42)........		....		....
44. Additional tax on fraction of exceptional capital net gain (line 43, col. *d* minus line 43, col *b*)........		....		....
45. Additional tax (line 44) multiplied by average number of years (line 13)........				....
46. Total tax (line 43, col. *b*, plus line 45)........				....

EXHIBIT 3

Statistics of capital gains, 1925 to 1929, from "Statistics of Income" for 1925 to 1929

[Amounts in thousands]

Size of incomes	Number of returns	Net income	Capital gains	Percentage of capital gains	Average net income	Average capital net gain	Average other income
$5,000,000 and up	96	$872,612	$569,367	65.2	$9,090	$5,931	$3,159
$4,000,000 under $5,000,000	63	283,131	153,581	54.2	4,494	2,438	2,056
$3,000,000 under $4,000,000	103	354,770	206,075	58.1	3,441	2,001	1,443
$2,000,000 under $3,000,000	276	669,306	338,880	50.6	2,425	1,228	1,197
$1,500,000 under $2,000,000	373	641,450	327,590	51.1	1,720	878	842
$1,000,000 under $1,500,000	841	1,016,732	541,806	53.3	1,209	644	565
Subtotal	1,752	3,838,001	2,137,299	55.7	2,191	1,220	971
$750,000 under $1,000,000	1,042	901,502	425,580	47.2	865	408	457
$500,000 under $750,000	2,421	1,462,651	587,952	40.2	604	243	361
$400,000 under $500,000	2,225	992,305	391,911	39.5	446	176	270
$300,000 under $400,000	4,097	1,410,933	505,005	35.8	344	123	221
$250,000 under $300,000	3,624	989,849	317,776	32.1	273	88	185
$200,000 under $250,000	6,123	1,363,773	422,151	31.0	223	69	154
$150,000 under $200,000	11,604	1,994,901	533,943	26.8	172	46	126
$100,000 under $150,000	28,169	3,400,056	726,385	21.4	121	26	95
Subtotal	61,057	16,353,971	6,048,002	37.0	268	99	169
$90,000 under $100,000	10,854	1,028,999	183,848	17.9	95	17	78
$80,000 under $90,000	14,496	1,224,174	191,901	15.7	85	13	72
$70,000 under $80,000	19,706	1,472,898	207,442	14.1	75	11	64
$60,000 under $70,000	28,241	1,825,186	216,285	11.9	65	8	57
$50,000 under $60,000	42,034	2,296,772	173,134	7.5	55	4	51
$40,000 under $50,000	68,972	3,072,163	116,634	3.8	45	2	43
Grand total	245,360	27,274,163	7,137,246	26.2	112	29	82

EXHIBIT 4

Estimate of excessive tax relief that would be granted by section 117 of pending bill on capital gains of 1925 to 1929, inclusive, based on average income in each of 20 income groups

Income group	Average ordinary income (thousands)	Average capital gains (thousands)	Average taxable income (thousands)	Tax on average ordinary income plus—		Difference in tax	Number of returns	Difference in tax times number of returns (thousands)
				60 percent of capital gains	3 times additional tax on one third of capital gains			
$5,000,000 and up	$3,159	$5,931	$9,090	$4,173,473	$5,667,833	$1,494,380	96	$143,459
$4,000,000 to $5,000,000	2,056	2,438	4,494	2,158,103	2,772,983	614,250	63	38,737
$3,000,000 to $4,000,000	1,443	2,001	3,444	1,606,853	2,110,853	504,000	103	51,912
$2,000,000 to $3,000,000	1,147	1,228	2,425	1,159,553	1,468,253	308,700	276	85,201
$1,500,000 to $2,000,000	842	878	1,720	803,603	1,022,153	218,550	373	81,519
$1,000,000 to $1,500,000	565	644	1,209	540,778	697,608	156,830	841	131,894
Partial total							1,752	532,722
$750,000 to $1,000,000	457	408	865	386,003	485,423	98,520	1,042	102,658
$500,000 to $750,000	361	243	604	267,908	325,278	57,370	2,421	138,893
$400,000 to $500,000	270	176	446	189,573	230,813	41,420	2,225	91,759
$300,000 to $400,000	221	123	344	141,858	170,278	28,420	4,097	116,437
$250,000 to $300,000	185	88	273	108,798	127,808	19,100	3,624	69,218
$200,000 to $250,000	154	69	223	83,933	99,893	15,960	6,123	97,735
$150,000 to $200,000	126	46	172	60,563	70,068	9,505	11,604	110,296
$100,000 to $150,000	95	26	121	36,468	42,328	5,860	28,169	165,070
Cumulative total							61,057	1,421,788
$90,000 to $100,000	78	17	95	24,103	27,264	3,161	10,854	34,309
$80,000 to $90,000	72	13	85	20,258	22,302	2,014	14,496	29,630
$70,000 to $80,000	64	11	75	16,268	17,839	1,571	19,706	70,958
$70,000 to $70,000	57	8	65	12,743	13,764	1,021	28,241	28,834
$50,000 to $60,000	51	4	55	9,543	10,195	652	42,034	27,406
$40,000 to $50,000	43	2	45	6,868	7,129	261	68,972	18,002
Grand total							245,360	1,593,927

EXHIBIT 5

Minimum estimate of unjustified tax relief that would be granted by sec. 117 of pending bill on capital gains of 1925 to 1929 based on the assumption that all the capital gains in each of 20 income groups were concentrated in incomes consisting exclusively of capital gains

Income group (thousands)	Number of returns	Average incomes	Tax at 12½ percent	60 percent of average income	Tax under pending bill
$5,000 and up	62.6	$9,090	$1,136,250	$5,454,000	$3,377,153
$4,000 to $5,000	34.2	4,494	561,750	2,696,400	1,639,865
$3,000 to $4,000	59.8	3,444	430,500	2,066,400	1,242,965
$2,000 to $3,000	139.7	2,425	303,125	1,455,000	857,783
$1,500 to $2,000	190.5	1,720	215,000	1,032,000	591,318
$1,000 to $1,500	448.1	1,209	151,125	725,400	400,933
$750 to $1,000	492.0	865	108,125	519,000	275,273
$500 to $750	973.4	604	75,500	362,400	181,549
$400 to $500	878.7	446	55,750	267,600	125,966
$300 to $400	1,4[illegible].0	344	43,000	206,400	90,470
$250 and $300	1,16[illegible]	273	34,125	163,800	66,149
$200 to $250	1,8[illegible].1	223	27,875	133,800	49,236
$150 to $200	[illegible]	172	21,500	103,200	32,058
$100 to $150	6,0[illegible].2	121	15,125	726	16,971
$90 to $100	1,935.2	95	11,875	57	10,938
$80 to $90	2,257.7	85	10,625	51	8,943
$70 to $80	2,765.0	75	9,375	45	7,128
$60 to $70	3,327.5	65	8,125	39	5,493
$50 to $60	3,147.9	55	6,875	33	4,038
$40 to $50	2,591.9	45	5,625	27	2,748

Income group (thousands)	One third of average income	Tax on one third of average income	3 times tax on one third	Difference	Difference times number of returns
$5,000 and up	$3,030,000	$1,850,033	$5,550,099	$2,172,946	$136,026,420
$4,000 to $5,000	1,498,000	884,873	2,654,619	1,014,754	34,704,587
$3,000 to $4,000	1,148,000	664,373	1,993,119	750,154	44,859,209
$2,000 to $3,000	808,333	452,234	1,356,972	499,189	69,736,703
$1,500 to $2,000	573,333	308,416	925,748	333,930	63,613,665
$1,000 to $1,500	403,000	208,208	624,624	223,691	100,235,937
Partial total					449,176,521
$750 to $1,000	288,333	137,991	413,973	138,700	68,240,400
$500 to $750	201,333	87,543	262,629	81,080	78,923,272
$400 to $500	148,667	57,562	172,686	46,720	41,052,864
$300 to $400	114,666	38,522	115,566	25,006	36,840,928
$250 to $300	91	25,573	76,719	10,570	12,303,480
$200 to $250	74,333	17,716	53,148	3,912	7,405,807
$150 to $200	57,333	11,051	33,153	1,095	3,399,208
$100 to $150	40,333	5,826	17,478	507	3,043,622
Cumulative total					700,380,102
$90 to $100	31,667	3,745	11,235	247	574,754
$80 to $90	28,333	3,015	9,045	102	230,285
$70 to $80	25,000	2,348	7,044	0	0
$60 to $70	21,667	1,756	5,268	0	0
$50 to $60	18,333	1,268	3,804	0	0
$40 to $50	15	883	2,649	0	0
Grand total					701,191,141

Exhibit 6

Comparison of taxes under pending bill and under proposed amendment

	Other income [1]	Capital net gain		Tax under—		Difference in tax
		Current year	Prior year average	Pending bill	Proposed amendment	
2-year investment	$10,000	$10,000	0	$893	$1,258	$365
Do	10,000	10,000	$5,000	893	1,353	460
Do	10,000	10,000	10,000	893	1,398	505
Do	10,000	25,000	0	2,248	3,268	1,020
Do	10,000	25,000	12,500	2,248	4,218	1,970
Do	10,000	25,000	25,000	2,248	4,393	2,145
Do	10,000	50,000	0	5,643	8,478	2,835
Do	10,000	50,000	25,000	5,643	11,123	5,480
Do	10,000	50,000	50,000	5,643	11,903	6,260
Do	10,000	100,000	0	15,768	23,498	7,730
Do	10,000	100,000	50,000	15,768	33,163	17,395
Do	10,000	100,000	100,000	15,768	35,808	20,040
3-year investment	10,000	10,000	0	893	1,217	324
Do	10,000	10,000	5,000	893	1,338	445
Do	10,000	10,000	10,000	893	1,398	505
Do	10,000	25,000	0	2,248	3,188	940
Do	10,000	25,000	12,500	2,248	4,167	1,919
Do	10,000	25,000	25,000	2,248	4,393	2,145
Do	10,000	50,000	0	5,643	7,172	1,529
Do	10,000	50,000	25,000	5,643	10,897	5,254
Do	10,000	50,000	50,000	5,643	11,903	6,260
Do	10,000	100,000	0	15,768	19,067	3,299
Do	10,000	100,000	50,000	15,768	32,054	16,286
Do	10,000	100,000	100,000	15,768	35,808	20,040
4-year investment	10,000	10,000	0	893	1,188	295
Do	10,000	10,000	5,000	893	1,335	442
Do	10,000	10,000	10,000	893	1,398	505
Do	10,000	25,000	0	2,248	2,820	572
Do	10,000	25,000	12,500	2,248	4,128	1,880
Do	10,000	25,000	25,000	2,248	4,393	2,145
Do	10,000	50,000	0	5,643	6,228	585
Do	10,000	50,000	25,000	5,643	10,733	5,090
Do	10,000	50,000	50,000	5,643	11,903	6,260
Do	10,000	100,000	0	15,768	16,648	880
Do	10,000	100,000	50,000	15,768	31,603	15,835
Do	10,000	100,000	100,000	15,768	35,808	20,040
5-year investment	10,000	10,000	0	678	1,183	505
Do	10,000	10,000	5,000	678	1,333	655
Do	10,000	10,000	10,000	678	1,398	720
Do	10,000	25,000	0	1,398	2,783	1,385
Do	10,000	25,000	12,500	1,398	4,088	2,690
Do	10,000	25,000	25,000	1,398	4,393	2,995
Do	10,000	50,000	0	3,298	5,858	2,560
Do	10,000		25,000	3,298	10,643	7,345
Do	10,000		50,000	3,298	11,903	8,605
Do	10,000	100,000	0	8,533	15,150	6,617
Do	10,000	100,000	50,000	8,533	31,228	22,695
Do	10,000	100,000	100,000	8,533	35,808	27,275
3-year investment	[2] 25,000	10,000	0	3,398	4,148	750
Do			5,000	3,398	4,278	880
Do			10,000	3,398	4,293	895
Do		25,000	0	5,543	7,437	1,894
Do			12,500	5,543	8,149	2,606
Do			25,000	5,543	8,433	2,890
Do		50,000	0	10,058	13,689	3,631
Do			25,000	10,058	16,707	6,649
Do			50,000	10,058	17,803	7,745
Do		100,000	0	22,433	29,271	6,838
Do			50,000	22,433	41,494	19,061
Do			100,000	22,433	44,108	21,675
5-year investment	[2] 75,000	10,000	0	2,958	4,148	1,190
Do			5,000	2,958	4,278	1,320
Do			10,000	2,958	4,293	1,335
Do		25,000	0	4,293	7,298	3,005
Do			12,500	4,293	8,038	3,745
Do			25,000	4,293	8,433	4,140
Do		50,000	0	6,928	12,873	5,945
Do			25,000	6,928	16,558	9,630
Do			50,000	6,928	17,803	10,875
Do		100,000	0	13,668	26,048	12,380
Do			50,000	13,668	40,953	27,285
Do			100,000	13,668	44,108	30,440

[1] Received by married man without dependents, $2,500 being dividends and interest exempt from normal tax.

[2] Received by a married man without dependents, $5,000 being dividends and interest exempt from normal tax.

Comparison of taxes under pending bill and under proposed amendment—Con.

	Other income	Capital net gain		Tax under—		Difference in tax
		Current year	Prior year average	Pending bill	Proposed amendment	
3-year investment	[3] $50,000	$10,000	0	$10,198	$11,407	$1,209
Do			$5,000	10,198	11,559	1,361
Do			10,000	10,198	11,603	1,405
Do		25,000	0	13,468	16,507	3,039
Do			12,500	13,468	17,349	3,881
Do			25,000	13,468	17,603	4,135
Do		50,000	0	19,858	25,939	6,081
Do			25,000	19,858	29,042	9,184
Do			50,000	19,858	29,958	10,100
Do		100,000	0	35,508	47,782	12,274
Do			50,000	35,508	57,807	22,299
Do			100,000	35,508	57,908	22,400
5-year investment	[3] 50,000	10,000	0	9,518	11,283	1,765
Do			5,000	9,518	11,558	2,040
Do			10,000	9,518	11,603	2,085
Do		25,000	0	11,603	16,358	4,755
Do			12,500	11,603	17,228	5,625
Do			25,000	11,603	17,603	6,000
Do		50,000	0	15,468	25,003	9,535
Do			25,000	15,468	28,878	13,410
Do			50,000	15,468	29,958	14,490
Do		100,000	0	24,683	44,408	19,725
Do			50,000	24,683	57,708	33,025
Do			100,000	24,683	57,908	33,025
3-year investment	[3] 100,000	10,000	0	33,206	35,406	2,200
Do			5,000	33,206	35,507	2,301
Do			10,000	33,206	35,508	2,302
Do		25,000	0	38,308	43,806	5,498
Do			12,500	38,308	43,897	5,589
Do			25,000	38,308	43,908	5,600
Do		50,000	0	46,708	57,807	11,099
Do			25,000	46,708	57,906	11,198
Do			50,000	46,768	57,908	11,200
Do		100,000	0	63,583	85,806	22,223
Do			50,000	63,583	86,333	22,750
Do			100,000	63,583	86,383	22,800
5-year investment	[3] 100,000	10,000	0	32,148	35,358	3,210
Do			5,000	32,148	35,508	3,360
Do			10,000	32,148	35,508	3,360
Do		25,000	0	35,508	43,708	8,200
Do			12,500	35,508	43,908	8,400
Do			25,000	35,508	43,908	8,400
Do		50,000	0	41,108	57,708	16,600
Do			25,000	41,108	57,908	16,800
Do			50,000	41,108	57,908	16,800
Do		100,000	0	52,308	85,708	33,400
Do			50,000	52,308	86,283	33,975
Do			100,000	52,308	86,383	34,075

[3] Received by a married man without dependents, $10,000 being dividends and interest exempt from normal tax.

EXHIBIT 7.—*Comparison of realized gains and losses on sales of securities and other property with estimated changes in the market value of all securities*

Year	Estimated net changes in security values [1]	Net gains and losses reported in income			Returns from 4,063 selected returns [3]
		Assets held less than 2 years	Assets held 2 years or more	Total [2]	
	Millions	*Millions*	*Millions*	*Millions*	*Millions*
1915	+15,672				
1916	−14,781				
1917	−33,135			+318	+10
1918	−17,028			+201	−57
1919	−11,891			+999	−88
1920	−1,340			+1,021	−205
1921	+24,884			+463	−150
1922	+9,490	+742	+249	+991	+8
1923	−1,518	+867	+305	+1,172	−24
1924	+13,056	+1,125	+389	+1,514	+47
1925	+3,438	+1,992	+941	+2,922	

[1] Excluding effect of new investments and of distributions to stockholders. From W. I. King, The National Income and Its Purchasing Power, National Bureau of Economic Research, New York, 1930.
[2] From Statistics of Income published annually by the Bureau of Internal Revenue.
[3] From returns of 4,063 taxpayers who reported incomes of $100,000 or more for 1916. Compiled by Select Committee on Investigation of Internal Revenue ("Couzens Committee") and quoted in report of Joint Committee on Internal Revenue Taxation, 1927.

STATEMENT OF PHILIP NICHOLS, BOSTON, MASS., REPRESENTING MASSACHUSETTS BANKERS' ASSOCIATION

Mr. NICHOLS. Mr. Chairman and gentlemen, I wish to put the Massachusetts Bankers' Association on record as supporting the amendments to the bill which are advocated by the American Bankers' Association, and just to add one thought that the difficulty in the provision of section 117, which justifies the bankers asking exclusion from the capital loss provision in the definition of capital assets, contained in section 117 (b). The securities of a bank are analogous to the stock-in-trade or the inventory of a dealer. The definition of "capital assets" in the bill is such that their securities are excluded from it unless it is given a rather strained interpretation. Therefore, not to allow a deduction for loss on the sale of securities, the maturity of securities in the case of banks, is depriving them of a loss occurring in the daily routine of their business, and therefore the capital assets definition as it is in the present bill, deprives them of a deduction which the trader and everyone else, including the dealer in securities, the investment broker, is entitled to. because he can include his securities in his inventory, but the banks are not allowed to include their securities in their inventories for purposes of taxation, although they do it for their own bookkeeping purposes. Therefore, the peculiar way that the capital assets definition is drawn, unless exclusion is made in section 117 (b) for banks and incorporated trust companies, it will result in discrimination against those organizations.

I thank you.

STATEMENT OF ROLLIN BROWNE, OF MITCHELL, TAYLOR, COPRON & MARSH, NEW YORK CITY

Mr. BROWNE. My name is Rollin Browne, of New York City. I appear on behalf of the City Bank, and Farmers Trust Co., of New York. I may say that the things which I am going to propose are designed first to relieve against administrative difficulties, and second, to relieve against beneficiaries of comparatively small trusts held by banks and trust companies.

Senator GORE. Are you a lawyer?

Mr. BROWNE. Yes, sir. The first point which I want to mention relates to the problem which arises upon the foreclosure of mortgages. The revenue acts make no provision for the treatment, for income-tax purposes, of the results of such foreclosures. The regulations of the Treasury Department have for some time, however, provided that where a mortgage is foreclosed and the mortgagee bids in the property at the foreclosure sale, the transaction is deemed a closed transaction on which gain or loss is recognized, measured by the distinction between the amount bid at the sale and the fair market value of the property acquired. The fair market value then becomes the cost basis of the property for the purpose of determining the gain or loss on subsequent sale. That is the only instance in the tax law that I know of where gain or loss is computed on the purchase of property.

The CHAIRMAN. Are you going to elaborate on that proposition in your brief, Mr. Browne?

Mr. BROWNE. Yes, sir.

The CHAIRMAN. Very well.

Mr. BROWNE. Now, I should like to have that changed, not for the purpose of saving a tax on anyone, but for the purpose of avoiding the administrative difficulty of computing the fair market value of the hundreds of thousands of parcels of real estate all over the country.

Senator CONNALLY. May I ask you a question right there about foreclosures?

Mr. BROWNE. Yes, sir.

Senator CONNALLY. Suppose you have a mortgage on a piece of real estate, and you do not foreclose, or if you do foreclose, the man just turns his back and he says, "I cannot pay your mortgage, take your property." Now, the property is worth less than the mortgage. What happens to the income-tax payer?

Mr. BROWNE. The Treasury Department in that case allows a gain or loss—allows a loss, or computes a gain measured on the same basis, the difference between the amount of the bid and the fair market value.

Senator CONNALLY. You have to take it for the year in which that transaction occurred?

Mr. BROWNE. Yes, sir.

Senator CONNALLY. Then you don't have to wait until you sell it?

Mr. BROWNE. No, sir.

Senator CONNALLY. I thought you had to wait until you sold it.

Senator GORE. That is the standard of profit, when you take it back, isn't it?

Senator CONNALLY. Well, if there is a profit, although if there is not a profit you take a loss.

Mr. BROWNE. You take a loss.

Senator CONNALLY. How can you determine the loss? Must I arbitrarily value the property?

Mr. BROWNE. Of course, you arbitrarily value it when you make your tax return and that is subject to check by the Commissioner.

Senator CONNALLY. That is what I mean. I can arrive at a valuation. Say I took this property in, when it wasn't worth much—say $800—and my mortgage is $1,000. Am I entitled to a loss of $200?

Mr. BROWNE. That is correct.

Senator CONNALLY. I am glad to hear that.

Mr. BROWNE. My theory of the transaction is that the mortgagee in such a case makes an investment in the real estate. It is an involuntary investment, that is forced upon him, and that he should be deemed to have purchased the property at the amount of the mortgage plus the cost and expenses of the foreclosure sale.

Senator CONNALLY. Let me ask you this: Suppose that happens in 1933 and I just do not take my loss. Then, in 1934, I sell the property. Can I take it then?

Mr. BROWNE. Your cost basis for that property is $800, in the case you put.

Senator CONNALLY. I say, can you take it when you dispose of it?

Mr. BROWNE. You can only take a loss which is measured by the fair market value at the time of the transaction.

Senator CONNALLY. I understand.

Mr. BROWNE. Not going back to your original amount invested.

Senator CONNALLY. Oh, no. You cannot.

Mr. BROWNE. No, sir.

Senator GEORGE. Take a second loss?

Senator CONNALLY. What I mean is: Suppose I have a mortgage in 1933, and I foreclose it or the mortgagor turns the property over to me and I do not return any loss, but in 1934 I sell the property; can I then figure off what my mortgage was, and then what I sold it for, and take that loss the following year?

Mr. BROWNE. You cannot.

Senator CONNALLY. I cannot?

Mr. BROWNE. And that is what I think should be allowed. That is what I think should be done, principally, as I say, to avoid the difficulties of valuation.

The CHAIRMAN. Let us get that clearly in mind. That is a matter for the experts to note. Do you mean to say, now, that if he had a mortgage and he lost $800 by virtue of the foreclosure? Is that right?

Senator CONNALLY. $200.

The CHAIRMAN. $200.

Senator CONNALLY. And they had this property, worth $800.

The CHAIRMAN. In 1933? He has got to take that loss that year?

Mr. BROWNE. Yes.

The CHAIRMAN. He must take it that year? Now, if in January he should sell for $1,000 more than the mortgage, $1,200, more than his loan, he would have to pay on a gain?

The CHAIRMAN. That is correct.

Senator CONNALLY. I have been figuring that when the property was taken in the mortgagee did not take the loss until he sold it, and so I failed to take my losses.

Mr. BROWNE. Well, maybe my proposed amendment will help you, Senator.

Senator GORE. That is one of the cruel things about this existing law, isn't it, Mr. Browne?

Mr. BROWNE. It is cruel in some instances.

Senator GORE. Take this example: A man sells a piece of property and takes it back on foreclosure. Whatever he gets back when he takes the property back under foreclosure, the value, whatever represented the capital in his original sale, is charged against his income when he takes it back.

Senator CONNALLY. Oh, no.

Senator GORE. Yes; it is.

Mr. BROWNE. Well, if a man has a mortgage on a piece of property in a certain amount, and bids it in at the foreclosure sale for a small bid, he is deemed to have realized a gain measured by the amount of his bid—the difference between the amount of his bid and the fair market value of his property.

The CHAIRMAN. And he is permitted to take that loss that year?

Mr. BROWNE. Well, that is a gain which he must take in that year.

The CHAIRMAN. Yes.

Mr. BROWNE. Then if he has a deficiency over against the mortgagee, which he fails to collect, he may charge that off as a bad debt, provided he demonstrates it is worthless.

The CHAIRMAN. But next year, if he should sell it at a high price, and could take the profit, he can take only the difference between what he bid his property back for and the profits, then?

Mr. BROWNE. That is correct. That is correct. But it makes two transactions, and it seems to me unwise to measure a thing like an income tax, which is supposed to be as exact as we can make it, by such an indefinite criterion as the fair market value of parcels of real estate, particularly in these times, unless it is necessary to prevent tax avoidance.

The CHAIRMAN. All right.

Mr. BROWNE. But it seems to me that it is not the way.

Senator MCADOO. In order to establish the loss in the circumstances you have just considered, you have to prosecute your claim to judgment, and you have to get a return nulla bona before you can charge it off, haven't you?

Mr. BROWNE. That is certainly much more safe.

Senator MCADOO. Well, I mean, doesn't the Bureau so hold?

Mr. BROWNE. I am not certain that they require that certificate. How about that?

Senator MCADOO. How about that?

Senator GORE. It would be like the case of a receivership or a bankruptcy, if they haven't anything, you cannot recover.

Mr. BROWNE. I have understood what Senator McAdoo said is a fact.

Mr. BARTHOLOW. No; not any more than in the case of any note. We do not actually require them to go to judgment, if they can give us facts to indicate that if they did it would be useless to enter the deficiency, or a judgment, which could not be satisfied. Of course, in many cases you don't have to insist on it.

Mr. BROWNE. That would be considered the best evidence.

Senator MCADOO. That is the best evidence, and frequently it is exacted. If a mortgagee prosecutes a case to judgment, the cost of prosecuting it to judgment could not be taken as a loss.

The CHAIRMAN. Well, it would seem to me to be perfectly foolish to prosecute to a deficiency judgment, if the mortgagee knew he could not collect, and the Government should not impose that burden upon anyone.

Mr. BROWNE. I do not believe they would, Senator, but you would have more difficulty in establishing your claims.

The CHAIRMAN. Yes.

Senator CONNALLY. Let me ask you one other question. I hope all these Treasury experts will listen to this: Now, suppose I have a mortgage in 1933 in the amount of $1,000. The mortgagor says, "I cannot pay you; just take the property"; and I take the property back and I do not do anything more about it. Well, that property really cost me $1,000.

Mr. BROWNE. But gain or loss is measured——

Senator CONNALLY. Well, I know; but wait a moment now.

Mr. BROWNE. I beg your pardon.

Senator CONNALLY. In 1934 I sell it for $1,500. Of course, I would have to report $500 income or profit, wouldn't I?

Mr. BROWNE. You would, under the change which I want to see made.

The CHAIRMAN. Under the present law?

Mr. BROWNE. Not under the present law.

Senator CONNALLY. How?

Mr. BROWNE. Not under the present law. You would report a gain on the difference between $1,500 and whatever was the fair market value of the property at the time you took it over.

Senator CONNALLY. Although I may not have taken any loss on it at all, taking it in at $1,000?

Mr. BROWNE. You are entitled to take a loss, if it was worth less and the mere fact that you don't take it——

The CHAIRMAN. All right.

Mr. BROWNE. I might ask Mr. Bartholow if that statement is correct.

Senator CONNALLY. I haven't taken it. I have had a number of instances like that where a man just says, "I cannot pay you for the property, just take it", and no foreclosure being necessary at all. The mortgagor says, "Just take it", and it is worth 50 cents on the dollar. Well, I haven't taken any deduction, because I thought I had to wait until I sold and realized the net transaction before I could take a loss.

Mr. BROWNE. I want to be as accurate as I can. I said that the rule that I just gave you applies only where you take the property in satisfaction of the debt, where you release the mortgagor. If you do not release the mortgagor, but hold the mortgage over him, then I do not believe you have a closed transaction.

The CHAIRMAN. Then you haven't taken your property back?

Senator CONNALLY. Well, yes; the mortgagee might. In this instance, I mean, there is nothing said about it; a fellow just gets up and moves off the place and says, "There it is; take it."

The CHAIRMAN. All right, Mr. Browne.

Senator GORE. Just one more question: You understood Senator Harrison to say that the price at which you bid it in—I did not get all your statement based on that. Would that be included in his income for the year it happened or as a basis for the return of income for the purpose of computing his income for that year?

Mr. BROWNE. The face value is prima facie.

Senator GORE. But not controlling?

Mr. BROWNE. But not controlling.

Senator GORE. What is the exact change you suggested?

Mr. BROWNE. I suggest a provision that on such a foreclosure sale, where the mortgagee bids in the property, no gain or loss shall be recognized at that time, but that he should be deemed to have acquired the property at the cost equal to his mortgage plus the cost and expense of foreclosure, and minus anything he may be able to collect on a deficiency judgment or otherwise; that that be deemed the cost to him of the property.

The CHAIRMAN. Well, we will leave that to the experts and talk to them about it. And your brief will elaborate on it?

Mr. BROWNE. Yes, sir. I have one other point which involves a definition of "corporations" under the law. The present law, the pending bill, and a number of earlier acts have defined "corporations" as including associations, joint-stock companies, and insurance companies. The purpose of that was to place in the category of corporations, for tax purposes, not only statutory corporations

but associations and trusts, which as the Supreme Court said in a case, "although not incorporated, transact their business as if they were incorporated; in other words, to tax as corporations de jure corporations and quasi-corporations." Now, in the regulations and rulings of the Treasury Department, the position has been taken that any trust which transacts business of any nature is an association within the meaning of that definition, and is subject to the corporation rate of tax. A number of banks and trust companies throughout the country have decided a number of years ago that they could render a better trust service to persons of small means if they could take the individual trust funds and commingle them into one fund for the purposes of investment. That would give these small trust funds the advantage of wide diversification in investments and decreased cost of administration. In other words, it would let me, with my small trust fund, get the same sort of service, diversification, safety, and expense that a man of his own individual large trust would get.

Under the laws of some of the States, trustees are permitted to mingle trust funds for investment. Under the laws of other States it is necessary for the trust instrument specifically to confer that power on the trustee, and in those States where the power must be conferred by the trust instrument, a number of banks and trust companies have devised plans of uniform trust. Under a plan like that a man will create a separate trust, but in the document creating the trust he will give the trustee power to mingle the trust funds with other trusts over which the trustee has the same power for purposes of investment.

Now, those commingled trust funds are handled exactly like individual trust funds. There is no business being conducted. There is only investment and reinvestment by the trustee. There are no features of a corporation. There are no peculiar exemptions for liability either of the trustee or the beneficiary. There is no transferable service. In short, there are none of the essential characteristics of a corporation, and it seems to me unwise to subject those funds to tax, where the result would be to penalize the people who have small trust funds, but want to get the same advantages as the beneficiaries of large trust funds get, and I am proposing an amendment which would definitely classify or place those trusts in the category of other trusts, rather than in the category of corporations.

I have drawn my proposed amendment so that it would not exempt from the corporate tax the typical investment trust, as it is commonly understood, where securities are sold to the public and there is a management fund and all that sort of thing. I do not touch those, but only funds held by incorporated banks or trust companies as the result of commingling private trust funds, and where the trustee has the sole power and control over the investments, and where no certificates or securities are sold to the public.

I have one other proposal with respect to the stamp tax. The State of New York has amended this stamp-tax law so that now transfers of stock to a custodian for safekeeping only, or transfers from a custodian to its nominee, or from one nominee of a custodian to another nominee or from the nominee back to the custodian, or from the custodian back to the customer, are not subject to a stamp

tax, on the idea that there is no sale involved, it is merely a convenience for safekeeping the certificates. I might suggest that a similar amendment be adopted by the Federal Government with respect to the Federal stamp tax.

There is no transfer of title in these custodian transfers, Senator Harrison. It is merely a convenience, and this would put the Federal tax on the same basis as the State tax.

The CHAIRMAN. How much revenue is involved?

Mr. BROWNE. I am sorry, but I do not know.

Senator GORE. Mr. Browne, New York has passed a statute providing, in the case of foreclosure sale and deficiency judgment, the property is to be appraised, the reasonable value of the property is to be ascertained, and is to be printed on the judgment; isn't that true?

Mr. BROWNE. Yes, sir.

Senator GORE. And in certain cases, unless that procedure is taken by affidavit or otherwise, they cannot get a deficiency judgment at all?

Mr. BROWNE. The amendment I have suggested with respect to foreclosure sales would not serve to encourage deficiency judgments, certainly not in New York where we cannot get a deficiency judgment except after a real valuation of the property by the court, and by special leave. We cannot bid in the property for $1,000 and automatically enter the deficiency judgment against the man.

Senator GORE. And, unless initiative is taken by the claimant within a limited time, he cannot obtain the deficiency judgment at all?

Mr. BROWNE. No; no deficiency judgment.

The CHAIRMAN. Now, does that cover your points?

Mr. BROWNE. Yes, sir. I had one more that I would like to advance only as a lawyer and taxpayer. And it is very brief. It is a provision which says that the statute of limitations shall not apply where a taxpayer fails to include in gross income an amount equal to 25 percent of his gross income as computed. I merely suggest that the taxpayer should have the right, without leaving the statute of limitations wide open, to recite plainly on his return that he received a certain amount of money from a certain transaction but that he is not including it in gross income, because he believes it is not taxable, and I think if he discloses the item on his return, it ought to serve the same purpose as if he puts it in gross income on the return.

The CHAIRMAN. Well, the experts may make that notation and give us their solution of it. Thank you, very much.

Mr. BROWNE. I have a letter from the superintendent of the insurance department of New York, approving of my proposed amendments relative to the mortgage situation.

The CHAIRMAN. Yes. Thank you, very much.

STATEMENT OF ROLLIN BROWNE RECOMMENDING AMENDMENTS TO THE REVENUE BILL OF 1934 (H.R. 7835)

TO PROVIDE THAT NO GAIN OR LOSS SHALL BE RECOGNIZED UPON THE FORECLOSURE OF REAL-ESTATE MORTGAGES AND OTHER TRANSACTIONS, AND TO PROVIDE FOR THE BASIS OF REAL PROPERTY ACQUIRED IN CONNECTION WITH SUCH TRANSACTIONS

During the period of the existing depression there have been numerous defaults under real-estate mortgages, resulting in a great many foreclosures, at which it has been essential for the mortgagee to bid in the property in order to avoid almost complete sacrifice of his investment. A great many of these mortgages have been and are held by fiduciaries in trust estates, and particularly in those cases the acquisition of the mortgaged property at the foreclosure sale represents an unwilling or involuntary investment of trust funds in real property. Such investments are of a temporary nature, it being the intention of such fiduciaries, and, in fact, their duty under the law, to resell the real property as soon as they are able to secure fair prices.

None of the revenue acts which have been enacted by Congress in the past have contained any specific provision for the treatment for income-tax purpose of the purchase of mortgaged property by the mortgagee at a foreclosure sale. The regulations of the Treasury Department promulgated under a number of earlier acts have, however, contained detailed provisions with respect to this subject. Under these regulations it has been provided that, where a mortgagee bids in the property at a foreclosure sale, the transaction is considered a closed transaction upon which gain or loss is recognized. The regulations provide that the transaction shall be considered an exchange of the portion of the bond and mortgage represented by the amount of the bid at the foreclosure sale in exchange for the real property so acquired, and that the gain or loss shall be the difference between the cost or other basis of the portion of the bond and mortgage so used and the fair market value of the real property at the time of the foreclosure sale, which, in turn, is the basis of the real property for the purpose of determining gain or loss upon any subsequent sale or disposition thereof by the mortgagee. The validity of such regulations is at least doubtful, since it seems to be somewhat anomalous to say that a person realizes again upon the mere purchase of property, no matter how great a bargain he may have secured, nor does it seem proper to allow a loss upon the mere making of a poor investment. These objections apply with particular force where the investment is forced upon the taxpayer by causes beyond his control.

The regulations have recognized the hardship of the rule above described and have attempted to relieve against such hardship in some measure by a corollary provision to the effect that if a deficiency results from such a foreclosure, then the uncollected portion of such deficiency may be deducted by the mortgagee as a bad debt, provided its worthlessness is demonstrated. This does not afford complete relief, since in many cases the foreclosure sale might occur in 1 year and the mortgagee thus realize a large theoretical profit on which he would be required to pay a tax, while the deficiency might not be determined to be worthless until the following year, so that the bad-debt deduction could not be used by the mortgagee to offset his theoretical profit on the foreclosure sale.

Furthermore, the present regulations are very difficult of administration. The method of taxation provided by the regulations depends principally upon the determination of the fair market value of the property at the date of the foreclosure sale, and obviously, particularly during these times, such determination is exceedingly difficult and, in many cases, practically impossible. It seems an unwise policy to measure an income tax by so indefinite a criterion, except when absolutely necessary. As we shall show, no such necessity exists in this type of transaction.

It seems obvious that when a mortgagee of real property purchases such property at a foreclosure sale, he is merely changing the form of his investment from an investment in a real-estate bond and mortgage to an investment in the real estate itself. It seems obvious that he is merely purchasing property and that his real gain or loss cannot be determined until he disposes of the property so purchased. In such case the amount of the investment so made is normally the principal amount of the mortgage at the time of the foreclosure plus the costs and expenses of foreclosure less any amount which the mortgagee may recover thereon, under a deficiency judgment or the mortgage. In cases

where the bond and mortgage had been acquired by gift or by inheritance, the amount of the investment would be measured by the cost basis of the bond and mortgage in the hands of the person foreclosing, rather than the principal amount of the debt. In general, it would be more accurate to say that the amount of the investment made on such a foreclosure sale is measured by the "adjusted basis" of the debt at the time of the foreclosure, and this is the language which is used in the proposed amendments submitted herewith. It would seem to be more logical and also more fair to treat such a transaction as a purchase of the real property at a price measured by the above formula and to postpone the determination and recognition of gain or loss until the property so acquired is disposed of. Provision should, of course, be made for the taxation of any actual profit which may be realized on such a transaction in the form of money or property other than the mortgaged property, although cases in which such a profit would be realized would be extremely rare. Also it should be provided that no deduction for a bad debt should be allowed as to any portion of a mortgage debt which is involved in such a transaction.

In some cases, principally to avoid the expense of foreclosure proceedings, a mortgagor of real property conveys the property to the mortgagee by a voluntary conveyance, in exchange for the satisfaction of the debt. The rulings of the Treasury Department have treated such transactions in the same manner as foreclosures, and if the amendments herein suggested with reference to foreclosures are adopted they should be broad enough to cover such voluntary conveyances.

Below are set forth proposed amendments to the pending revenue bill of 1934 (H.R. 8935) to carry out the suggestions set forth above:

(1) Insert the following in section 112, immediately following subsection (f):

"SEC. 112. (g) No gain or loss shall be recognized if the owner of a debt secured by real property or a leasehold or other interests therein acquires such property by purchasing the same at a sale for the enforcement of the security, or by a conveyance from the owner of such property in exchange for the satisfaction of the debt; but if, in addition to the property so acquired, money or other property is received in reduction of the principal of the debt or in reimbursement of the actual cost and expenses of such acquisition, then the amount of money and the fair market value of such other property shall be applied against and reduce the adjusted basis of the property so acquired provided in section 113, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property."

(2) Renumber the present sections 112 (g), (h), and (i).

(3) Insert the following in section 113 (a), immediately following subdivision (13):

"SEC. 113. (a) (14) If real property or leasehold or other interest therein was acquired after December 31, 1933, upon a transaction described in section 112 (g), the basis shall be the adjusted basis of the debt at the time of such acquisition, increased in the amount of the actual cost and expenses of such acquisition, but such basis shall be reduced to the extent, if any, required by the provisions of section 112 (g)."

(4) Renumber the present subdivision (14) in section 113 (a).

(5) Amend section 23 by striking out the period at the end of the sentence and inserting the following:

"; but no deduction shall be allowed with respect to any portion of a debt which may be taken into consideration in computing the basis of property provided in section 113 (a) (14)".

RELATIVE TO TAXATION OF CERTAIN TRUST FUNDS ESTABLISHED WITH INCORPORATED BANKS AND TRUST COMPANIES

Section 1111 of the Revenue Act of 1932 provides that the term "corporations", when used in the act, "includes associations, joint-stock companies, and insurance companies." Section 710 of the pending bill contains the same definition, and practically identical definitions have been contained in the prior revenue acts. The purpose of these provisions has been to place in the same category with corporations, for purposes of the revenue acts, statutory joint-stock associations, common-law associations, and similar organizations which, although not incorporated, nevertheless possess and enjoy some of the essential distinguishing characteristics and privileges of corporations.

The purpose of such a definition is not to make certain that such organizations are subjected to tax, because whether they are treated as corporations, trusts, or individuals, they would be subject to tax; the problem is merely one of classification. Viewed in this light, it seems obvious that such provisions, when properly construed, would include only such organizations as possess some of the essential characteristics and privileges of corporations, in other words, that it would include only corporations and quasi-corporations.

We believe that such an organization should be treated as a corporation for Federal income-tax purposes if it possesses and enjoys the characteristics above referred to, regardless of its status under the local law.

As the Supreme Court said in *Hemphill* v. *Orloff* (277 U.S. 537),

"Whether a given association is called a corporation, partnership, or trust is not the essential factor in determining the powers of a State concerning it. The real nature of the organization must be considered. If clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment."

In *Burk Waggoner Oil Association* v. *Hopkins* (269 U.S. 110), the Supreme court said that there was no constitutional prohibition upon Congress taxing as a corporation "an association which, although unincorporated, transacts its business as if it were incorporated."

The interpretation of these statutory definitions by the Treasury Department has been far from uniform, so that under the regulations it has been almost impossible to ascertain in many cases whether trusts should be considered as corporations or as strict trusts under the tax laws. This uncertainy of the Treasury Department with respect to this question has been caused principally by conflicting court decisions and in large measure by the Department's interpretation of the opinions of the Supreme Court in *Crocker* v. *Malley* (249 U.S. 223) and *Hecht* v. *Malley* (265 U.S. 144).

The Department believes that in the *Crocker case*, which involved the former capital stock tax, the Supreme Court announced that the primary test in determining whether or not a trust constituted an association or corporation was whether or not the beneficiaries were given any appreciable control over the management of the trust estate by the trustees. The Department believes that in the *Hecht case*, which involved the income tax, the Supreme Court departed from this principle and announced that the test was whether or not the trust was engaged in or carrying on business, irrespective of whether or not the beneficiaries were given control over the acts of the trustees. We submit that this interpretation of the Supreme Court's opinions in these two cases is erroneous and that the two opinions, when read together, show that the test which has been laid down by the Supreme Court is whether or not the trust carries on business in the manner and form of a corporation, or, in other words, whether the trust enjoys any of the quasi-corporate characteristics. And certainly, the above quotations from the opinions in *Hemphill* v. *Orloff* and the *Burk-Waggoner case* show clearly that the justification for classifying a given trust with corporations for purposes of statutory regulation and taxation is the presence of such quasi-corporate characteristics.

However, the Treasury Department, relying on its interpretation of the opinions in the *Crocker case* and the *Hecht case*, which interpretation has also been approved by the Board of Tax Appeals and some of the lower Federal courts, has adopted the practice of taxing as corporations almost all trusts which are engaged in business, and the Department has adopted a very broad interpretation of the term "business."

Some banks and trust companies have found that they are able to render a much more satisfactory service in the investment of comparatively small trust funds if they mingle the funds for the purpose of investment. Some States have authorized such commingling of trust funds; in other instances, such commingling must be specifically authorized by the terms of the trust instrument. For the purpose of accomplishing such commingling, where it is required to be authorized by the trust instrument, a number of banks and trust companies have adopted systems of uniform trusts. Generally speaking, a person who desires to establish a trust under one of these plans of uniform trusts, establishes a separate trust with the trustee and by the instrument establishing the trust confers upon the trustee certain uniform powers and privileges (which are usually incorporated into the document by reference to the uniform plan), including authorization to the trustee to commingle the trust fund for purposes of investment with other trust funds over which the trustee has the same authorization. The chief advantages sought to be accom-

plished by such commingling, whether accomplished by uniform trusts or otherwise, are diversification of investments resulting in greater safety of principal and decreased cost of administration. Such trust funds are not "investment trusts" as the term has long been understood; there is no management company; there is no wide-spread sale of the trustee's certificates among the public (the facility being merely offered as a trust service); in fact, in many instances, no certificates of any kind are issued by the trustee and even where such certificates are issued they are not transferable; the beneficiaries have no voting power or control over the management of the trust fund by the trustee; the trustee's rights, powers, duties, and liabilities are governed exclusively by the law of trusts; the trustee is not engaged in business, but is only investing and reinvesting the trust funds committed to its care to the best of its ability, although in recent imes such rustees have usually made frequent changes in investments as required by the exigencies of existing economic conditions.

In many such cases the Treasury Department has ruled that the commingled trust fund constitutes a corporation under the above-quoted definition.

Neither the trustee nor the beneficiaries of such funds enjoy any of the benefits and privileges usually enjoyed by corporations, their officers, directors, and stockholder; such a trust has no separate existence, but the term of each trust, the funds of which are commingled, is measured by the ordinary rules of the law of trusts and is usually measured by the life of two persons; such a trust does not have the "freely shifting personnel" of a corporation since it does not issue certificates or such certificates are not transferable; neither the trustee nor the beneficiaries enjoy any exemption from liability except such as may be conferred upon them by the law of trusts; in short, neither the trustees nor the beneficiaries receive any benefits or advantages which would justify them in being required to pay the special tax imposed upon corporations or quasi corporations.

Furthermore, we submit that this trust service which banks and trust companies are attempting to give persons of small means is a service which should be encouraged in every legitimate manner. We believe that the man of small means who creates such a trust in order to receive for his small investments the same care, attention, safety, and diversification that a man of great wealth could receive for his separate individual trust fund should not be subjected to tax or other statutory burdens.

We do not urge any amendment to the revenue laws which would exempt from the corporate tax the usual "investment trust" the certificates or securities of which are sold to the public, and the operations of which are managed either by a management company or a board of trustees with the powers and exemptions of directors and officers of corporations, but we do urge an amendment which would definitely place in the category of strict trusts commingled trusts established with incorporate banks and trust companies. We take the liberty of pointing out that not only are such trust funds protected and regulated by the law of trusts but the trustees are also subject to the laws relating to banks or trust companies and to the supervision and regulation of either the National or State banking departments. We feel, therefore, that an amendment such as we propose would not result in a general exemption from the corporate tax of organizations which really enjoy the benefits and privileges of the quasi-corporate form of organization.

Below are set forth proposed amendments, the object of which is to place such trust funds definitely in the category of strict trusts under the revenue bill. The amendments have been drawn so as not to exempt from the corporate tax the typical "investment trust", the certificates or securities of which are marketed to the public.

1. Amend section 161 (a) of the pending bill, which imposes upon trusts and estates the taxes imposed upon individuals, by adding thereto a new paragraph as follows:

"(5) Income of any fund consisting principally of, or established for the principal purpose of investment in, securities, which is formed by the commingling of private trust funds established with a bank or trust company organized under the laws of, or qualified to do business in, the United States or any State or territory thereof, as trustee, under wills, written agreements and/or declarations of trust conferring upon such trustee the sole power and control over the investment and management of such fund, where it is shown to the satisfaction of the Commissioner that it is not the purpose of the person

or persons establishing such private trust funds to sell participating or beneficial interests therein and that such participating or beneficial interests are neither sold generally by the person or persons establishing the same nor transferred to or acquired by others in consideration of contributions made thereto. The income and deductions of any such fund shall be included in computing the net income of the trusts the funds of which are commingled therein, ratably according to the interest therein of each such trust."

2. Insert after the words "provided in" in subsection (b) of section 161 the words "in paragraph (5) of section 161 (a) (relating to certain commingled trust funds) and."

WITH RESPECT TO THE EXEMPTION FROM STAMP TAX OF CUSTOMER-CUSTODIAN AND NOMINEE TRANSFERS

It appears to be the intention of the Federal Revenue Law, as evidenced by the amendments made by the Revenue Act of 1932—Schedule A (stamp taxes), not to consider as taxable for stamp-tax purposes transfers of securities unless there is an intention to actually sell or dispose of the property. That being the case, the attached proposed amendments to the revenue bill of 1934 are suggested so as to insert in the law a specific provision with respect to the exemption of deliveries or transfers by an owner to a custodian, or its nominee, or vice versa, or from one of such nominees to another, where the securities so delivered or transferred are to be sold or disposed of by such custodian or its nominee for and subject to the instructions of the owner.

The New York State law, which is similar in purpose to the Federal law, has already been amended in this respect and the wording of the proposed amendments hereto attached will incorporate similar provisions in the Federal Revenue Law.

The adoption of such amendments will not only clarify the intention of the Federal statute but will make its practical operation consistent with that of the State law, thereby facilitating the collection of stamp taxes. Below are set forth proposed amendments to accomplish this purpose.

1. Insert a section in title III, amendments to prior acts and miscellaneous in an appropriate place, which will read as follows:

"Subdivision [illegible] of schedule A of the act of [illegible], as amended by section 723 of the Revenue Act of 1932, is amended by inserting after the fourth '*Provided further*' clause, an additional proviso to read as follows:

"'*Provided further*, That the tax shall not be imposed upon deliveries or transfers from the owner thereof to a custodian, or a nominee of such custodian, if the shares or certificates are to be held or disposed of by such custodian, or its nominee, for and subject to the instructions of the owner, or from such custodian or its nominee to the owner, or from the nominee to such custodian, or from such custodian to a nominee of such custodian, or from one nominee of such custodian to another, provided the same continue to be held by such nominee or nominees for the same purpose for which they would be held if retained by such custodian, but such deliveries or transfers shall be accomplished by a certificate setting forth the facts.'

"Subdivision 9 (a) of schedule A, as added by section 724 (a) of the Revenue Act of 1932, is amended by inserting after the second '*Provided further*' clause, an additional proviso to read as follows:

"'*Provided further*, That the tax shall not be imposed upon deliveries or transfers from the owner thereof to a custodian, or a nominee of such custodian, if the instruments are to be held or disposed of by such custodian, or its nominee, for and subject to the instructions of the owner, or from such custodian or its nominee to the owner, or from the nominee to such custodian, or from such custodian to a nominee of such custodian, or from one nominee of such custodian to another, provided the same purpose for which they would be held if retained by such custodian, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts."

Senator WALSH. I would like to have the brief of F. W. Denio, of Boston, Mass., put into the record.

The CHAIRMAN. Very well.

(The brief referred to is as follows:)

MEMORANDUM SUBMITTED BY F. W. DENIO, BOSTON, MASS., VICE PRESIDENT OF THE FIRST OF BOSTON CORPORATION OF MASSACHUSETTS, ALSO ON BEHALF OF NATIONAL SHAWMUT BANK, FIRST NATIONAL BANK, SECOND NATIONAL BANK, MERCHANTS NATIONAL BANK, OLD COLONY TRUST CO., ALL OF BOSTON, AND 18 COUNTRY BANKS

1. Banks and insurance companies are engaged in a type of business entirely different from all others. The following are some of the more important differences:

(*a*) By law banks are limited in the use of their funds practically to dollar obligations and cash, and in many States insurance companies are also limited in the investment of their reserves. Insofar as they have other assets, they are acquired as an incident to the collection of dollar obligations owed to them. Therefore, they are not in a position to make gains, and the nature of the business is such that they cannot avoid losses.

(*b*) Substantially all the gross income of banks is derived from interest on loans and securities. Interest income of other businesses is usually a very minor factor and is derived from the investment of surplus funds in manners not connected with the current operation of the primary business. Losses on such investments are accordingly outside that primary business. In the case of banks losses on loans and securities do not arise from the investment of surplus, but are an unavoidable incident of the primary income-producing function of loaning money.

(*c*) The ordinary business corporation can control the amount of its inventory and its payables, but banks and insurance companies are subject entirely to the popular whim. The business corporation can, within limits, liquidate its inventory and pay its creditors at or before maturity, but a bank is compelled to liquidate its inventory at such times as the depositors demand their money.

(d) The merchant or manufacturer computes his gross earnings on the inventory method of accounting, with result that losses on his stock in trade or product are reflected in the determination of gross income. Banks and insurance companies are substantially the only types of businesses which are not permitted by the income-tax authorities to use the inventory method of accounting. This distinction, made by the tax authorities for over 20 years, places banks and insurance companies in a separate classification. If this tax principle is maintained, banks and insurance companies should be given as deductions in computing net income what business corporations are allowed in computing gross income, namely, the losses necessarily incident to the primary income producing function.

II. The purpose of the new tax law appears to be to tax the full amount of the taxpayer's periodical net income but to allow him a deduction for losses necessarily incident to the current operation of his business. Unlimited income-tax deductions are to be allowed on the stock in trade of the merchant and the inventory of the manufacturer. Losses not arising in the ordinary current conduct of the business (such as the sale of the manufacturer's plant or investment securities), are to be allowed only to the extent of gains from similar transactions.

Losses on bad debts and securities are not only a necessary incident of the current operation of a bank, and inseparably connected with earnings from interest which constitute almost all of its gross income, but also absorb such a large part of that gross income that the failure to allow an unlimited deduction of such losses would impose a discriminatory burden on banks. This is all the more serious because the nature of their assets is such that they seldom have profits on sales against which such losses would be allowable under the new law.

Figures published by the Comptroller of the Currency[1] show that for the years 1918 to 1933 inclusive, losses actually charged off on loans and investments of national banks have averaged practically 1 percent per annum (0.97 percent) of the average of more than 18 billion dollars of total loans and investments (including Government bonds). The amounts so charged off which averaged during the last 16 years in excess of $176,000,000 per year, constituted more than 50 percent of the net earnings from all sources computed before such charge-offs.

III. The effect of the new provision as applied to security losses alone, will be, in substance, to greatly increase the tax rate on the actual earnings of

[1] Comptroller's Report, Jan. 3, 1934, p. 82, Treasury Document No. 3062.

banks over the rate paid by manufacturing and merchandising corporations. This results from the fact that other statistics published by the Comptroller[4] show that for the last 16 years losses on securities alone absorbed $27.56 of every $100 of actual earnings of national banks, computed before such losses. If banks are to pay a 13¾-percent tax on the $100 when they have only actually earned $72.44 after deducting security losses, the effect is to tax banks at the rate of 19 percent of their actual earnings, while merchandising and manufacturing corporations are taxed at only 13¾ percent of their actual earnings. This penalty will be even more severe in the next few years because of the present depreciation in the investment portfolios of banks. The new law deprives banks of the unlimited deduction for these losses and they normally have no profits against which these losses can be used in order to obtain the benefit of the limited deduction provided in the new law. The merchant or manufacturer, on the other hand, is to be allowed an unlimited deduction for losses on his inventory or stock in trade and usually has at least some profits against which he can offset other losses.

IV. Quite apart from questions of fairness to the banks, important questions on public policy are involved because of the hardship which the proposed rule would impose upon borrowers from banks. If a bank forces the bankruptcy or liquidation of a debtor's business, it will be allowed, under the new law, an unlimited income-tax deduction for the portion of the debt so ascertained to be worthless. Most banks are glad to cooperate with embarrassed debtors in order to prevent bankruptcy or liquidation. This is particularly true in the case of individual debtors, and it is usual banking practice to accept some reasonable settlement with such a debtor or to accept stock or securities in the reorganization of a corporate debtor in lieu of the former bank debt. Under the new law, a bank cooperating with its debtor in this manner will lose the 12¾-percent income-tax benefit that would result if the debtor were forced into bankruptcy or liquidation, and in the case of State taxes, such as the Massachusetts tax on banks, an additional 6-percent loss is involved. This penalty is so severe that banks will most certainly be deterred from cooperating with debtors in these respects, since the income-tax saving on bad debts probably averages more than the amount salvaged.

As a matter of policy, Congress should not impose such a substantial obstacle to the willingness of banks to cooperate with debtors to avoid bankruptcy and liquidation. This is particularly true since a simple change in the tax law will both prevent such bankruptcies and liquidations and obtain for the Government the same tax revenue as though such bankruptcies and liquidations were required.

V. Section 23 (r) 3, of the 1932 Revenue Act, relating to banks, and section 204 (b) d, relating to insurance companies, recognize the principle that they are entitled, as are other corporations, to losses that occur in the exercise of their primary income-producing activities, and that special statutory exceptions may be necessary to bring about this equality of taxation.

VI. The English income-tax laws recognize this distinction between individuals' security transactions and those of banks. Individuals are not taxed on the profits on sales of securities, nor are they allowed to deduct from their income losses on sales of securities. Banks, on the other hand, are required to include in their income as a normal incident of their business profits on the sales of securities and for the same reason are allowed to deduct from their income all losses on the sales of securities.

VII. The proposed law will be much more difficult for the Treasury Department to administer, because in all cases where property is received on the voluntary payment of a debt or as a result of foreclosure it will be necessary for the Treasury Department to place a cash value on the property at the time received, because no further loss on the ultimate sale of the property will be allowed. Under the present law this appraisal does not become necessary, because the transaction usually crystallizes into an ultimate loss within a reasonably short time. The amendment suggested below would avoid administrative difficulties by continuing, for bank and trust companies, the present rule, which is easy of application. Banks and trust companies constitute a well-defined class of taxpayers and no difficulty arises in distinguishing them from other types of businesses.

VIII. The present draft of statute can be easily amended by inserting the following words at the beginning of sections 23 (j) and 117 (d):

"Except in the case of banks and trust companies."

F. W. DENIO.

STATEMENT OF D. J. NEEDHAM, REPRESENTING AMERICAN BANKERS ASSOCIATION

Mr. NEEDHAM. May I say in introduction, Mr. Chairman, and members of the committee, that the American Bankers Association has given this proposed revenue bill very serious and thoughtful and careful consideration from the standpoint of being of assistance in the program of the Government toward the ultimate end of a general national recovery. With that thought in mind, may I have the privilege of reading this very brief statement.

The CHAIRMAN. Proceed.

Mr. NEEDHAM. The American Bankers Association, by its authorized representatives, submits herewith for your favorable consideration three proposals constituting amendments to the above-named bill now before you for consideration. These proposals are as follows:

(1) Section 23 (b). Deductions from gross-income interest.

That this section be amended by deleting therefrom the following language (p. 26, lines 19–20), "or the proceeds of which were used to purchase or carry."

The CHAIRMAN. The committee has already taken action on that, so you need not discuss that.

Mr. NEEDHAM. (2) Section 24 (a) (5), items not deductible. This section to be eliminated entirely.

Senator REED. On section 24 (a) (5), if we were to insert in the second line of that clause, which is line 23, the words "except interest on indebtedness", it would pretty well cover your point, wouldn't it?

Mr. NEEDHAM. Not wholly.

Senator REED. But pretty well?

Mr. NEEDHAM. There are some very vital elements in that particular paragraph which this committee should consider, and I am going to ask Mr. Blinn to call your particular attention to them.

(3) Section 117 (d), capital gains and losses—Limitation on capital losses—That this section be amended by adding thereto the underlined words as shown below so that this section as amended will read as follows:

Senator COUZENS. The experts will get that.

Mr. NEEDHAM (reading):

> SEC. 117 (d). Losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, but this subsection shall not apply or be applicable to a bank or trust company incorporated under the laws of the United States or of any State or Territory.

The CHAIRMAN. We have not passed on that proposition, but I think the experts are drawing up an amendment on it.

Mr. NEEDHAM. The American Bankers Association offers for your consideration the following observations relative to the foregoing proposed amendments to the revenue bill now before you.

I will eliminate section 23 (b), as you have noted that you are taking action upon that:

Section 24 (a) (5), items not deductible: This section as now written provides that amounts ordinarily allowable as deductions shall not be allowed to the extent that they may be allocated to income on

which the taxpayer does not have to pay taxes. This section is entirely new and in substance will have the effect of removing a substantial part of the exemption traditionally inherent in all tax-exempt securities. The right to make such allocation has been considered by the courts on various occasions, and as we understand where the exemption was constitutional rather than statutory the Supreme Court has held that such an allocation could not be validly made. This section as now written will undoubtedly have a depressing effect upon the value of all tax-exempt securities by virtue of the partial nullification of the tax-exempt features inherent therein. Instead of Government securities being wholly exempt from taxation they will be only partially exempt. Purchasers of Government obligations would not know to what extent, if any, a tax exemption would be effective, for until the end of the year a taxpayer would not know the three necessary factors, namely, taxable income, nontaxable income, and business expenses.

Unless this section is deleted a taxpayer will be unable to determine what amounts otherwise deductible are "allocable to income wholly exempt", thereby resulting in much confusion. The net result will be that Government obligations will naturally become less attractive and thus will be forced to carry in the future a higher coupon rate. In addition, the adoption of this section is bound to lead to many difficulties in administration and will, no doubt, become a subject of considerable controversy. The same may be said of section 23 (b).

Section 117 (d), capital gains and losses—limitation on capital losses: Our proposed amendment to this section, if adopted, will result in retaining the provisions now in the revenue law insofar as banks and trust companies are concerned.

In dealing with this subject it must be considered that banks and trust companies do business on a basis which does not result in substantial capital gains. The income from a banking institution is derived primarily from interest on loans and income from securities. Securities are bought and sold as banking transactions, and any gain or loss incurred in these transactions should be treated the same as any other revenue or expense.

This section limits the deduction of losses sustained on Government obligations to an amount not in excess of gains from the sale of Government or other securities. One of the purposes of the bill is to prevent tax avoidance by the effect of manipulated tax losses against capital gains. Up to this time it has been the belief that no restrictions should apply to Government securities. This is believed to be sound since they do not fluctuate greatly in price. Practically all of the investments in such securities as made by banks and other institutions are based upon the tax-exempt yield on the securities. It is quite usual for such securities to sell above par. The difference between the cost price and par under existing law becomes a proper tax deduction at maturity. Elimination of this right to deduct will in many cases deprive bona fide investors of a substantial part of the return which was inherent in the securities when purchased. The realization of this loss is to a considerable extent not subject to the control of the investor. When the bond matures the loss occurs. There may or may not be capital gains to offset the loss

and the institution may be forced to sell securities on which it has a paper profit solely to establish capital gains.

This section as now written would have adverse effects on the security market. It would tend to depress the price of Government and other bonds; particularly tending to prevent the price from rising above par; and it would bring about selling by institutions of other securities on which they might have a profit. Thus, instead of preventing, this section would tend to encourage, manipulative tax selling.

We believe that this is an inopportune time for introducing any change in the underlying principles on tax exemption of Government securities. The bond market needs to be broadened and kept attractive in order that the Government may carry out its recovery program. Unless the above sections are modified as suggested herein, the market for Government securities will be restricted and these securities will be less attractive to all types of investors. The present bill will no doubt cost the Government far more in increased interest charges than will be collected in increased taxes. While the object of Congress is no doubt directed to an increase in Federal revenue, we believe that the result, should the proposed bill become law, would be the opposite. We believe that there should be no diminution in the value of the tax-free covenant in Government securities now outstanding. Such diminution if desired should be effected only by a change in the tax-free covenants of bonds to be issued in the future.

Due to the interest of the Government in the banking industry by virtue of Government instrumentalities such as the Federal Deposit Insurance Corporation, the Reconstruction Finance Corporation, and the Federal Reserve System, we believe that these suggested amendments are worthy of your earnest and sincere attention, and we urge their adoption.

The CHAIRMAN. Thank you, very much.

Mr. NEEDHAM. This is Mr. Charles P. Blinn, Jr., of the Philadelphia National Bank, Philadelphia, who would like the privilege of talking to you for just a few minutes.

STATEMENT OF CHARLES P. BLINN, JR., PHILADELPHIA, PA., REPRESENTING THE AMERICAN BANKERS ASSOCIATION

Mr. BLINN. Amplifying the remarks of Mr. Needham, do I understand that the amendment of section 23 (b) has been stricken from the bill? If not, I should like to make a comment on it.

The CHAIRMAN. The committee has not finally passed upon that section.

Mr. BLINN. May I say a word on that? The effect of the amendment of section 23 (b) is to include as a tax paid, to carry United States securities interest which is paid upon deposits. The effect of that is to reduce the income on Government securities now held by banks and to impair the tax-free covenants written into those securities. That should not be. The tax-free covenants in the securities should not be violated and the interest paid on deposits should continue to be a deduction as it is in the 1932 law.

Going on to section 24 (a) (5)—I am trying to speed up——

Senator CONNALLY (interrupting). Suppose your interest on deposits was more than your revenue from the bonds.

Mr. BLINN. I do not believe that is the case. That might be an isolated case but that is not generally the case. Those bonds have been bought on very low income-tax yields, and they have been bought on those low bases because of the tax-free covenant. The proposed bill impairs the tax-free contract in the bond.

Senator COUZENS. Only to the extent that it deducts the expense of handling.

Mr. BLINN. That is right.

Senator COUZENS. That is not a violation of the covenant. That has been done in private cases many times.

Senator REED. You are talking at cross purposes. Senator Couzens means that after the committee's action has been taken, all that is allocated to this tax-free income is general running expenses of the bank.

Mr. BLINN. In other words, it restores the 1932 law? That is all right. It is the introduction of the amendment to section 23 (b) that we object to.

Going to section 24 (a) (5), the same principle is involved there. I do not know the purpose of the interjection of that amendment, but the effect is capable of this interpretation, that that portion of the operating expenses of the bank—let me put it differently. The income of a bank may be divided into two classes—tax-exempt income and the taxable income. The effect of section 24 (a) (5) is to permit as a taxable deduction, only that portion of operating expenses which bears the same percentage as the taxable income bears to the whole income; in other words, a bank is denied the right to deduct as an allowable deduction that percentage of its operating expenses equal to the percentage of tax-free income to the whole income, and there again is an impairment of the tax-free covenant in the bond, and the association would like to record its objection to that point.

Going now to the question of capital gains and losses, banks are in a little different category than other corporations that are casual investors in Government securities. Banks are very heavy investors in Government securities, owning between eight and nine billions of those bonds today. They buy bonds at a premium at a low income-yield basis with knowledge that the premium is a deduction at maturity. Under section 117 (d) and (f), the premium on Fourth Liberties, which were bought at prices ranging from 103 to 105, the premium on Fourth Liberties at maturity, of the call day, cannot be deducted as a capital loss, although the write-off of that premium was contemplated at the time of the purchase, and the write-off of the premium, less the income received, is the real bona-fide profit or income to the bank.

Senator REED. Is that wholly logical?

Mr. BLINN. I think so.

Senator REED. Here are all your coupons on those Liberties which are tax exempt in the hands of a corporation like a bank. You disregard all of that income for the purpose of income tax, and then you want to take the premium off as a capital loss. In the beginning you calculated your income rate by subtracting the necessary amortization of that premium which you paid, and you figured that of these Fourth Liberties perhaps you get a net income return of 2½ percent totally tax free. Now, when you come to deduct that pre-

mium as a capital loss, you are deducting it from your taxable income and not from this tax-free income.

Mr. BLINN. There is something to that argument.

Senator REED. And as to section 23 (b), Mr. Parker very wittily calls my attention to the fact that I have been inconsistent there. It always seemed to me a little bit shocking that a bank should charge off all of its expenses, including its interest paid to depositors against its taxable income and get away, in effect, without paying any income tax in many cases. I do not want to ask you about your own bank, but I know of a number of large banks which, by that process, escape the payment of income tax every year. It does not seem quite just.

Mr. BLINN. But it is the class of the investment.

Senator REED. No; not entirely.

Mr. BLINN. The investment carries the tax-free covenant, and the bank buys the investment on that basis, and the obligor gets the benefit of that rate on these securities.

Senator REED. Yes; but is it fair to charge all of the expenses of the bank against its taxable income and no part against tax-free income?

Mr. BLINN. If the bank does not, there is bound to be an adjustment of income yield on the income securities, and the Government through the higher coupon rate pays the bill eventually.

Senator COUZENS. We can take care of that as long as the bank pays its proper share.

Mr. BLINN. The Government is interested in borrowing its money at cheap rates.

Senator REED. That is another point. We are in a period when the Government must have recourse to the bond market frequently. It has to maintain the marketability of its issues. I think this is a poor time to change the law for that reason, but some day if we ever get on an even keel, which we probably will in the next administration [laughter], then I think the law will be corrected.

Mr. BLINN. When is that coming?

Senator REED. In 1936. [Laughter.]

Mr. BLINN. You have income yields on United States securities ranging all the way from one half of 1 percent to 3.50 and 3.60. You have interest-bearing deposits in banks at rates all the way from 1 percent to 3 percent in some of the country banks——

Senator CONNALLY (interrupting). Let me ask you a question right there. Government bonds are not taxable except for surtaxes.

Mr. BLINN. They are nontaxable to a corporation. Surtaxes to an individual.

Senator CONNALLY. You do not pay any tax on them at all, do you?

Mr. BLINN. That is the contract. The bank buys the contract.

Senator CONNALLY. I am not objecting to that. So you do not pay any tax on that anyway, and yet you want to use the income as suggested by Senator Couzens or Senator Reed, to offset all of your expenses, which it seems to me is an unfair advantage. You are not paying any tax on them at all.

Mr. BLINN. Let me develop the fact that I started to develop.

Senator CONNALLY. Why shouldn't you pay on a pro rata basis of income?

Senator COUZENS. That is what the bill provides, and that is what they are objecting to.

Mr. BLINN. The point that I started to develop is that the income yield ranges from ½ to 3½ percent. The banks pay interest all the way from 1 percent to 3 percent according to the class of the bank, and the location, and so forth. If you provide any allocation of expenses, that only that percentage may be deducted, you have a very low income yield on the Government securities, which the banks have as a check-up line of reserves.

Senator CONNALLY. The banks do not buy all the bonds.

Mr. BLINN. They have between eight and nine billions.

Senator CONNALLY. Take a private individual who has Government bonds. If he has any surtax, he pays on them. He cannot deduct his income on those bonds from his running expenses and take a deduction in addition to getting a tax-free income, and that is what you want to do with the bank.

Mr. BLINN. He bought the bonds with knowledge of the contract. Now you are changing the contract during the life of the bond. That is what the banks object to.

Senator CONNALLY. We are not changing the contract.

Mr. BLINN. This bill does it.

Senator CONNALLY. It does not change the contract.

Mr. BLINN. Indirectly.

Senator CONNALLY. You have been getting away with deducting the expense of handling tax-exempt securities by deducting it from taxable income.

Mr. BLINN. That has been the law.

Senator CONNALLY. That is the reason I think we ought to change it.

Mr. BLINN. Let me leave this point with you. That the banks have bought the bond and entered into the situation and have it today based upon the laws as they stood.

Senator CONNALLY. If that is true, we could not ever change the tax laws. I bought a bond last year under the same circumstances. I would have to pay an increased surtax rate.

Mr. BLINN. Make today the effective date for such transactions, and then we will buy future issues of bonds on such a basis, and let the existing contracts stand and run out to the maturity of the bonds.

Senator CONNALLY. There is no such contract. If that were true, we could never change the tax laws. The same would apply to a man buying a piece of real estate.

Mr. BLINN. I am not disputing that. You are right on that point, but what I am contending for is this, that the effect of this tax law is to change and alter during the life of the bond, the tax-free covenant in the bond.

Senator CONNALLY. No; I do not think so.

Mr. BLINN. In our opinion, that is the effect.

The CHAIRMAN. Is there anything else?

Mr. BLINN. Section 117 e and f. I think I have covered that, and Senator Reed cross-examined me on it.

The CHAIRMAN. Thank you very much.

FOREIGN TAX CREDIT

STATEMENT OF L. C. GRATON, REPRESENTING CERRO DE PASCO COPPER CORPORATION

The CHAIRMAN. Mr. Graton, I understood you wanted 5 minutes?

Mr. GRATON. The reason I should like to speak at this time on foreign tax credit is that so far as I am aware, I am the only representative of the taxpayer to speak on this subject and, with your permission, I would like to submit a brief which shows some matters that I want to have before you, but which I shall not have time to touch upon.

My name is L. C. Graton, of Cambridge, Mass., and I represent the Cerro de Pasco Copper Corporation, New York City.

It seems advisable at the very outset to acquire a true sense of proportion regarding this matter. One might gain the impression, from the remarks made at the recent hearings before the Ways and Means Committee that the underlying purpose behind the proposed reduction or elimination of this credit is to retaliate against domestic concerns who may have imported into this country agricultural implements fabricated in branch factories abroad, and against other companies who may likewise be charged with questionable practices. If there be such, the question arises whether they would bear the chief brunt of this denial or reduction of foreign tax credit or whether, on the contrary, such action would fall as a serious hardship to a far greater number of other companies wholly innocent of a disloyal or prejudicial act.

I have here a table which shows the relative distribution of investments abroad, which I may summarize very briefly: All manfacturing and sales companies combined constitute only 25.3 percent of the total investments abroad, and 68 percent relates to enterprises to which no stigma can attach since their operations must be conducted abroad, for obvious physical reasons.

In this latter group stand the great raw material industries, accounting for 46.2 percent of the total. The mineral-producing industry, representing 50.8 percent, is the largest of all.

The Cerro de Pasco Copper Corporation is engaged in metal mining in Peru. Its experience has been sufficiently detailed in the recent report of hearings of the Ways and Means Committee, pages 475–477. Its experience is fairly representative of the mineral industry in respect of foreign tax credit, and thus affords a far more typical example of the workings of that provision than is to be found by selecting some one or a few cases held to be notoriously offensive.

In order to penalize these latter for alleged improprieties, cutting or dropping the foreign tax credit would impose grave burden and injustice on a great number of innocent companies that, without any offsetting advantages whatsoever, are adding enormously to this country's wealth.

I have appended here very brief comment on the principal arguments that have been advanced in favor of either elimination or reduction of the foreign-tax credit permitted by existing law. I shall touch, with your permission, just upon one question—one or

two of them—leaving the others for my brief. I believe it can be shown that most of these arguments are weak, if not completely unsound.

1. It seems to be implied that because foreign-tax credit was not permitted until the act of 1918 it would be quite proper now to revert to the practice preceding that date. But, as everyone must grant, the burden of income taxation in nearly all countries has risen so enormously since the close of the war that what was inconsequential theretofore would be wholly intolerable now.

2. Emphasis has been placed on the progressive restriction of the conditions under which the credit has been allowed in the various acts since 1918; and this seems to have been taken as justification for now making an absolute cut of 50 percent, or even 100 percent, of the credit. But these changes in the several recent acts have been made primarily to correct certain administrative flaws found to be present in the earlier acts. They serve as no precedent for outright reduction of the credit now.

5. Much emphasis is laid on the implication that because certain other nations do not allow similar credits in their own tax administration the United States would be stupidly overgenerous to continue the credits now in force. But this is false logic. It may be pertinent to inquire whether other nations reciprocate our tax policy regarding alien and foreign corporations; but when it comes to our own taxation of our own citizens and corporations who do business abroad, the prime concern of this country should be to give them fair play and proper support, regardless of whether or not other countries do the same by their own citizens.

7. It is contended that our companies go abroad in order to take advantage of cheap foreign labor, with consequent detriment to our own workmen. Insofar as the raw-materials industries are concerned, this argument has obviously no application whatsoever, since such operations must inescapably be performed where the raw materials occur. In the second place, insofar at least as relates to the heavy industries, including mining, the supposed advantage of cheap labor is a myth. Having studied mining operations on five continents, I think I can say with confidence that few if any important American mining operators abroad would not gladly change their cheap native labor for good American labor at American wages. For, despite higher wage levels, mining companies operating in this country on ores of equivalent richness almost without exception produce at lower unit costs than are attained anywhere alse in the world. American labor is largely responsible for that record.

Senator KING. You are drawing attention, I suppose, to chromium and manganese and those other scarce metals.

Senator COUZENS. He represents copper.

Mr. GRATON. I am speaking, through my experience, for the mining and mineral producing industry as a whole. For those things which do not occur in this country in any effective quantities, of course, it is absolutely essential that American industry secure some control over those for all kinds of needs.

12. Much inconsistency is shown with regard to the proposal's effect in dollars and cents. Some hold that the extra tax to be gained

by elimination of the credit is so small in total amount that no great damage can result. Others point to the fact that although the extra tax would be small just at present, the predepression years show that this gain to the Government will be much larger when foreign trade picks up to normal. The mutual contradictions in these views are obvious. If the total of credits now being taken is much smaller than was the case prior to 1929, it means that those who are now receiving the credit constitute the small residue that has been able still to cling in the profit-producing class. To impose upon these survivors a heavy added burden could hardly fail to reduce them still more drastically. On the other hand, to imagine that, under such added burden, foreign trade can and will pick up to the levels it held without such burden is optimism of a kind destined to disappointment.

13. Of similar significance is the apology that if many companies are making no foreign profits now, withdrawal of the credit makes no difference. If the argument is to be based on cases that show no profits, it is equally valid to suggest that the law be left as it is. But if it desired that profits shall increase, that foreign trade shall prosper and that this country shall profit thereby, then it does make a difference whether action is taken that will seriously handicap the realization of all these benefits, not only now but for long periods ahead. Income taxation both here and abroad is almost certain to become heavier rather than lighter, because of huge borrowings for relief. Therefore, the burden of double taxation will increase for years to come.

14. There are those who view with alarm the magnitude of American investments in foreign countries. But they forget that a very large part of these foreign investments was not capital taken bodily out of the United States but has gradually been built up out of earnings of the foreign undertaking. For example, the Cerro de Pasco Copper Corporation has taken out of the United States during its entire life a cash investment of $14,434,000. But the present sound value of its foreign properties is very much larger, the difference representing the plowing in of earnings made abroad and eventually to be returned here through the benefits arising from these plowed-in earnings.

15. Some show complete indifference in contemplating colossal loss to our companies who have invested abroad, as if this would serve them right for ever having done so. This is not only a strange manifestation of governmental obligation but is, from the purely selfish standpoint, the most short-sighted and injurious policy that could be imagined. Do those who point with grave concern to the $7,000,000,000 value of American holdings abroad have any conception of what our Nation gains therefrom? Let me place at their disposal the illuminating figures applying to the Cerro de Pasco Copper Corporation. From its initial $14,434,000 investment, taken out of this country, the company has already returned to this country over $192,000,000.

Senator KING. Much of that investment, too, grew out of the sale of machinery that went down there in the development of the mines?

Mr. GRATON. Absolutely.

That is to say, it has already brought back more than 13 times as much as it took out, and, granted fair play, it will continue to bring back still more for many years to come. Probably it is true that our particular company has a better record in this regard than does the average company. But almost certainly it is true that those companies who receive the foreign tax credit and thus are profit-making companies fall into the same category of having already returned to this country far more than they have taken away from it.

That, of course, would not be true of companies newly organized. They would not have time, of course.

All such sums returned are new and virgin wealth so far as this country is concerned, taxable in all their multitudinous turn-overs, and are playing an important part in maintaining the economic dominance of the United States. If there ever were such things as "golden eggs", these returns from American investments abroad are surely to be so regarded. The proposed elimination or severe reduction of protection against duplicate taxation seriously damages and jeopardizes the investments already made and severely discourages the making of new ones.

To lessen profits by taking double taxes will inevitably lessen dividends, the taxability of which is to be increased by the present new bill, so there will be little direct net gain anyway. But still worse, elimination of the credit will gradually shrink and freeze the flow of new wealth into the country. Companies will either relinquish their domestic charters and move abroad, or they will sell out to foreign companies who are not subject to the unfair burden of double taxation. The resulting loss of total tax to the Government would be very great, indeed..

The CHAIRMAN. Have you finished?

Mr. GRATON. Almost, sir. I would like to ask one question, though—rather from perspective and advice than because of any particular application it may have here. Our company, as a matter of fact, is composed of men who are in this company for two generations, they and their predecessors, their fathers. They are the kind of people that we would like to recognize as Americans. They propose to stay in this country, and yet, I ask you, what would you do if you were responsible for the management of a company, practically the whole of whose operations is in a foreign country, when it finds that at home it is taxed and taxed and taxed, whereas, by relinquishing its domestic charter, it could serve its own ends very much more effectively.

That is the kind of a problem that faces the management of many of these companies. They ought not to be penalized for their loyalty, for their inherent, intense, and instinctive desire to remain American corporations.

Senator REED. These companies are mostly in Chile?

Mr. GRATON. Peru.

Senator REED. How much income tax does the Cerro de Pasco company pay there; what percentage?

Mr. GRATON. The proportion of the total tax that they pay to Peru that is specifically labeled in Peru as an income tax is a relatively small fraction of their total, and on their total taxes paid to Peru they are subject to credit. They can hope to get credit only

for a relatively small fraction. That fraction up to date has always been less for our company than the proper limitations imposed upon the taxpayer.

Senator REED. Would it amount to as much as half of the American tax on that same income?

Mr. GRATON. Yes; often more.

Senator COUZENS. You did not answer Senator Reed's question, what percentage of the profit you pay to that government?

Mr. GRATON. I do not know. But I would be very glad to put that in.

Senator COUZENS. The income tax there would be probably about 7 percent. There are many other forms of taxes.

Mr. GRATON. As a matter of fact, the Peruvian income tax is not stated in terms of percentage, but is stated in terms of a sliding scale based upon the magnitude of the receipts, and not in terms of units.

Senator COUZENS. It is a gross tax.

Mr. GRATON. No. It is designed to be a net income tax, but it is stated in arbitrary terms in one fashion rather than in arbitrary percentages, but I shall be very glad to get those figures in terms of percentage.

Senator COUZENS. I was only asking out of curiosity.

Senator KING. You have franchise taxes?

Mr. GRATON. Oh, yes. That is on land, and all kinds of taxes not specifically labeled income taxes.

The CHAIRMAN. Will you proceed?

Mr. GRATON. Finally, let it be repeated that if real abuses exist, they should be reached and stopped by measures directed exclusively at the offenders rather than by a sweeping provision that would work grave hardship on countless others who are engaged in legitimate, constructive enterprises, highly advantageous to the Nation in every respect. Surely the raw-materials industry and the mining industry in particular must in fairness be exempt from any modification of present law aimed at questionable methods of a few foreign branch manufacturing plants.

I would like to say one word, if I may, about the effect on individuals, which I believe has not been touched upon at all. With your permission, I should like to take just 2 minutes more.

The point I wish particularly to emphasize in this connection as to the effect of this new proposal on individuals is that the burden of such taxation may be relatively much greater on individuals than on corporations, through the influence of the surtax.

Take, for example, a citizen of the United States who is engaged, let us say, in professional work, a part of which he performs in a foreign country. Let us assume, for example, that his taxable income from sources within the United States, after all deductions have been subtracted, is $10,000 and that he earns another $10,000 of net taxable income from a foreign country, making a total of $20,000. If we assume that the rates of taxation in the two countries are exactly equal, then it would appear at first sight that of his total tax, he would pay one half to the foreign country and one half to the United States; or, in other words, that the credit on account of tax paid to a foreign country would be for half the tax on his total

taxable income of $20,000 in this country. But that is not the way the matter works. At the rates in force for the year 1933, he would pay to the foreign government on his $10,000 net income tax to the amount of $680. But to the United States on his total taxable income of $20,000, half earned abroad and half earned here, he would owe $1,720, and if allowed credit for the entire amount paid to the other country he would still have to pay to this country $1,040, or 53 percent more than he paid to the other country. This excess would amount to 91 percent at the rates proposed for 1934, and would, of course, become still further and rapidly exaggerated with increasing income and, therefore, higher rates of surtax.

In short, the foreign tax credit as allowed to individuals is little enough as it now stands. To cut it still further, to say nothing of eliminating it altogether, would be to increase the hardship.

Here again the proposal to cut or abandon the foreign tax credit threatens to cut off or reduce a flow of wealth now coming into this country and threatens to be, in the case of individuals, as in the case of corporations, both, a most short-sighted policy.

Senator WALCOTT. I would like to ask you a question with reference to the effect on our merchant marine. Did you touch upon that?

Mr. GRATON. I did not, sir, but of that $192,000,000 which our company has brought back and spent in this country, a very substantial amount is freight between here and Peru, both ways, on freight items going down in the way of supplies, powder, and so forth, and of metal coming back, and we patronize American ships.

(See page 602 for additional statement.)

Senator REED. Mr. Thomas made that very plain in his testimony this morning.

Senator WALCOTT. I won't pursue it further.

STATEMENT OF WARD V. TOLBERT, REPRESENTING F. W. WOOLWORTH CO. AND OTHER TAXPAYERS

Mr. WARD V. TOLBERT. I represent F. W. Woolworth Co. on the question of foreign tax credit. If I may be permitted, I would like to submit my brief.

(The brief referred to is as follows:)

TOLBERT, EWEN & PATTERSON,
New York, March 12, 1934.

HON. PAT HARRISON,
Washington, D.C.

SIR: We desire to call to your attention certain considerations relevant to the provisions of the new revenue act (H.R. 7835) relating to foreign tax credit and to the tax on personal holding companies.

FOREIGN TAX CREDIT

By section 131 (b) (1) the new act reduces by one half the credit which, since the enactment of the Revenue Act of 1918, has been allowed to American corporations trading abroad either directly or through foreign subsidiaries.

By the allowance of this credit in the past the injustice of double taxation has been avoided where foreign income has already been subjected abroad to income taxes exceeding in amount those imposed by the United States. Many businesses have been entered into in reliance on the continuance of this relief, and the effect of its curtailment is the equivalent of the imposition of an additional and unanticipated burden on foreign trade.

At best, the change will work hardship. At the worst, it may, under present adverse conditions and the increasing discriminations of foreign governments

against American enterprises, render much of our foreign commerce so unprofitable as to cause it to cease, with resultant loss of the investment involved and the attendant diminution of the revenue heretofore brought here from foreign countries. The effect of such a change in policy cannot but add to the uncertainties attendant on foreign trade and act as a deterrent to those contemplating embarking in any business abroad.

The taxation of foreign commerce or business is in principle similar to a tax on exports and open to the same objection. Such tax represents an obstacle and an obstruction to the outflow of unuseable surplus in the one case of commodities and in the other of business activities of capital which cannot find profitable employment in this country.

It has been suggested, inasmuch as corporations trading in the United States are allowed deduction only for the State taxes imposed on their income, that to allow the foreign tax as a credit is in effect a discrimination against corporations trading solely in the United States.

The conditions are not analogous. An American corporation trading abroad is not, as to its foreign business, in competition with American corporations engaged in domestic trade only. It is in competition with corporations resident to the foreign country. So long as it is subjected to the local foreign tax only, and in the absence of discriminatory burdens, it and its competitors are at least subjected only to the same tax burden, and to this extent it can compete on a basis of equality. If required to pay an additional American tax on its profits derived from the foreign country, it is placed at a disadvantage, and unless the profit is large it cannot meet its competitor's prices and must eventually be forced out of this business.

A very large part of foreign business is necessarily done through foreign subsidiary corporations the dividends from which are usually subject to foreign tax but which are not exempt from United States tax except by the operation of the foreign-tax credit. American corporations doing business in the United States through domestic subsidiaries receive the dividends from their subsidiaries exempt from the American tax, so that the disallowance of the foreign-tax credit would result in a discrimination as to this class of income against the corporation trading abroad.

The amount of additional revenue which might be derived from a reduction of the foreign tax credit, even if it had no ill effect on foreign trade and commerce, would be but small in the aggregate, however burdensome and harmful the additional tax may be in any individual case. This additional revenue may, on the other hand, be more than offset by diminution of the foreign income which would otherwise be received by American corporations and distributed as dividends to their stockholders which when received by them would be subject to surtax. This result is not improbable, since much business abroad is done through foreign subsidiaries whose profits are transmitted in the form of dividends. If the foreign-tax credit heretofore allowed against the tax on such dividends be reduced, it is not improbable that these dividends will also cease until the burden of taxation in the United States decreases.

At the present time American enterprises abroad are contending with unprecedented burdens and discriminations which make their continuance both difficult and problematical. To add to these burdens by what is, in effect, a new tax bill would certainly discourage and probably prevent any extension of foreign trade, and may even prove the last straw to many already overburdened and struggling businesses.

TAX ON PERSONAL-HOLDING CORPORATIONS

We desire further to call your attention to certain hardships which will result from the enactment of section 102 of the new revenue act in its present form, due to the omission of the following provision contained in subdivision (d) of section 104 of the Revenue Act of 1932, for which it is substituted:

"(D) The tax imposed by this section shall not apply if all the shareholders of the corporation include (at the time of filing their returns) in their gross income their entire distributive shares, whether distributed or not, of the net income of the corporation for such year. Any amount so included in the gross income of a shareholder shall be treated as a dividend received. Any subsequent distribution made by the corporation out of the earnings or profits for such taxable year shall, if distributed to any shareholder who has so included in his gross income his distributive share, be exempt from tax in the amount of the share so included."

We represent a number of investment corporations, some of which make annual distribution of substantially all of their net income, and others of which reinvest a part of their income, their stockholders reporting the company's entire net income in their individual returns as dividends received pursuant to section 104 (d) above quoted.

It frequently happens, however, that it is impossible to make actual complete distribution of income in the year in which it arises, due to the fact that these investment companies receive large stock dividends payable December 31, but not received until after January 1 of the following year. Such dividends are for tax purposes, deemed income in the year when payable, even although the company reports on a cash basis. Obviously, they cannot be distributed until received, and under the act in its present form if they exceed in amount 10 percent of the company's annual income, they automatically become subject to the 35-percent tax.

The law also in its present form penalizes reinvestment of income even where as frequently happens, it is necessary to do so in order to protect the company's other investments.

We also represent personal holding companies organized to own and operate apartment houses in this city which are required to make annual amortization payments in reduction of mortgages and other capital expenditures for replacements, alterations, and like nondeductible capital charges which, with their present reduced intake, makes any distribution by such companies to their stockholders impossible, but nevertheless would subject them to a 35 percent penalty.

The addition of subdivision (d) of section 104 of the Revenue Act of 1932 would obviate these hardships and if resorted to, would result in the stockholders paying surtax on 100 percent of the holding company's net income instead of on 90 percent as permitted in the bill in its present form.

Respectfully,

TOLBERT, EWEN & PATTERSON.

STATEMENT OF MITCHELL B. CARROLL ON BEHALF OF THE DOUBLE TAXATION COMMITTEE OF THE AMERICAN SECTION, INTERNATIONAL CHAMBER OF COMMERCE

Mr. CARROLL. I am here to represent the double taxation committee of the American section, International Chamber of Commerce, which has been working on the question of relief from double taxation for a period of 10 years, and as you know, this movement to prevent double taxation is a world movement, and therefore it seemed to us that perhaps you would be interested in hearing what is being done in other parts of the world to encourage export trade through measures in tax laws or in treaties to prevent double taxation.

First of all let me say that America was the pioneer in this movement and Dr. Thomas S. Adams, of whom you all know in all probability, was a devout believer in what we advocate in respect to the same income to two different countries' tax systems, that it would impose such a heavy burden on that flow of income that hardly any enterprise could engage in business in the two countries.

Congress had the wisdom to insert in the Revenue Act of 1918 a credit for foreign taxes, a provision whereby taxes paid to a foreign country were, within certain limitations, credited against the United States income tax. It is true that by so doing the United States gave up all or part of its tax on the foreign income when it was derived by the domestic corporation, but that income flowed to the corporation and was paid out in salaries to employees, to suppliers of raw materials, and what was left was distributed as dividends to shareholders, interest was paid to bondholders, and consequently this income that flowed in from abroad was distributed

throughout the United States and passed from hand to hand and increased the wealth of the country.

It has been estimated that one tenth of our population was dependant, directly or indirectly, upon our foreign trade.

At the present time, practically all of the leading countries of the world, either by law or by treaty, assure their own enterprises, with regard to certain markets or to all markets, relief from double taxation which is in many cases greater than that now allowed by the United States. Thus a number of countries tax business profits only if allocable to local sources, such as a business establishment, and exempt profits allocable to another state and therefore subject to its taxes; they include France, Italy, Estonia, Denmark, Jugoslavia, Argentina, Australia, and South Africa. Austria, Czechoslovakia, and Hungary grant, on condition of reciprocity, a similar exemption for profits attributable to an establishment in another country. Belgium, Holland, Spain, Switzerland, and other countries grant a certain measure of relief against their own tax.

Germany allows such an exemption in treaties with Austria, Czechoslovakia, Danzig, Hungary, Italy, Poland, and Sweden. Italy has concluded agreements to prevent double taxation with most of her European neighbors. Last July France ratified general agreements with Italy and with Belgium, and is reported to be negotiating a similar agreement with Germany. There are over 30 general or special agreements between continental European powers to prevent double taxation. Double taxation of shipping profits is now almost universally eliminated because of arrangements for the reciprocal exemption of such income.

Perhaps one of the fundamental reasons for the preeminent position of Great Britan in foreign trade is the fact of its large permanent investments in all parts of the world. The nation is assured a fairly steady stream of business and income, because if trouble occurs in one country her enterprises can still carry on in others. There are principles in United Kingdom law and jurisprudence which mitigate double taxation to a large degree. For example, the British tax is not imposed on profits from foreign possessions, such as a business carried on wholly in a foreign country, even by a British company, except for the part thereof remitted to England.

It is significant that so many countries, whether by law or by treaty, have adopted the principle that the foreign country in which income is derived by a permanent establishment of a domestic enterprise shall have the prior, if not the exclusive, right to tax such income; the home country of the enterprise allows in some cases a full or partial credit against its own tax, but in the majority of cases exempts the income of the foreign establishment.

Just at the time when other countries are pushing their foreign trade under the protection of the above-mentioned measures for relief from double taxation, the revenue bill of 1934 proposes to cut in half the relief now granted in the 1932 Revenue Act. It is difficult enough for our enterprises to sell in foreign markets despite the high tariff rates, the currency restrictions, and all the other obstacles to the movement of goods and capital. If, in addition to these obstacles, they are also to be subjected by our Government to a serious tax disadvantage in competing with the enterprises of other countries which give even today more general relief from double

taxation, it is obvious that the results are likely to be unfortunate. In other words, the reduction of our credit by 50 percent will be tantamount to imposing a restriction on the exportation of American products.

The direct effect of such a restriction or increased burden will be to force some of the weaker enterprises, which are already struggling to maintain their foreign establishments despite onerous tax and other burdens, to curtail their activities or possibly withdraw from various markets. The stronger enterprises may feel constrained to form subsidiary companies abroad in order to keep their income beyond the reach of the American tax. It was on these grounds that both the Treasury and Commerce Departments urged the continuation of the full credit before the Ways and Means Committee. In other words, the direct result of such a measure, which is intended to increase revenues, would instead be to reduce revenues through reducing the sale of American products abroad and the consequent influx of revenues therefrom.

The Ways and Means Committee evidently estimates that one half of the amounts now credited in respect of foreign taxes will be automatically turned into tax revenues. But this is an illusion, as has been stated by the Treasury Department:

> It is quite clear that the elimination of the foreign tax credit will not increase the revenues to the extent of the taxes which American taxpayers now save by virtue of it. The amount in any case, however, is relatively small. The total credit taken in 1932, based upon available information to date, is only $5,984,833. For 1933 the total of foreign tax credits is estimated at not to exceed $8,000,000.

It would appear from the foregoing Treasury statement that cutting the credit in half would not yield even $4,000,000 in revenues.

The objection that foreign branch plants are detrimental to American labor and production in general is unfounded. In Senate Document 258, Seventy-first Congress, third session (American branch factories abroad), it is pointed out that—

> There is nothing to justify the assumption that in the absence of such branch plants there would have been an equivalent exportation of the corresponding products from the United States. In addition, it must be considered that employment in the United States is created by the demand for semimanufactured products used in assembly operations as well as for industrial equipment and certain raw materials.

Some enterprises have spent millions in exploring foreign oil fields or mines, purchasing rubber plantations, or sources of other raw materials. They purchase supplies from the United States and bring their income back to the United States in one form or another. For example, one company alone (Chile Copper Co.—Chile Exploration Co.) during the last 22 years has disbursed in the United States $148,640,000 for equipment, supplies, and administrative expenses, $199,270,000 for interest on indebtedness, and $105,990,000 for dividends, making a total of $305,260,000. Such enterprises are of vital importance in that they secure sources of materials which are needed for national defense.

American foreign trade not only supported about 2,400,000 families but added to the national wealth and well-being of all. Thousands of purely domestic enterprises which supplied raw materials, transportation, distribution, and financial facilities all received their share and were enabled to employ more men and women than if

our business were purely domestic. As the result of international business our national wealth is increased by the profits realized in other countries, and the lives of our people are enriched in many ways from business with other peoples. Is it the better part of wisdom to impose an artificial barrier to this inflow of wealth by increasing the tax on exporting enterprises, just at the time when they need much more than the full tax credit to enable them to recapture foreign markets lost during the depression?

If the United States wishes to follow the lead of foreign countries, it is not enough to give the full credit for foreign taxes. It should take steps to protect our enterprises from the imposition of taxes by foreign countries which are either discriminatory or extraterritorial in character. By extraterritorial taxes is meant those which are laid on income or property not within the jurisdiction of the foreign country but in that of the United States. This can best be done by concluding with foreign countries bilateral or multilateral agreements which prescribe fair limits to jurisdiction and sound principles of allocation. Section 104 should be amended to provide for such agreements.

Another section of the bill which will have injurious effects on American foreign trade is section 403, which abandons the long-established principle of residence and subjects to the full estate tax the property left by citizens who die while resident abroad.

The tendency in the international field is similar to that in the interstate field in this country, namely, to tax real estate and tangible personalty only at situs and intangibles only in the country of domicile. The 1934 revenue bill in section 403 proposes to abandon the general principles long followed in our law and subject to full liability the estates of citizens dying while resident abroad, even including real estate situated in a foreign country.

For the benefits of citizenship, our laws, contrary to the general practice, subject the citizen residing abroad to full liability, except for certain exemptions and credits for income taxes paid to the country of residence and other foreign countries; if he makes a gift abroad of foreign property, he is subject to the American gift tax as well as the local gift tax; now under this bill if he dies while residing abroad his estate will be subject not only to the high succession taxes of the country of residence but also to the full United States tax without even a credit for the foreign taxes paid. After the dead has paid this tribute to the two sovereigns, it is unlikely that there will be anything left for the heirs. Is the Senate desirous of passing an amendment which thus subjects United States citizens to a burden not imposed by any other great power on its own subjects?

Mr. Chairman, there is attached to this several resolutions of the double taxation committee——

Senator CONNALLY. Right on that point. The tax is not on the man that lives in France, for instance, although he is an American citizen, but it is on the privilege of his heirs to inherit property here, isn't it?

Mr. CARROLL. I believe that our estate tax is interpreted as a tax on personal property from the dead to the living.

Senator CONNALLY. What difference does it make where the man is if the property is over here?

Mr. CARROLL. I do not object to any estate tax on property having its situs in the United States. The point raised is that it seems a rather long extension of jurisdiction to tax a transfer of property situated in a foreign country.

Senator CONNALLY. What do you mean? Stocks and bonds and things of that kind?

Mr. CARROLL. Whether stocks and bonds, or real estate.

Senator CONNALLY. Stocks and bonds are in corporations here at home, aren't they?

Mr. CARROLL. No objection can be raised to taxing property situated in the United States, or stocks and bonds in the United States or any other property having its situs in the United States, but the case that I was envisaging is a citizen, let us say, living in Austria, and he is there permanently representing some American company, selling American products in Austria. He dies. During his life, he has acquired, say, a house in Vienna, he has acquired certain stocks and bonds in Austrian companies. He dies, leaving his property to his wife. He dies in Austria, the will is probated in Austria, the transfer takes place in Austria, and the property transferred is Austrian property. Still, under this section 104 of the 1934 revenue bill, it is expected that the United States authorities will collect the Federal estate tax imposed by the United States on the transfer of property in Austria from a decedent living in Austria, to heirs residing in Austria. And that seems an unwise extension of jurisdiction.

The direct result will be to subject the estates of all of our citizens, that have to reside permanently abroad in the interests of foreign trade, to double taxation. The practically universal principle is that they will be fully subject to an estate tax in the country of residence. Now, by virtue of their citizenship, they will also be subject to a Federal estate tax.

Senator CONNALLY. They are claiming citizenship here, and calling upon the Government to protect them. Why don't they give up their citizenship? They are constantly calling upon our embassies and demanding that our Government do something for them, and yet you want them exempted from what we have to pay at home if one of us happens to die.

Mr. CARROLL. When you look at our tax system, Mr. Senator, the man pays for protection during his life. As you know, our income tax is imposed upon our citizens wherever they may be. It is true that there are certain exemptions and credits, but he remains subject to the Federal estate tax wherever he may be. He pays for that protection when living. When he dies, the property goes to his heirs. It is true that he has derived benefits from citizenship. I would not question that. It is just a question whether it is a wise tax policy. Other countries, Great Britain, France, Italy, and many other countries have deemed it wise to follow the principle of residence. They subject only the total personalty of resident decedents to tax, and they exempt real estate situated in foreign countries, even though it belongs to a resident. In the case of a nonresident, they tax only property having its situs within its territory.

Other countries have found it wise to do that. Great Britain's preeminence in foreign trade is largely due to the large investments it has all over the world, to British subjects who reside permanently

in all parts of the world, and they find it wise to adopt these other principles to reduce or prevent double taxation, because double liability in respect to the same income of property is often so excessive that little or nothing of the income on the property is left.

Senator KING. I think your time has expired. Thank you very much. You may file your brief and any amendments you care to suggest.

(The brief presented by Mitchell B. Carroll, and referred to above, is as follows:)

STATEMENT PRESENTED BY MITCHELL B. CARROLL ON BEHALF OF THE DOUBLE TAXATION COMMITTEE OF THE AMERICAN SECTION, INTERNATIONAL CHAMBER OF COMMERCE

I am appearing in behalf of the double-taxation committee of the American section, International Chamber of Commerce, with reference to the amendment in the revenue bill of 1934 which reduces by 50 percent the credit for foreign taxes now allowed in section 131 of the 1932 Revenue Act. It is becoming more and more evident that the sale of our products abroad is essential for the disposal of surpluses. It is a well-known fact that today foreign countries impose many more obstacles to the importation of our products into their markets than existed in 1918, when the measure for relief from double taxation was first introduced into our revenue act. At that time American enterprises which assumed the risks of setting up establishments abroad had to pay the various foreign countries the high post-war rates of taxes, which, when added to our own, often consumed more than half the income derived from the operations abroad.

Realizing that few enterprises could possibly engage in international trade in the face of liability to heavy taxes in two countries on the same income, the Congress, largely at the instance of Dr. T. S. Adams, then economic advisor to the Treasury Department, inserted in the 1918 Revenue Act a provision for offsetting the foreign income tax against the Federal income tax. It is true that the United States thereby gave up all or part of its tax when the income was brought home by the domestic corporation, but it gained much more in revenues, inasmuch as this income from abroad, which otherwise might not flow in, was taxed when paid out in the form of salaries to workmen and employees, profits to suppliers of materials, dividends to shareholders, and interest to bondholders in the domestic corporation. The removal of this artificial barrier of double taxation helped materially to bring about a larger sale abroad of the products of farms, mines, and factories in the United States, and the moneys derived from those sales which were brought home by the exporter passed from hand to hand throughout the country and afforded not only a livelihood for the tenth of our population which is dependent, directly or indirectly, upon our foreign trade but also increased the general taxable wealth of the country.

If this credit for foreign taxes was needed in 1918 to help lift America out of the post-war depression, it is all the more necessary now to deliver us from the present emergency. The wisdom of such measures of relief from double taxation was so apparent that the International Chamber of Commerce, at its organization meeting at Atlantic City in 1919, declared double taxation to be one of the primary obstacles to the resumption of trade. This view was expressed again in the International Financial Conference held in Brussels in 1920 and subsequently, under the auspices of the League of Nations, fiscal experts of leading countries, and representatives of the International Chamber, held a series of metings at Geneva and elsewhere which resulted in the elaboration of model conventions for preventing double taxation. (See report on double taxation, submitted to the financial committe, League of Nations, by Professors Bruins, Einandi, Seligman, and Sir Joseph Stamp (E.F.S. 75 F. 19) (1923); report and resolutions submitted by the technical experts to the financial committe of the League of Nations (F. 212) (1925); report presented by the committee of technical experts on double taxation and tax evasion (Ser. L. o. N. p. 1927 II. 40); summary of the observations received by August 30, 1928, from the governments on the report submitted by the committee of technical experts on double taxation and tax evasion (Ser. L. o. N. p. 1928 II 46); report presented by the general meeting of government experts on double taxation and tax evasion (Ser. L. o. N. p. 1928 II. 49); reports of the fiscal committee to the council on the work of the committee (Ser. L. o. N. p. 1929 II. 44; 1930, II. 23; 1931 II. A. 22; 1933).

Parallel to this movement, countries introduced into their legislation measures somewhat similar in effect to the credit for foreign taxes in the United States Revenue Act and, in addition, concluded bilateral agreements with other countries to complete through the joint action of other governments the measures which they themselves took in their own law. At the present time practically all the leading countries of the world, either by law or by treaty, assure their own enterprises, with regard to certain markets or to all markets, relief from double taxation which is in many cases greater than that now allowed by the United States. Thus a number of countries tax business profits only if allocable to local sources, such as a business establishment, and exempt profits allocable to another State and therefore subject to its taxes; they include France, Italy, Estonia, Denmark, Yugoslavia, Argentine, Australia, and South Africa. Austria, Czechoslovakia, and Hungary grant, on condition of reciprocity, a similar exemption for profits attributable to an establishment in another country. Belgium, Holland, Spain, Switzerland, and other countries grant a certain measure of relief against their own tax. (Taxation of foreign and national enterprises, vol. IV, p. 157. et seq., published by the League of Nations.)

Germany allows such an exemption in treaties with Austria, Czechoslovakia, Danzig, Hungary, Italy, Poland, and Sweden. Italy has concluded agreements to prevent double taxation with most of her European neighbors. Last July, France ratified several agreements with Italy and with Belgium and is reported to be negotiating a similar agreement with Germany. There are over 30 general or special agreements between continental European powers to prevent double taxation. Double taxation of shipping profits is now almost universally eliminated because of arrangements for the reciprocal exemption of such income. (Collection of International Agreements and International Legal Provisions for the Prevention of Double Taxation, published by the League of Nations.)

Perhaps one of the fundamental reasons for the preeminent position of Great Britain in foreign trade is the fact of its large permanent investments in all parts of the world. The nation is assured a fairly steady stream of business and income because if trouble occurs in one country her enterprises can still carry on in others. There are principles in United Kingdom law and jurisprudence which mitigate double taxation to a large degree. For example, the British tax is not imposed on profits from foreign possessions, such as a business carried on wholly in a foreign country, even by a British company, except for the part thereof remitted to England. (*Colquhoun* v. *Brooks* (1889), 14 A.C. 493, 2 T.C. 490, cited in Taxation of Business in Great Britain, published by the United States Department of Commerce, p. 40; and *Mitchell* v. *Egyptian Hotels*, 6 T.C. 542, ibid, p. 11).

In order to stimulate trade within the Empire, Great Britain grants relief against its tax under such conditions that a British company pays in general no more tax if it trades in a Dominion than if it did busness exclusively at home. Canada and the varous Dominions have corresponding or complementary provisions for relief. With the Irish Free State, the United Kingdom has concluded an agreement for the reciprocal exemption of all income from local sources derived by a resident in the other contracting State. (Taxation of Foreign and National Enterprises, vol. IV, p. 159 et seq; hearings, pp. 431, 432.)

It is significant that so many countries, whether by law or by treaty have adopted the principle that the foreign country in which income is derived by a permanent establishment of a domestic enterprise shall have the prior if not the exclusive, right to tax such income; the home country of the enterprise allows in some cases a full or partial credit against its own tax, but in the majority of cases exempts the income of the foreign establishment.

The existence of these provisions in the law of other countries and of the network of bilateral treaties between the various European countries evinces conclusively that liability to two countries in respect to the same income or property constitutes a real barrier to trade between nations. It should not be overlooked that during the depression France has ratified treaties for preventing double taxation with Belgium and Italy and is reported to be engaged in negotiating a similar treaty with Germany. To supplement these general treaties for preventing double taxation which prevent in principle dual liability in respect to the same income, the fiscal committee of the League of Nations, composed of officials high in the tax administrations of the leading countries of the world, has drafted a convention concerning the allocation of income for tax purposes which, if adopted, and applied in conjunction with

the aforementioned treaties or provisions such as the credit for foreign taxes in our own Revenue Act, should completely prevent the double taxation of business income. (Draft convention adopted for the allocation of business income between States for the purpose of taxation, report of the fiscal committee to the council of the League, June 26, 1933, League of Nations document no. C. 392, M. 204, 1933, II. A.)

Just at the time when other countries are pushing their foreign trade under the protection of the above-mentioned measures for relief from double taxation, the revenue bill of 1934 proposes to cut in half the relief now granted in the 1932 Revenue Act. It is difficult enough for our enterprises to sell in foreign markets despite the high tariff rates, the currency restrictions, and all the other obstacles to the movement of goods and capital. If in addition to these obstacles, they are also to be subjected by our Government to a serious tax disadvantage in competing with the enterprises of other countries which give even today more generous relief from double taxation, it is obvious that the results are likely to be unfortunate. In other words, the reduction of our credit by 50 percent will be tantamount to imposing a restriction on the exportation of American products. Taking the 1932 act as the normal basis, it constitutes an increase in the tax burden of export enterprises which in most instances will equal half the American rate of tax, or 6.875 percent in the case of corporations.

Thus, if an American enterprise sells farm products, textiles, shoes, or machinery in Germany in competition with an exporter from Italy or any other state which by law or treaty exempts income derived in Germany, the American enterprise will be at a serious competitive disadvantage. German companies competing with the American sales branch will pay the German 20-percent corporation tax, the Italian competitor will pay the same tax rate on the German profits but no home tax. Competing enterprises of many other countries would be in the same situation. The American company would have to pay, in addition to the German rate of tax, an American tax of 6.875 percent, or a total tax burden on the German income of about 27 percent. It would be at a competitive disadvantage equal to about 6.875 percent of its German net income. Likewise, the American enterprise trading in Canada or another British dominion would be placed at a disadvantage with British concerns; while the British competitor would not pay more dominion tax and United Kingdom tax than if it traded only at home, the American company would have to pay, on its Canadian income, taxes to the dominion and to the United States totaling 19.375 percent, or 5.625 percent more than if it traded exclusively in the United States. In general, the effect of the credit reduction will be to increase up to approximately 7 percent the tax burden on American enterprises trading in Great Britain, Germany, France, Italy, and a large number of other important markets. In fact, the burden is likely to be in excess of the amount indicated since because of the technicalities of the law and practical operating conditions, American exporters are often precluded from availing themselves of the full relief from double taxation contemplated by the law.

The direct effect of such a restriction or increased burden will be to force some of the weaker enterprises, which are already struggling to maintain their foreign establishments despite onerous tax and other burdens, to curtail their activities or possibly withdraw from various markets. The stronger enterprises may feel constrained to form subsidiary companies abroad in order to keep their income beyond the reach of the American tax. It was on these grounds that both the Treasury and Commerce Departments urged the continuation of the full credit before the Ways and Means Committee. (In the judgment of the Treasury Department, the present arrangement seems fair and should be continued.) If it is not continued, American taxpayers doing business abroad will have an additional incentive to organize foreign corporations to take over their foreign business, with resultant loss of both business and revenues therefrom. (From the statement of the Treasury Department, hearings before the Committee on Ways and Means, House of Representatives, Revenue Revision 1934, page 78; see also supporting statement of Hon. John Dickinson, Assistant Secretary of Commerce, ibid, pp. 416–451). In other words, the direct result of such a measure which is intended to increase revenues would instead be to reduce revenues through reducing the sale of American products abroad and the consequent influx of revenues therefrom.

The Ways and Means Committee evidently estimates that one half of the amounts now credited in respect of foreign taxes will be automatically turned into tax revenues. But this is an illusion, as has been stated by the Treasury

Department: "It is quite clear that the elimination of the foreign tax credit will not increase the revenues to the extent of the taxes which American taxpayers now save by virtue of it. The amount in any case, however, is relatively small. The total credit taken in 1932, based upon available information to date, is only $5,984,833. For 1933 the total of foreign tax credits is estimated at not to exceed $8,000,000." (Ibid, p. 78.) It would appear from the foregoing Treasury statement that cutting the credit in half would not yield even $4,000,000 in revenues. As previously stated, the income from abroad may disappear or be disposed of in such a way as to prevent double taxation and consequently the United States will derive the tax neither from the enterprice itself nor from the workment, suppliers, shareholders, and bondholders to whom such income would in due course normally flow. All the domestic business which is dependent upon the foreign business would suffer. In consequence, the United States, instead of deriving 5 millions in additional revenue might suffer a far greater loss in revenues and, in addition, would prejudice its position in the markets of the world. It would penalize our enterprises which bear the risks of sending men and money to market the products of our farms and industries in countries all over the world and would, in effect, help those countries to keep our products out of their markets.

Largely due to the protection against double taxation contained in the revenue acts since 1918, thousands of American enterprises of all types and sizes endeavored to operate in all parts of the world, representing a total direct investment of about $8,000,000,000. They generally began by appointing local agents, but finding them unsatisfactory they opened sales branches, or, if local laws or conditions so required, they organized subsidiary companies. In most instances they sold products made in the United States. As tariffs were increased, quotas were imposed or other measures were taken by this or that foreign country to restrict imports, they were forced more and more to form local subsidiaries, organize assembly plants, and even to manufacture to a certain extent. Nevertheless, they continued to use American products and materials to the full degree that was economically possible, and it was a matter of either manufacturing to the necessary degree or giving up the market to a foreign competitor.

The objection that foreign branch plants are detrimental to American labor and production in general is unfounded. In Senate Document No. 258, Seventy-first Congress, third session (American branch factories abroad), it is pointed out that "There is nothing to justify the assumption that in the absence of such plants there would have been an equivalent exportation of the corresponding products from the United States. In addition, it must be considered that employment in the United States is created by the demand for semimanufactured products used in assembly operations as well as for industrial equipment and certain raw materials." (Hearings, p. 432.)

Some enterprises have spent millions in exploring foreign oil fields or mines, purchasing rubber plantations, or sources of other raw materials. They purchase supplies from the United States and bring their income back to the United States in one form or another. For example, one company alone (Chile Copper Co.-Chile Exploration Co.) during the last 22 years has disbursed in the United States $148,640,000 for equipment, supplies, and administrative expenses; $199,270,000 for interest on indebtedness; and $105,990,000 for dividends; making a total of $305,260,000. Such enterprises are of vital importance in that they secure sources of materials which are needed for national defense.

American foreign trade not only supported about 2,400,000 families, but added to the national wealth and well-being of all. Thousands of purely domestic enterprises which supplied raw materials, transportation, distribution, and financial facilities all received their share and were enabled to employ more men and women than if our business were purely domestic. As the result of international business our national wealth is increased by the profits realized in other countries, and the lives of our people are enriched in many ways from business with other peoples. Is it the better part of wisdom to impose an artificial barrier to this inflow of wealth by increasing the tax on exporting enterprises, just at the time when they need much more than the full tax credit to enable them to recapture foreign markets lost during the depression.

Suggested amendments to section 104: If the United States wishes to follow the lead of foreign countries, it is not enough to give the full credit for foreign taxes. It should take steps to protect our enterprises from the imposition of taxes by foreign countries which are either discriminatory or extraterritorial in character. By extraterritorial taxes is meant those which are laid on income or property not within the jurisdiction of the foreign country but in that of

the United States. This can best be done by concluding with foreign countries bilateral or multilateral agreements which prescribe fair limits to jurisdiction and sound principles of allocation. Section 104 should be amended to provide for such agreements.

Arguments against section 403: Another section of the bill which will have injurious effects on American foreign trade is section 403 which abandons the long-established principle of residence and subjects to the full estate tax the property left by citizens who die while resident abroad.

As commerce requires citizens to live abroad permanently as representatives of enterprises and conduces to investments across frontiers, there is a network of treaties between various European countries to prevent the double imposition of succession and gift taxes, e.g., between Austria and Czechoslovakia, Germany and Czechoslovakia, Germany and Hungary, Austria and Hungary, Poland and Czechoslovakia, Hungary and Poland, Danzig and Poland. Broadly speaking, these treaties provide that real property and tangible personalty pertaining thereto shall be taxable only in the state of situs, whereas other personal property, including stocks and bonds, shall be taxable in the country of which the decedent was a national unless he was domiciled in the other state, in which event such property shall be taxable at the domicile of the decedent.

Great Britain realizes that trade representation in other countries is inefficient unless her citizens reside permanently in the foreign land in order to learn its language, customs, and trade practices, and to follow the changes in the tastes of the people. The general interests are not obscured by any attempt to get the last tax penny out of its citizens.

Nonresident British citizens are not subject to the United Kingdom income tax except in respect of income of the estate of the nonresident. Duties are imposed only on that part of the estate of the nonresident British decedent which has its situs in the United Kingdom. Real estate situated abroad is not subject to death duties even though the owner dies while domiciled in the United Kingdom. Similar principles are found in the laws of France, Italy, and many other countries.

It has been noted that the general rule is that the country of nationality yields to that of residence. The tendency in the international field is similar to that in the interstate field of this country, namely, to tax real estate and tangible personalty only on situs and intangibles only in the country of domicile. The 1934 revenue bill in section 403 proposes to abandon the general principles long followed in our law and subject to full liability the estate of citizens dying while resident abroad, even including real estate situated in a foreign country.

For the benefits of citizenship, our laws, contrary to the general practice, subject the citizen residing abroad to full liability, except for certain exemptions and credits for income taxes paid to the country of residence and other foreign countries; if he makes a gift abroad of foreign property, he is subject to the American gift tax as well as the local gift tax; now under this bill if he dies while residing abroad, his estate will be subject not only to the high succession taxes of the country of residence, but also to the full United States tax without even a credit for the foreign taxes paid. After the dead has paid this tribute to the two sovereigns, it is unlikely that there will be anything left for the heirs. Is the Senate desirous of passing an amendment which thus subjects United States citizens to a burden not imposed by any other great power on its own subjects?

Conclusion.—In short, we respectfully urge—

1. That the words "one half of" be eliminated from section 131 (b) (1) and (2) in the 1923 revenue bill.
2. That section 104 be amended so as to permit the Executive to conclude amicable agreements for the elimination of foreign discriminatory and extraterritorial taxes on Unitted States citizens and corporations.
3. That section 403 be omitted, and that a provision be inserted in the act for the reciprocal exemption of intangibles belonging to nonresident decedents.

RESOLUTIONS OF COMMITTEE ON DOUBLE TAXATION, AMERICAN SECTION INTERNATIONAL CHAMBER OF COMMERCE

Credit for taxes paid abroad.—The committee on double taxation of the American section of the International Chamber of Commerce urges the retention of the credit for foreign taxes now allowed by section 131 of the Revenue Act of 1932 and opposes the amendment in the revenue bill of 1934 as adopted by

the House of Representatives which reduces by one half the present protection against double taxation. The committee endorses the original recommendation to this effect made by the Secretary of the Treasury and the Secretary of Commerce.

This committee opposes any reduction of credit for several fundamental reasons; the full credit is essential (1) to enable American enterprises to compete with those of foreign countries which grant more complete relief from double taxation; (2) to maintain and increase the volume of our exports of American products; (3) to assure the influx into the United States of income from foreign operations; (4) to continue the consequent benefits to domestic agriculture, mining, and manufacture, and the workmen employed therein; and (5) to safeguard the revenues now derived from taxes, other than those on the enterprise itself, which are paid upon salaries to employees, profits to suppliers, dividends to stockholders, interest to bondholders, and other domestic income resulting from the foreign business.

The soundness of the principle has been recognized in the bill by the allowance of the credit to the extent of one half thereof. If, however, the credit is allowed only in respect to one half the foreign income, the admittedly unsound double taxation of the other half will largely defeat the advantages of the credit. The disadvantages of this restricted credit would tend to bring about the same injurious effects for business and Federal revenues as would the elimination of the credit. The estimate of increased revenue of $5,000,000 is illusory. The amounts now credited will not automatically be transformed into tax revenues. Americans trading in foreign countries will be constrained to leave their funds abroad instead of bringing them home to be taxed and foreign business to an increasing extent will be done through foreign organizations not subject to the United States tax. More important, however, is the general loss to the business and investors of the country as our foreign commerce is impeded or discouraged, and the consequent loss of our revenues from taxation will be much more than $5,000,000. If the Government withdraws even half its protection from double taxation which it has accorded in respect of the foreign establishments of American enterprises for the last 15 years, we think it will have a distinct loss rather than a gain in revenues.

Taxation of estates of nonresident decedents.—The committee on double taxation of the American section of the International Chamber of Commerce expresses its disapproval of the amendments to the State tax provisions in the bill (sec. 403) which operate to impose upon American citizens who are residents of foreign countries the full Federal estate tax on all property, real and personal, wherever situated. The generally recognized principle affecting this subject is that the country in which the individual resides has proper jurisdiction to taxe the entire estate of that individual, except real property situated abroad. The estates of our citizens residing abroad will be subject to such taxation by the foreign country. This bill will therefore aggravate the burden of double taxation of the estates of nonresident decedent citizens to the extent that there will remain little or nothing to pass to the heirs.

The committee opposes this violation of the correct principles affecting international double taxation.

It is believed that the Congress should go even further and follow the lead of the States and the jurisprudence of the Supreme Court in prescribing sound principles to prevent double liability to estate taxes. It is an almost universal principle that real estate should be liable to succession taxes only in the jurisdiction where situated. The principle of States reciprocally exempting intangible personalty belonging to nonresident decedents (so that it will be taxed only in the State of his residence) has been upheld by the Supreme Court. In order to make these principles likewise applicable between the United States and foreign countries it is recommended that a provision be inserted in the revenue act providing for the exemption on a reciprocal basis of intangible personalty and other property of a nonresident decedent except real property and tangible personal property having its situs in the United States.

Alleviation of international double taxation.—The Committee on Double Taxation of the American Section of the International Chamber of Commerce recommends that if section 104 of the bill is to be adopted it should be amended so as to cover the matter of allocation of income and also to permit the Executive branch of the Government to enter into agreements with foreign countries looking toward the elimination of discriminatory taxes and providing for equitable methods of allocating income for the purpose of taxation among the several countries in which the activities occur.

ESTATE TAX ON NONRESIDENT CITIZENS—PROPOSALS TO PREVENT DOUBLE TAXATION

An unfortunate reversal of long-established principles in our estate-tax laws is contained in section 403 of the 1934 revenue bill which amends sections 303 and 304 of the Revenue Act of 1926 and section 403 of the Revenue Act of 1932. If it is made law, the Federal estate tax will be imposed, in the case of United States citizens who die while resident abroad, on their entire estate including real and personal property situated in a foreign country. In this connection, one may recall the words of Chief Justice White in *United States* v. *Goelet* (323 U.S. 293, 58 L.ed. 610, 34 S.Ct. 43):

"It may not be doubted—speaking in a general sense, that the taxing power, when exerted, is not usually applied to those albeit they are citizens, who have a permanent domicile or residence outside of the country levying the tax. Indeed, we think it must be conceded that the levy of such a tax is so beyond the normal and usual exercise of the taxing power as to cause it to be, when exerted, of rare occurrence and in the fullest sense exceptional."

In the case of an alien, who dies while resident in the United States, his property, whether situated in the United States or abroad, will be fully subject to Federal estate taxes, while nonresident aliens will be subject to such taxes only with respect to that part of their gross estate which is situated within the United States. In other words, the United States follows, in the case of aliens, the principle of residence which is almost universally applied in foreign countries, and, insofar as citizens are concerned proposes to subject them to full tax even though they die while resident in a foreign country, which likewise subjects them to full succession tax because of such residence.

Aliens residing in such a foreign country would be subject, in addition to the tax imposed therein on the basis of residence, to the United States tax only on property having its situs within the United States. The United States citizen residing in the same country, however, would pay in addition to the local tax imposed on estates of residents, the full American tax on the entire estate including property having its situs in foreign countries. By adopting the principle of citizenship, the United States will thus subject its own citizens to a tax burden much greater than that imposed on foreigners in a similar situation.

The laying of this burden is, however, in direct opposition to the administration's policy of encouraging foreign trade. One of the fundamental reasons for the preeminence of Great Britain in foreign commerce is that the representatives of her industries live permanently abroad in all parts of the world to sell British goods. The permanent residence of trade representatives of her industries is necessary not only to give them an opportunity to become fully acquainted with a given market but also to learn the language and customs of the country and to keep in touch with changes in local market conditions. To compete with companies of Great Britain and other countries, which are represented in this manner, it is necessary for the representatives of American companies to become resident abroad. When citizens become permanently resident in many foreign countries their estates become fully subject to the succession taxes of the country of residence, which in most instances have rates higher than our own. If, in addition to this liability, full liability to the American tax is also incurred, there will be little left of the estate to pass to the wife and children and other heirs of our citizens who have endured the hardships of living abroad in the interests of our foreign commerce.

The principles almost universally followed in the matter of succession taxes are: (1) Liability is based on residence or nonresidence, without regard to citizenship; (2) real estate is taxable only in the country of situs without regard to the domicile of the decedent owner; (3) only the jurisdiction in which the decedent was domiciled can tax all his tangible and intangible personal property; and (4) although the rule is practically universal that tangible personalty having its actual situs within a given jurisdiction may be subjected to the succession taxes even though the owner was domiciled abroad, the principle that intangible personal property should be taxable only at the domicile of the decedent has become definitely recognized in the United States. (See *National Bank of Boston* v. *Maine*, 284 U.S. 312, 77 L. ed. 316, 52 S.Ct. 174, A.L.R. 1401.) The amendment in the 1934 Revenue Bill is contrary to these almost universal principles and tendencies, notably insofar as it subjects the estates of nonresident citizens to the same tax as that imposed on the estates of resident citizens, and insofar as it subjects to our tax real estate situated in foreign countries.

It may be argued that the United States has the sovereign power to impose this tax by virtue of the protection which it affords its citizens wherever they may live. One should not question "the scope and extent of the sovereign power of the

United States as a nation, and its relation to its citizens, and their relations to it." One does not presume "that government does not, by its very nature, benefit the citizen and his property wherever found", nor deny "the possession by government of an essential power required to make citizenship completely beneficial." (See *U.S.* v. *Bennett*, 233 U.S. 299.) For the benefits of citizenship, however, the American citizen is liable in full to income tax during his life even though he may live abroad and derive all his income from foreign sources.

The United States is the only great power that still follows this rule; all other countries, for example Great Britain, France, and Germany, subject their nonresident citizens only to the liability in respect of income from local sources, such as is borne by nonresident aliens. Contrary to the general practice, the United States likewise taxes the citizens, even though resident abroad, on gifts made abroad of property situated in foreign countries. The United States now proposes to levy its estate tax on the entire property of a deceased citizen, even though he may have resided abroad for years in the interest of American commerce and even though his entire estate may have its situs abroad. It is well to recall the words of Chief Justice Marshall that the power to tax involves the power to destroy and to consider the limitation upon the taxing powers of the States of the Union that have been placed in the Federal Constitution. Is it not wise for the United States voluntarily to place upon its fiscal jurisdiction in the international field the limitations imposed by the Constitution in the interstate field? It has long been settled that real property cannot be taxed, or made the basis of an inheritance tax, except by the State in which it is located. More recently it became settled that the same rule applies with respect to tangible personal property (*Frick* v. *Pennsylvania*, 268 U.S. 491, 69 L.ed. 1063, 35 S.Ct. 603, 42 A.L.R. 316). Still more recently it has been held that intangible personalty shall be subject to inheritance taxes only in the State where the decedent resided.

"Practical considerations of wisdom, convenience, and justice alike dictate the desirability of a uniform general rule confining the jurisdiction to impose death transfer taxes as to intangibles to the state of the domicile; and these considerations are greatly fortified by the fact that a large majority of the States have adopted that rule by their reciprocal inheritance tax statutes. In some States, indeed, the rule has been declared independently of such reciprocal statutes. The requirements of due process of law accord with this view." (*First Nat. Bank* v. *Maine*, supra.)

While referring to the view that once prevailed that intangible property could be taxed in more than one State, the Supreme Court has said:

"The inevitable tendency of that view is to disturb good relations among the States and produce the kind of discontent expected to subside after the establishment of the Union (Federalist No. VIII); perhaps two thirds of the States have endeavored to avoid the evil by resort to reciprocal exemption laws." (*Farmers Loan & T. Co.* v. *Minnesota*, 280 U.S. 204, 74 L.ed. 371, 50 S.Ct. 98, 65 A.L.R. 1000.)

It was this "rule of immunity from taxation by more than one State" deducible from decisions in respect to various and distinct kinds of property that the court applied in *First Nat. Bank* v. *Maine*, supra.

"The rule of immunity from taxation by more than one State, in its application to both taxes, rests for its justifications upon the fundamental conception that the transmission from the dead to the living of a particular thing, whether corporeal or uncorporeal, is an event which cannot take place in two or more States at one and the same time. In respect to tangible property, the opposite view must be rejected as connoting a physical impossibility; in the case of intangible property it must be rejected as involving as inherent and logical self-contradiction. Due regard for the process of correct opinion compels a conclusion that the determination fixing the local situs of the thing for the purpose of transferring it in one State carries with it an implicit denial that there is a local situs in another State with the purpose of transferring the same thing there. The contrary conclusion as to intangible property has led to nothing but confusion and injustices by bringing about the anomalous and grossly unfair result that one kind of personal property cannot, for the purpose of imposing a transfer tax, be within the jurisdiction of more than one State at the same time, while another kind, quite as much within the protecting reach of the fourteenth amendment, may be, at the same moment, within the taxable jurisdiction of as many as four States, and by each subjected to a tax upon its transfer by death, an event which takes place, and in the nature of things can take place, in one of the States only.

"A transfer from the dead to the living of any specific property is an event single in character and is effected under the laws, and occurs within the limits of a particular State; and it is unreasonable, and incompatible with the sound construction of the due process clause of the fourteenth amendment, to hold that jurisdiction taxes in that event may be distributed among a number of States." (*First National Bank* v. *Maine*, supra.)

The previous reasoning of Justice Sutherland in delivering the opinion of the court in the case of the *First National Bank* v. *Maine* applies equally well in the international field. Commerce within the confines of the United States has ceased to be local and has crossed State frontiers; it has likewise extended its ramifications into all the countries of the world. While double taxation has been prevented in the field of inheritance taxes by virtue of Supreme Court interpretations of the due process clause of the fourteenth amendment, there is unfortunately no such restriction to be invoked in preventing as equally detrimental a taking of property by two or more national governments. This international double taxation gives rise to ill feelings between peoples and should be the concern of Congress just as it was the concern of the authors of the fourteenth amendment. Other governments have voluntarily introduced sound principles of inheritance taxation so as to prevent dual liability in the form of bilateral treaties. ("Collection of international agreements and internal legal provisions for the prevention of double taxation and fiscal evasion," published by the League of Nations.) As stated by Chief Justice Hughes in *Burnet* v. *Brooks, supra:*

"In its international relations, the United States is as competent as other nations to enter into such negotiations, and to become a party to such conventions, without any disadvantage due to limitation of its sovereign power, unless that limitation is necessarily found to be imposed by its own Constitution."

It is therefore urged that the Senate not only oppose section 403 of the revenue bill and retain liability to estate tax on the basis of domicile, but that it also adopt measures to extend into international relations the principles that have been adopted to prevent double taxation as between the States. The principle of taxing real property only at situs and therefore exempting real property situated abroad is applied under the existing law in accordance with the opinion of the Attorney General, dated March 14, 1918 (Treasury, 2735).

With regard to tangible personality, the exception to the rule of mobilia sequuntur personum in favor of the jurisdiction of actual situs should obtain in international taxation for the same reasons as those advanced in interstate taxation.

"The adoption of a general rule that tangible personal property is in other States may be taxed at the domicile of the owner involves possibilities of an extremely serious character. Not only would it authorize the taxation of furniture and other property kept at country houses in other States or even in foreign countries, (and) stocks of goods and merchandise kept at branch establishments when already taxed at the State of their situs, but of that enormous mass of personal property belonging to railways and other corporations which might be taxed in the State where they are incorporated, although their charters contemplated the construction and operation of roads wholly outside the State, and sometimes across the continent, and when in no other particular they are subject to its laws and entitled to its protection." (*Union Refrigerator Transit Co.* v. *Kentucky*, 199 U.S. 194, 50 L.ed. 150, 26 Sup. Ct. Rep. 36, 4 Ann. Cas. 403, cited in *Frick* v. *Pa.*, *supra.*)

For stocks, bonds, bank deposits and other classes of tangible and intangible personal property, the principle upheld by the Supreme Court in the case of *First Natl. Bank of Boston* v. *Maine*, *supra*, should be applied. These principles could be brought into application as between the United States and any foreign country, either by means of reciprocal legislation, such as that followed in various States of the Union, or by reciprocal agreements. In any event, it is recommended that a provision for reciprocal exemption of intangibles and property other than personal property having an actual situs and real property in the United States be placed in the Revenue Act for 1934. It is respectfully suggested that this object might be accomplished by adding to section 302 subsection (1) reading substantially as follows:

"Personal property of a nonresident decedent except tangible personal property having its actual situs within the United States, shall not be subject to the tax imposed by the United States if an equivalent exemption is made by the laws of the foreign country of the decedent's residence in favor of residents of the United States."

With the foregoing suggestion, it is presupposed that the United States will continue to follow the principle of subjecting real estate to the estate tax only if it is situated in the United States. The real estate in the United States of a nonresident decedent would still be liable to the estate tax.

STATEMENT OF RICHARD P. MOMSEN, OF RIO DE JANEIRO, BRAZIL

Mr. MOMSEN. My name is Richard P. Momsen, and I appear here on behalf of the American Chamber of Commerce in Brazil, with headquarters in Rio de Janeiro and Sao Paulo, to urge the retention of the foreign tax credit, permitted under section 131 of the Revenue Act of 1932. These organizations are of the opinion that the elimination or reduction of the existing credit will be a serious menace to our already diminished foreign trade.

I have lived in Brazil for the past 20 years and in making this appeal to your committee I do so from the viewpoint of the person out in the field and in daily contact with the problems confronting our citizens engaged in foreign trade. From a study of the policies of this Government, I have come to the conclusion that it wishes to encourage and restore our foreign commerce in order to provide markets for our suplus of agricultural products and to give employment in industries producing exportable manufactured goods. One of the most important actions of this Government, in reducing the gold content of the dollar, was, as expressed by the President, aimed at reviving our foreign trade. Only last week the Secretaries of State, Commerce, and Agriculture emphasized to the House Ways and Means Committee the importance of our commerce with other countries in overcoming the depression. Measures have been adopted for the establishment of special Governmental agencies to finance certain overseas transactions and it is proposed that foreign trade be stimulated through reciprocal trade agreements. The Government can unquestionably do much in the solution of the situation by these and other measures but the success of these policies must in a large measure rest upon those individuals and companies who are either at present engaged in foreign trade or willing to enter it. Viewing the situation from the broad viewpoint, any action taken at this time which will place American traders abroad in an inferior position, as compared with their European or foreign local competitors, will seriously militate against the restoration or even the maintenance of our present reduced foreign trade. Many of these foreign trade policies have only been recommended by the President during the past week or two and were not present when the House passed the bill cutting the credit in two.

There is an impression prevailing in some circles that American business abroad should be doubly taxed on the ground that its activities are directed toward greater competition with goods produced in this country and that in consequence it is a menace to American labor. I do not believe that satisfactory world-wide statistics are available on this subject in Brazil.

In Rio de Janeiro and Sao Paulo there are, to my knowledge, 77 corporations owned or controlled by Americans doing business there at the present time; of these 59 are licensed American companies and 18 are corporations organized under the local laws.

Of these 77 companies many having branches in both cities, 74 operate in Rio de Janeiro and 49 in Sao Paulo. An analysis of the activities of these companies indicated that 54 are engaged exclusively in nonmanufacturing activities, practically all of these being devoted to the sale of goods manufactured in the United States. There are 23 companies whose activities are either wholly or partially dedicated to manufacturing or assembling products in Brazil. Of these, 17 may be classed as assembly plants importing all or most of the principal materials, in manufactured or partially manufactured form, from this country. However, nearly all of the 23 companies manufacturing or assembling in Brazil do not do so as their principal business activity but import from the United States a variety of other finished goods for sale there. In localities mentioned, only 5 are devoted exclusively to manufacturing from local raw materials. Even these, representing but 6 percent of the total number doing business there, purchased their machinery and equipment in the United States, employ American technical staffs and remit profits—when there are any—to this country. It is my belief that the impression concerning branch factories is an erroneous one and that to penalize all American companies abroad under this theory is destructive and detrimental to our best interests.

Considering some of these manufacturing or assembling plants individually, it is interesting to note the reasons for their establishment. One company maintains a small shop to assemble culverts made from corrugated sheets imported from the United States; the freight on finished culverts is prohibitive and it is impracticable to keep a stock on hand. Without this assembly plant no business at all could be done in this line. This particular company by reason of the slump in business has taken on a dozen or more American selling agencies in the past year, thus affording an outlet for many other products manufactured in this country which heretofore did not have representation in Brazil.

Of the companies manufacturing in Brazil at least six produce medicinal or toilet articles, and in almost every instance carry other manufactured lines imported directly from the United States. One company, under the assembly classification, erects a few articles of a line of surgical goods and found it necessary to do so because during the recent Sao Paulo revolution local industry had entered this field. I have given these illustrations to show that there are many reasons for establishing these so-called "branch factories" and that in most cases this is a misnomer.

In my opinion Americans establish branch factories or assembly plants abroad by reason of necessity rather than choice, under such circumstances as the following:

1. After a company has spent many years of effort and much money in establishing a market for its American-made goods, it suddenly finds itself shut out by a tariff intended to protect local industry. Under these circumstances there is no other alternative than abandoning the market or meeting competition by local manufacture;

2. In other articles the freight rate may be so high on the completed article that it is necessary to import same knocked down and assembled in the market of distribution;

3. In many cases there is more favorable rate of duty on the raw materials or unassembled parts, making it more advantageous or even necessary to produce the finished goods in the foreign country;

4. In other instances local and European manufacturers have established themselves in the country and Americans are either faced with the necessity of withdrawing from the market or setting up their own establishment.

This statement is also made on behalf of the individual American who is overseas for American foreign trade and who has established himself abroad for this purpose. These probably number quite a few thousand in the various countries. It would seem very unfair to discourage these Americans in the pursuit of these activities which are so vital to our agriculture, industry and commerce.

These American interests of which I have spoken, individual and corporate, have had a most difficult time in recent years due to the general decline of business everywhere, due to tariff restrictions, revolutions, exchange control, and many other handicaps. In a majority of cases I believe they have not been able to make any profits, and, although many have been compelled to abandon their undertakings, most of those remaining have survivied under the greatest of difficulties. Everyone hopes that we are at the turning point for a revival of world trade. Americans have at large expense and with much effort built up good will and a knowledge of the foreign markets in recent years. When the revival comes let us be ready for our share and give our citizen traders every reasonable opportunity to trade on equal conditions with our competitors.

In conclusion, on behalf of the organizations I represent, I earnestly hope that the full credit will be maintained.

Senator CONNALLY. May I ask one question?

Mr. MOMSEN. Yes.

Senator CONNALLY. You just stated that on account of favorable duties, the raw materials were easy to import and assemble in the foreign countries?

Mr. MOMSEN. Yes, sir.

Senator CONNALLY. What is the advantage to American trade unless we give employment to our people here at home in our own industries? That is the reason we want to increase foreign trade, isn't it?

Mr. MOMSEN. I did not get the question.

Senator CONNALLY. I say, the benefits of increasing foreign trade are to give more employment and more activity to our people in the United States?

Mr. MOMSEN. Yes, sir.

Senator CONNALLY. You want to encourage those shipments of material to the producers, and let them assemble the machinery and set it up down there——

Mr. MOMSEN (interrupting). But the constituent parts from which it is made are made in this country.

Senator CONNALLY. I understand that. Why not make it all here?

Mr. MOMSEN. The duty on the completed article in many cases makes the importation prohibitive and shuts Americans out completely.

Senator CONNALLY. I do not want to encourage American factories to go abroad and manufacture their products and call it American and American trade.

STATEMENT OF E. P. THOMAS, REPRESENTING THE NATIONAL FOREIGN TRADE COUNCIL, THE NATIONAL FEDERATION OF FOREIGN TRADE ASSOCIATIONS AND COUNCIL ON INTER-AMERICAN RELATIONS

Mr. THOMAS. Representing the three above organizations, established for the promotion of foreign trade by means of sound national policies, I appear before this Senate Finance Committee in opposition to any amendment of the revenue act which would impose an additional handicap upon American corporations operating abroad.

These companies pay to the United States Government the excess of the American income tax over the foreign national income tax, although no part of their incomes on foreign operations is derived within the jurisdiction of the United States. So far from the present tax provision being in any way discriminatory against American domestic business, any comparative advantage is to be found wholly on the side of American business at home.

The credit against Federal income tax, since 1918, has contributed greatly to the development of foreign sales organizations and to the creation of employment at home.

Foreign countries generally accord comparable treatment in this respect, of which full particulars have been submitted for your record. The rescinding of 50 percent of the foreign tax credit clause in the act, would in effect penalize American capital abroad by making it subject to taxation in two countries. This handicap might prove prohibitive of operation in a foreign country on a profitable basis. Further, Federal and State Governments would lose the tax revenues now derived from these companies. In practically all cases American income taxes paid upon such profits when brought into the United States are, in the aggregate, as great, if not greater in some cases, as that paid on profits accruing from investments abroad. To handicap further these American investments in foreign countries is to impair seriously a valuable source of American export trade. These investments have served largely to overcome the excess value of our exports over imports and without this compensating effect, increased imports, or lessened volume of exports will be necessary.

This proposed tax handicap comes at a most inopportune time when the realization of the aims of the National Industrial Recovery Act depends in such a large degree upon the restoration of our export trade, and when this administration is seeking by reciprocal trade agreements and export credits to increase exports.

As compared with other competing countries, United States enterprises in the foreign field labor under many disadvantages. Essential to the success of our national recovery measures is frank recognition of the principle that the United States aid in the promotion of our export trade should be no less effective than that given by foreign governments to their foreign traders.

Of some 7,000 foreign traders in 1929, with about 4,000 actively engaged, only about 2,000 can now be said to have a return on their foreign business sufficient to justify continuance in that field. Less than 300 are deriving profits sufficient to pay foreign income tax as deductible from the American tax return.

As a prime factor in industrial recovery, Government aid is more necessary than ever. Government services in the foreign field have

been greatly curtailed owing to drastic economies. Instead of imposing any additional handicaps on our foreign business, the decline in our export trade of 3½ billion dollars reflects the difficult situation confronting foreign traders. Present efforts to reopen foreign markets impose upon most of our foreign traders the disadvantage of operating without substantial profit, and frequently at a heavy loss. Many firms are maintaining their old connections abroad in the hope of improved conditions, in competition with foreign competitors having greater advantages through the active assistance given by their governments. With the prospect of dual taxation being imposed, we have been definitely assured by numbers of these firms that they will have no recourse but to withdraw, or from foreign companies not liable to double taxation.

In Great Britain and leading European countries, credit and financial facilities are made available to exporters. Approved foreign credits are guaranteed against risk, without resort to the exporter, up to an average of 75 percent of the credit risk on payment of an appropriate fee.

Senator GORE. How many countries do that?

Mr. THOMAS. There are about 10 countries, Senator Gore, that do that, including Great Britain, France, Belgium, Germany, Italy, Japan, Norway, Sweden, and Austria.

Senator GORE. They have had better luck in collecting these foreign credits than we have.

Mr. THOMAS. In the operation of these foreign credits export plans, none of these countries has suffered any loss. In the case of Great Britain, the operation over the past 7 years has resulted so far in a substantial profit of about £1,000,000 on account of the unusual premiums paid so that in practically every case the operation is self-sustaining. In Germany the exporter may purchase scrip issued in part payment of service on external loans, resulting in a saving to the exporter of 25 percent on the export price of his goods. Our foreign traders are compelled to meet the competition of English products, produced at an average wage scale of one half that of the United States; of France, Germany, and Belgium of one third to one fourth. Under the N.I.R.A. the American exporter faces a gradual rise in cost of production which hitherto has generally been greater than that of his foreign competitor. It is not to be wondered at that he has been compelled, by tariff walls, to establish branch plants abroad, just as many foreigners have had to do in this country.

Contrary to the opinion generally held, only $1,500,000,000 or one fifth of our total direct investments in foreign countries, are in manufacturing enterprises. A much larger amount of American capital abroad was represented, in 1929, by American investments in public utility and other enterprises.

About 1,800 branch plants abroad have been created by 711 firms for the purpose of facilitating the distribution of American products in foreign markets. There are in addition a number of American concerns abroad engaged largely in buying products of a type not produced in the United States. The existence of these American establishments is an indication of their economic necessity. A number of American branch plants and sales companies abroad handle American agricultural products, including meat-packing companies and similar enterprises.

Other advantages derived from foreign investments to our national economy should be carefully considered.

England's great industrial expansion followed her foreign investments.

Without these foreign investments in branch plants by American industries—in countries having customs barriers against our exports—the corresponding foreign trade would have been lost to us entirely, with the profits therefrom.

Other foreign investments of American capital have been made to develop natural resources of foreign countries, which otherwise would have been developed by capital from competing countries, resulting in direct competition here and abroad with our own industries.

From the standpoint of national defense, as proved in the World War, another incentive to investment of American capital abroad is the necessity of obtaining an adequate supply of the essential raw materials entering into American manufacturing operations, and not produced here to any extent.

Our foreign investments entail the shipment of immense quantities of American equipment and supplies made by American labor for plants and other utilities. Current operations involve continual purchase of American materials, and services of American employees in management.

Mr. KING. Have you any figures there showing the number of American sailors and the amount invested in the American merchant marine—that is, ships carrying our trade or commerce, flying the American flag?

Mr. THOMAS. I haven't those figures, but they are readily available. I would be glad to have them submitted through the Shipping Board and the Department of Commerce.

Senator KING. Have you any figures indicating the apparent value of the finished products and the semifinished products which we are shipping abroad?

Mr. THOMAS. Those figures are available also to a very large extent. I made the statement before the Ways and Means Committee, which I have omitted here for the sake of brevity, and that was referring to the 3 billion dollars which we were required to expend during the war on account of not having an adequate merchant marine; and that fact alone, it seems to me, would justify a consideration of the continuance of our foreign trade as a means of building up and continuing the operation of our merchant marine.

Senator KING. We do not need a very large merchant marine if we do not have any foreign trade.

Mr. THOMAS. No, and the converse is true. If we can build up the foreign trade, we will need the merchant marine as an element of national defense.

Senator GORE. Do you know how much of the $3,000,000,000 was spent on these wooden ships that couldn't cross the ocean?

Mr. THOMAS. I couldn't give you the exact figures, but those are readily available, sir.

Senator KING. Two hundred and thirty-five millions.

Mr. THOMAS. A large part of these plants appear merely to assemble parts manufactured in the United States, to avoid prohibitive duties

on the completed units. This is export trade that otherwise would have been lost to us.

If the gentlemen will permit me, I would like to give you briefly, an illustration of that. Several years ago I was required to go to Chile to purchase a local plant, on account of the fact that a British company had bought a plant for the galvanizing of black sheets. Consequently, the trade that the United States had enjoyed in the shipment of black galvanized sheets to Chile was completely lost, the British monopolizing the trade on account of the duty of approximately 100 percent on the galvanized sheet over the duty on black sheets, being virtually nothing. Now, not only did that operation enable us to restore shipments of these black sheets to that country merely with the addition of spelter for galvanizing, under a protection of $50 per ton, but it enabled us to compete with British capital operating in the same way under heavy duty protection. That is a concrete illustration of the loss that would have occurred to our export trade had American capital not gone into that foreign country.

Senator Reed. And all of the business of the manufacturer of the black sheets was preserved for American labor?

Mr. Thomas. Then we resumed the manufacture of the black sheets in the United States, merely going there to be finished, the same as any other assembling operation. I will now conclude, gentlemen, if you please, by saying that an American citizen operating abroad does not enjoy in the same degree as the citizen at home the protection of the United States Government in return for the income tax which it is proposed he shall pay if this amendment is passed. It is logical that the operator should pay the income tax to the Government under whose laws he is protected. It is not logical that this tax should be pyramided through double taxation at home. The Government of the United States derives revenue through other taxes levied on those companies and through taxation of their dividends.

Industries developing natural resources are not depleting the resources of the United States as they would in operations here.

American export trade has been largely instrumental also in building up the American merchant marine as an indispensable adjunct to our national defense.

The situation today is somewhat analogous to that of 1917. Our export trade has so greatly diminished, our mercantile shipping is largely unemployed and becoming obsolete with very little shipbuilding in progress. The promotion of our foreign trade, therefore, is not only a question of national economic importance, but one also of importance to national defense. Our export trade is of vital concern not so much from the standpoint of profits derived from this trade, at present negligible, but from the standpoints of increasing employment and of providing exchange for essential imports. In normal times about 10 percent of our population is directly or indirectly affected by this trade and its accompanying services. About 1,600,000 unemployed heads of families are dependent on the restoration of this foreign trade, particularly in our heavy industries.

The case of American foreign traders and investors against the proposed amendment of the revenue act rests on the necessity of making our foreign trade contributory to the purposes of the N.R.A. To impose double taxation upon those who under exceptional difficulties

are seeking to increase employment by maintaining and enlarging their connections with foreign markets, would be contrary to the letter and spirit of the National Industrial Recovery Act.

BRIEF SUBMITTED BY HARRY TIPPER, EXECUTIVE VICE PRESIDENT, AMERICAN MANUFACTURERS EXPORT ASSOCIATION

The American Manufacturers Export Association is an association of approximately 300 members in all types of manufacturing, who have a substantial export business, are located in different sections of the United States and represent an important cross-section of the various types of manufacturing business of the country.

This brief refers to section 131 (a) of the revenue bill—foreign tax credits.

The American Manufacturers Export Association respectfully urges the retention of this section as it was in the previous act, without any change, on the basis that:

(1) The contemplated change in this provision of the law will adversely affect the total exports from this country, particularly of manufactured goods.

(2) It will lead directly to the closing of branches maintained in foreign countries and, consequently, to a direct loss of business due to the less intensive work that will be substituted for such organized operation.

(3) It will result in a direct loss of income by the concerns who are affected. This loss in income will result in a reduction in the total tax available from income and, we believe, will more than offset any additional income value to the Government that might be secured in the change in the foreign-tax provision.

(4) It will particularly affect medium-sized concerns who have been in export business for a long period and have, during their history, gradually developed subsidiary organizations abroad to meet the competitive requirements of the market. This effect is most serious in those lines of business where the products are very closely priced and where the competition of other countries is highly developed, such as, household supplies, drugs, cosmetics, oil, etc.

(5) The size of the company bears no relation to the effect on the exports; in fact, with the medium-sized company, operating in some of the lines mentioned, where it is possible to maintain a foreign branch only under profitable conditions, the effect of this provision will be the most definite and complete.

Figures received from a questionnaire sent out by the American Manufacturers Export Association to its members show that of concerns maintaining 115 subsidiary branches abroad, these branches are as follows:

Complete manufacturing	3
Assembly packing and partial manufacturing	50
Sales companies	62
Investment in these 115 subsidiary companies (approximately)	$37,000,000
Total business involved (approximately)	$38,500,000
Tax credits involved (approximately)	$1,200,000
Estimated business loss expected by these concerns if the credit is withdrawn	$12,000,000 to $16,000,000
Number of branches to be closed entirely or operated at substantial loss	34
Number of branches doubtful of continuance	56

On the basis of a normal estimate of 10 percent profit, the net profit to these concerns on the above business would be $1,600,000. In order, therefore, to collect a tax of $600,000 the export business would be reduced by $16,000,000 and the taxable profit of the concerns reduced by $1,600,000.

These figures do not represent, by any means, the total loss that would be suffered by the entire membership of the American Manufacturers' Export Association, but represent only those cases where it has been possible, in the short time available, to secure full statistics and, consequently, draw up accurate totals. They do, however, definitely indicate the disastrous effect that this proposed change would have on important elements in the export business.

The inevitable effect of this reduction of the export business would result in a reduction in the taxable income, a reduction in the dividends to their stockholders, and a corresponding reduction in the stockholders' income therefrom.

The Chairman. Senator Walsh has received several letters on this subject which he desires to have placed in the record at this point.

BOSTON, *March 7, 1934.*

Hon. DAVID I. WALSH,
Washington, D.C.

DEAR SENATOR: We are very much concerned about the provisions in the House Revenue bill under which the credit for taxes paid to a foreign government is limited to 50 percent of the amount of the United States taxes on such income. If this change in the income tax law is approved by the Senate, it will result in a double taxation on income from foreign sources which is already subject to very heavy foreign taxes. We urge you to oppose the acceptance of this section of the bill and to advocate the substitution therefor of the foreign tax credit provisions of the 1932 tax bill.

American manufacturers operating in foreign countries are already severely handicapped by high tariffs, by import quotas, exchange restrictions, and exchange fluctuations. Furthermore, we have to face intense local competition. The additional burden of increased taxes under the pending bill would further handicap foreign operations and would undoubtedly affect the volume of business and the resultant flow of profits to this country.

It seems to us that the proposed increase in the tax burden will have the effect in a measure of discouraging a continuation of current operations and preventing the extension of activities. Our foreign trade is vital and we submit that the Senate should do everything in its power to encourage efforts to expand it.

Yours very truly,

GILLETTE SAFETY RAZOR CO.,
STAFFORD JOHNSON, *Treasurer.*

BOSTON, MASS., *February 5, 1934.*

Senator DAVID I. WALSH,
United States Senate, Washington, D.C.

DEAR SIR: We wish to call your attention to the proposed tax which disallows foreign taxes as credits for a domestic corporation.

The Reece Button Hole Machine Co. is a Maine corporation and manufactures machinery. The foreign business is handled by the International Button Hole Sewing Machine Co., which is also a corporation of Maine. The Reece Button Hole Machine Co. sells direct to the International Button Hole Sewing Machine Co. in this country and they in turn ship to all foreign countries. The International Button Hole Sewing Machine Co. owns The Reece Machinery Co., Ltd. (London); Reece Machinery Co. (France); Reece Machinery Co., G.m.b.H.; Reece Machinery Co. of Canada, Ltd.

These four foreign countries do the leasing and selling for the International Button Hole Sewing Machine Co. in their respective countries and each of them pay taxes in those countries. If the International Button Hole Sewing Machine Co. is not permitted to credit these foreign taxes paid it will make it more difficult for them to export machines than it has been in the past. The money that the International Button Hole Sewing Machine Co. makes through its foreign companies is naturally brought back to the United States.

It seems to us a tax law that would make it very difficult for the International Button Hole Sewing Machine Co. to do foreign business is one that would unquestionably defeat the purposes of the N.R.A. and also the purposes of President Roosevelt under his new monetary policy, which is naturally supposed to be an aid to export.

We, therefore, ask you to use your best efforts to be sure that the new tax allows full credit for taxes paid in foreign countries.

Very truly yours,

THE REECE BUTTON HOLE MACHINE CO.,
By F. A. REECE.

WORCESTER, MASS., *March 1, 1934.*

Hon. DAVID I. WALSH,
Senate Chamber, Washington, D.C.

DEAR SIR: Hitherto, for what seems to us sound and logical reasons, the Federal Government has permitted corporations a deduction for foreign taxes. It is clear that the foreign investment is taxed locally in the foreign jurisdiction on the sound ground that protection and other Governmental benefits have been supplied in the foreign jurisdiction to which the corporation or individual enjoying such protection should appropriately contribute. Furthermore, all dividends

from a foreign source again are taxed by the foreign Governments when they are transmitted to the receipient corporation in the United States.

The investment has been made entirely in the foreign jurisdiction, the money has been earned in the foreign jurisdiction and contrawise the investment is not in the United States. Its profits are not made in the United States, and the Federal Government has not supplied any service in connection with such activity. The proceeds of the foreign venture are subsequently taxed by our Federal Government. For the Federal Government now to deny the American corporations their deductions for foreign taxes would seem to imply that the Federal Government is merely desirous of taking by way of tax a bigger slice of the corporate profit which it can lay its hands on within its jurisdiction with utter disregard of the logic of the situation including the incidence of the several taxes and the well recognized fact that the foreign taxes are an expense of doing business in the foreign jurisdictions.

The deduction of State income taxes is permitted to the taxpayer on Federal income. By the same token, the allowance should be made to the Federal corporate taxpayer for the taxes paid to foreign jurisdictions upon the values which are to be again taxed by the Federal Government.

We hope that these and other arguments which we believe are sound in this instance will induce you to stand firm against any modification of the present law as regards deductibility of foreign taxes. If the Government must secure additional revenue from corporate sources, a preferable method is to increase the percentage rate of taxation rather than to ignore the logical principles which hitherto have been recognized to a reasonable degree in our income tax legislation.

Respectfully yours,

NORTON CO.,
CLIFFORD S. ANDERSON,
General Counsel.

BOSTON, *February 19, 1934.*

Hon. DAVID I. WALSH,
United States Senate, Washington, D.C.

MY DEAR SENATOR: The revenue bill of 1934 (H.R. 7835), copy of which has just come to hand today, apparently provides for a limitation of the credit for foreign taxes to 50 percent of the amount paid.

As you know, under the present revenue act and for a good many years, Puerto Rico has been treated as foreign for purposes of income taxation. For this reason then, income taxes paid to Puerto Rico by domestic corporations, either directly or through controlled subsidiaries, have been allowed as a direct credit against United States income taxes. This proposed reduction of 50 percent will be a very serious hardship on capital invested in the island. I am thoroughly convinced that full credit should continue to be given as has always been the case and I am hopeful that the equity of this suggestion as to Puerto Rico, where the United States is trying to be helpful, will be apparent to the Finance Committee.

I wish you could get the committee to amend the House bill making provision for full credit for taxes paid to Puerto Rico. This could be done by insertion of the word "foreign" after the word "any" in the second line of section 131 (b), paragraph 1, and in paragraph 2 by inserting after the word "credit" in the first line the following clause: "In respect of the tax paid or accrued to any foreign country" so that the limitation section would read as follows: (1) "The amount of the credit in respect of the tax paid or accrued to any foreign country shall not exceed the same proportion of the tax against which such credit is taken, which one half of the taxpayer's net income from sources within such country bears to his net income for the same taxable year and,

(2) "The total amount of the credit in respect of the tax paid or accrued to any foreign country shall not exceed the same proportion of the tax against which such credit is taken, which one half of the taxpayer's net income from sources without the United States bears to his entire net income for the same taxable year."

I know you have a great many things to consider but urge you as strongly as I can to take this matter in hand.

Very sincerely,

CENTRAL AGUIRRE ASSOCIATES,
By CHARLES G. BANCROFT, *President.*

BOSTON, MASS., *May 17, 1933.*

Hon. DAVID I. WALSH,
Washington, D.C.

DEAR SIR: I am enclosing to you a circular letter received this morning subject matter of which may possibly have been called to your attention before. An owner of Canadian security is taxed 5 percent on the interest or dividends received unless they are payable on this side of the line where the Canadian Government can't get at them.

There are a large amount of United States securities in Canada. I hope this situation can be called to the attention of Congress so that we will at least get an even break with them.

Yours respectfully,

J. S. ROUND & CO.,
JOHN J. ROUND.

TORONTO 2, ONT., *May 16, 1933.*

JOHN J. ROUND, Esq.,
734 Washington Street, Boston, Mass.

DOMINION OF CANADA TAX ON INTEREST AND DIVIDENDS PAYABLE TO NON-RESIDENTS

DEAR SIR OR MADAM:

The Dominion Government, commencing April 1st, has levied a tax of 5 percent on interest and dividends in Canadian funds paid by Canadian debtors to nonresidents. This tax applies to interest paid by Canadian banks on deposits in Canadian funds carried in Canada by nonresidents and it will, therefore, be necessary for this bank to withold and remit to the Government 5 percent of the interest payable on your balances.

Should you at any time desire a certificate of the amount of tax withheld and paid to the Government, we shall be pleased to furnish one on application.

Yours faithfully,

THE BANK OF NOVA SCOTIA,
P. C. JOURDAN, *Manager.*

CONSOLIDATED RETURNS OF CORPORATIONS

STATEMENT OF R. V. FLETCHER, WASHINGTON, D.C., REPRESENTING THE ASSOCIATION OF RAILWAY EXECUTIVES

Mr. FLETCHER. I have no thought of delaying the committee. I only want to mention two or three matters, and content myself with the bare mention of them, because some of them at least have already been called to the attention of the committee, and I think have been pretty fully considered.

Representing about 93 percent of the mileage of the class 1 railroads of the United States, I just want to call the attention of the committee again to what seems to us to be an injustice in connection with the 2-percent penalty for making consolidated returns. I shall not elaborate upon that further than to call attention to the fact that the railroad industry happens to be one in which it is impossible, by reason of provisions of law, and orders of regulating commissions to operate their properties as one corporation. You are familiar with the fact that every considerable railroad system in the country is a growth, that they began in most cases at least with a local railroad which was incorporated, which had its obligations to its stockholders, which particularly had obligations to bondholders, and in many cases had obligations to public authorities and to the statutes of the State under which they were incorporated. That thereafter by one method or another, through a system of leases, or the acquisition of control

or capital stock, those comparatively small railroad corporations became a part of a single operated system, that it represents but a single investment, in most cases represents but a single operation; and now, under the law as it is here, now if they elect to file a consolidated return, they are subjected to a 2-percent penalty.

I might take the time of the committee if time were not so pressing here, to give many practical illustrations of just how that works out as a serious injustice to railroad operations. Particularly in view of the fact that they are compelled to maintain these separate corporations partly for financial reasons, for economic reasons, and for legal reasons.

The CHAIRMAN. Do you know of any other industry in America that is in the same category as the railroads with reference to this matter?

Judge FLETCHER. Well, I do not happen to have, Mr. Chairman, such familiarity with industry generally as would enable me to make an intelligent reply to that question.

Senator REED. All of the steel companies that have ore reserves are obliged to have local mining companies, because under the laws of those States, a foreign corporation cannot operate an iron-ore mine.

Judge FLETCHER. I should think that would be true, Senator.

Senator KING. It seems to me, if the Senator will pardon me, that there is a distinction, because railroads are more of a public utility, and with the change in public sentiment, for good or for bad, looking toward more governmental control, railroads are not the free agents that the steel companies are.

Judge FLETCHER. That may be, Senator.

Senator KING. They are circumscribed by State statutes as well as Federal control by the Interstate Commerce Commission. A steel corporation is not controlled by Federal agencies.

Judge FLETCHER. I am not competent to discuss any other industry. Take a situation that occurs out of the peculiarity of the constitution of the State of Texas, which makes it necessary for any railroad operating in that State to be a Texas corporation. There is no chance, there is no opportunity for the Rock Island Railroad or the Southern Pacific or the Santa Fe Railroad to absorb into their parent company, those Texas affiliated and subsidiary companies. They must be so maintained in accordance with the constitution of the State.

I will mention a State with which I am sure one Senator at least is familiar, and which I happen to be familiar with too, from former residence—Mississippi. There is a constitutional provision there that no railroad shall be owned and operated except by a railroad which is itself a resident of the State in the legal sense. As a result of that, one important railroad with which I was formerly connected, found it necessary to maintain separate corporations for two of the Mississippi railroads which it owns and controls—one being the Yazoo & Mississippi Valley, and the other the Gulf & Ship Island. I do not think I need to elaborate the point to this committee.

I think it has been discussed quite fully in the House hearings. It was mentioned, I believe, on the floor of Congress in debate, and is mentioned particularly in the report of the House committee—except to say this, that I could cite you if time permitted, instance after instance where there is a small railroad which is a subsidiary of a

larger system which is essential to be maintained there in the public interest, which should be maintained, doubtless, for the sake of the country which it traverses, and to give them the service that they are entitled to, and yet out of the treasury of the parent railroad, every year there has to be advanced to the smaller railroad, considerable sums of money for the purpose of keeping that smaller railroad going. Unless you are able to file a consolidated return without too heavy a penalty, it works a substantial hardship upon the parent company.

The CHAIRMAN. Judge, you have put in your brief on that question. Is there some other question you want to discuss?

Judge FLETCHER. I had one other matter, Mr. Chairman—one or two other matters. One that I will mention, and that is this:

In the treatment of the subject of depreciation and depletion by those who administer the act, there has arisen this curious and I think improper situation. Where a railroad has leased another railroad, with a covenant in the lease that the lessee company shall pay the taxes of the lessor company and shall also at the end of the lease period, return the property in as good condition as it was when the lease contract was made, the practice has grown up in the Department, with which I am not now quarreling, which does not allow either the lessor or the lessee to take any depreciation upon its equipment. May I use an illustration to show what I mean by that? The Illinois Central Railroad, with which I was once connected, through its subsidiary the Yazoo & Mississippi Valley Railroad Co., has leased two certain railroads in the States of Louisiana and Mississippi, under the usual form of lease contract by which the Illinois Central has agreed to return the property at the end of the lease period in as good condition as it was when acquired. The lessee of that company, namely, the Illinois Central, cannot take any depreciation as a deduction from income for the reason that it is held that they do not own the property—which is true in the legal sense. And the lessor company cannot take any allowance for depreciation because they say they are indemnified under the terms of their lease against loss, and I am suggesting in the paper which I will file with the committee an amendment which will take care of what seems to us to be an untenable situation.

Senator REED. Have you ever tested the question whether the holder of an estate for years is as much entitled to such relief as the owner of the fee?

Judge FLETCHER. No, sir.

Senator REED. Don't you think that question should be tested?

Judge FLETCHER. The course of decisions in the United States Supreme Court has inclined us to think that such a test in the case of railroad leases would be pretty difficult to maintain.

The CHAIRMAN. Thank you, very much.

Judge FLETCHER. There is only one other question, and that is a certain feeling of uneasiness which I have with reference to whether under the capital gains and losses under the act, or the depreciation section of the act, there may be proper allowance when property has been abandoned, which occurs all the time during the course of railroad operation, or has become obsolete. I am not very skillful in income-tax matters, not being an income-tax lawyer, but may I suggest also to the committee in my memorandum, an amendment to the act which would make it clear that that privilege should not be denied to railroads.

The CHAIRMAN. Thank you, very much.

Judge FLETCHER. May I inquire within what time those briefs must be filed.

The CHAIRMAN. Give them to us as soon as possible. We are trying to have this matter published, and we are going to go into executive session on Thursday, and these matters should be ironed out so that we can get the bill on to the floor.

CONSOLIDATED INCOME TAX RETURNS, BRIEF BY C. W. KELLOGG, CHAIRMAN OF ENGINEERS PUBLIC SERVICE CO.

There has crept into the Revenue Act of 1932, and the same thing has been carried forward into the proposed Revenue Act of 1934, a discriminatory provision regarding consolidated returns of corporations which I believe to be most unjust. I refer to the provisions of paragraphs (a), (c), and (d) of section 141. This part of the act provides that in cases where 95 percent or more of the voting stock of one corporation is owned by another corporation they may file a joint return of income. This provision is referred to in the act as a privilege and where this so-called "privilege" is used the rate of tax is increased from 13¾ percent to 15¾ percent. I am making no complaint about the amount of the corporation tax—anyone who considers the size of the Government's debt and the rate at which it is spending money must be reconciled to heavy taxes for a generation to come. I do feel, however, that the larger the taxes become, the greater the need for strict justice in distributing the burden, and I hope to be able to show that the provisions of section 141 above referred to are not just.

The very word "privilege", especially when applied to a corporation, has come to have a sinister meaning and I cannot help feeling that it is the inaccurate use of this word in the section of the act which has led to the erroneous and unjust conclusion.

Let me remind you of the facts.

It is common knowledge that in most large enterprises there are great differences in the degree of profitableness of various departments of the business. Some departments, due to being in the development stage or to being operated to round out other parts of the business or for other reasons, actually lose money.

In the case of, let us say, Corporation A, in which all departments are owned directly by that corporation, the losses of one department automatically offset gains by others and the combined total is the unquestioned net earnings of the company without benefit of any provisions in any revenue act.

Let us now consider the case of Corporation B, which we will assume comprises no more property than Corporation A, but in the case of B the properties are in different States or have underlying bonds which prevent consolidation, or for some other reason can be combined as a unit only through the ownership of stock by Corporation B in them. This is the typical holding company situation. Probably the majority of the large enterprises of the country are combined through holding companies; it is certainly the case where their properties are in many States—all the largest railroads and communication systems as well as many of the industrials and public utilities. Such companies have often been criticized for the complexity of their corporate structures, but if my own experience with my company is a fair yardstick for the others, I can say that we have kept the number of corporations down to the lowest possible point consistent with divergent State laws and underlying financial obligations or priorities. The point I wish to make is that Corporation B's corporate set-up, taking average conditions, is as simple as it can be made and is a reflection of diverse legal financial conditions beyond the control of Corporation B. The holding company status of Corporation B is the only way, in all the surrounding circumstances, that it can do the same business as Corporation A.

This state of facts has been recognized in our revenue acts from the earliest days of the income tax laws. The Government said in effect to Corporations B: "We realize the fact that your corporate set-up is something largely beyond your control and to put you on all fours with Corporation A, you may make a consolidation of the income of all the corporations forming your group. The only condition we impose is that you must own at least 95 percent of the voting stock of the companies whose income you propose to consolidate." Through all the intervening years, until 1932 this arrangement continued; it was clearly

not regarded as a "privilege" but as simply a fair and just arrangement for putting on the same footing two citizens, whom fortuitous circumstances, not of their making, would have put on a different footing.

I cannot help feeling that if the word "privilege" should come into the consideration of this bill at all, it should be an argument against the discrimination I am complaining of. Every person (our corporations are legally persons) has the constitutional privilege of equal treatment by the laws. I think the discrimination in section 141 as proposed is in contravention of this privilege.

To be specific, I recommend that the word "right" should be substituted for the word "privilege" where the latter appears in paragraph (a) of section 141, and that the clause at the end of paragraph (c) of said section, after the semicolon, be stricken out. This is the clause providing an added tax of 2 percent on consolidated returns. For consistency, the cross reference in parenthesis at the end of paragraph (a) section 13 should also be omitted.

The CHAIRMAN. Senator Nye has requested that the following letter to be inserted in the record:

GRAND FORKS, N.DAK., *March 10, 1934.*

Hon. GERALD P. NYE.
United States Senator, Washington, D.C.

DEAR SENATOR: For some time I have been reading the new tax provisions and studying the old law from the standpoint of a small corporation, and as I study this it becomes more serious every day, until today I have decided to send you a telegram on the subject.

There are, of course, cases of people incorporated for the purpose of avoiding tax. But on the other hand there are thousands and thousands of small corporations which could not be conducted on a partnership basis because the man furnishing the capital could not afford to assume the credit responsible.

Under the present law and any provisions that seem to be made in the new law, there is no relief for this situation. The small corporation on one side of the street is unfairly taxed compared with the individual competitor or the copartnership competitor on the opposite side of the street.

A corporation in this position must either pay themselves more salaries than they feel should be paid or they must pay a tax which is entirely out of reason with their profits.

For instance, we have three corporations where we have set young men up in business. We have incorporated and given them 50 percent of the common stock and furnished the capital for them as preferred stock. You will plainly see there is nothing about this which would dodge taxes or be for that purpose. It is simply for the purpose of preventing us from becoming liable for more than a fixed amount of credit or obligations of this corporation. At the same time giving this young man 50 percent working interest in the business.

Now this young man accepts a small salary, a salary which, of course, would seem ridiculous to the ordinary person in the East, and he sets up his profits and tries to build up a business. He having an option to retire this preferred stock that we own just as fast as he can do so. You will plainly see the position that he is in when he must pay 13¾ percent of taxes on all profits and the handicap this tax places on his future and success.

For instance, we have a little hardware store on this basis. This young man has made a net profit of $500 after allowing himself his salary of $150 per month. Now, if you will figure up the taxes he pays, you will see how unreasonable it is—when the man across the street on the same earings would pay practically nothing.

It seems to me that a provision can and should be made in this law whereby it is possible for these small corporations to divide all their profits each year among the stockholders and be taxed the same as a copartnership, providing the Government does not wish to give the small corporation some exemption. Either one of these would provide the proper relief. But unless this is done, all these corporations must be liquidated and no man could afford to give young men these opportunities. This also applies to the small corporation set up by a family who is working in the business but who do not wish to take the responsibility of unlimited credit of all the acts of the copartnership.

I believe that if you will give this consideration you will immediately see that some relief must be given the small corporation for they must devise some way of avoiding this excessive tax or they must go out of business. It seems to me that the committee on taxation has always been willing to do something for this

small corporation which is honestly conducted and was not formed for the purpose of avoiding taxes and certainly it would not avoid any tax for the Government to provide a way whereby a corporation could be taxed in the same manner as a copartnership, to elect to be bound to divide their profits each year and pay the same as a copartnership.

I know that the time is late and I also know that this is serious, but it seems to me that the administration itself is looking for something of this kind to relieve the small corporation.

It is very apparent that in the effort to tax the large corporation they are putting up a system whereby they will put small honest corporations out of business entirely or force them to the mercy of unlimited credit of co-partnership and the hazards which follow such a copartnership. It is simply going to make it impossible for these small businesses to continue.

If there is anything further I can do on this subject I will be glad to have you inform me. I feel sure a great service can be done small business in this way.

I will greatly appreciate your reaction and any efforts you can make to relieve this situation.

Yours very truly,

G. L. IRELAND.

FRUIT-JUICE TAX

STATEMENT OF MARION DE VRIES, RE TAX ON GRAPE CONCENTRATE AND GRAPE JUICE

Gentlemen of the Finance Committee of the Senate, I appear on behalf of the Wine Producers' Association, of California, suggesting an amendment to H.R. 7835, page 195. I will make it brief.

I call your attention to title IV, "Excise Tax", page 195. That proposes to repeal that part of the existing law which lays a tax upon grape concentrate and grape juice. Whether by oversight or intention I am not advised, while this bill, page 195, line 15, repeals paragraph 2, section 615, of the Revenue Act of 1932 which levies a tax upon grape concentrate containing less than 35 percent sugar, it leaves in the existing law title IV, Manufacturers' Excise Taxes, section 601, subdivision (3) which lays a tax upon grape concentrate containing over 35 percent of sugar. It reads:

"(3) Grape concentrate, evaporated grape juice, and grape syrup (other than finished or fountain syrup), if containing more than 35 per centum of sugars by weight, 20 cents a gallon. No tax shall be imposed under this paragraph (A) upon any article which contains preservative sufficient to preserve fermentation when diluted, or (B) upon any article sold to a manufacturer or producer of food products or soft drinks for use in the manufacture or production of such products."

You will observe from reading that paragraph that it is intended to and does lay a tax upon grape concentrate only when used in the making of wine. All other classes of uses are thereby excepted from the tax. That provision was adopted during prohibition. At that time there were but few legal uses of wine. Now that wine making is legal, grape concentrate and grape juice used in the making of wine will be taxed as wine, it seems unfair and unjust to maintain this double, and sometimes triple, tax upon the same product. Wines are now taxed, as you know, not only by the Federal Government but by almost every State in the Union and it is unfair to have the wine tax by the Federal Government and by almost every State further burdened by this tax upon wine material.

It is the suggestion of the wine producers and grape growers of California that an amendment be inserted in the bill striking out said subdivision (3). I suggest, therefore, that the bill be amended at page 195 under title IV, "Excise taxes", by inserting between lines 10 and 11:

"Subsection (c) of section 601, Revenue Act of 1932 (relating to a tax upon grape concentrate) is amended as follows:

"(a) Paragraph (3) thereof is repealed;"

The result thereof will be to conform the bill with the therein following amendment, line 15, which repeals the tax upon grape concentrate of less than 35 percent sugar content.

May I further invite your attention to lines 18 to 24, page 195, and lines 1 to 3, page 196, the same being a single paragraph. The only change made by this paragraph is to insert in the existing law the words "imitations of." The result is that while all imitations of fermented fruit juice are subject to a tax by reason of retaining the words "except grape juice" in line 19, imitations of grape juice

are not subject to a tax. I can see no reason for this discrimination. If imitations of other unfremented fruit juices are to be subject to a tax in protection of the pure juice, this should also extend to grape juice. Therefore, I suggest that this inequality be met by striking out the words "except grape juice" in line 19.

The continuance of said tax upon grape concentrate works an even greater injustice when applied under section 622 of said Revenue Act of 1932, whereby a tax is laid upon concentrate not sold but made in a winery to be used therein in the course of wine making.

I thank you on behalf of the organization for any relief you may give to the industry in this matter.

MARION DE VRIES,
Attorney for Wine Producers Association of California.

MARCH 13, 1934.

TAX ON CERTAIN OILS

STATEMENT OF JOHN B. GORDON, REPRESENTING BUREAU OF RAW MATERIALS FOR AMERICAN VEGETABLE OILS AND FATS INDUSTRIES

Mr. GORDON. Mr. Chairman, could I make a request in reference to the suggestion which was announced this morning in regard to the allocation of time between those who desire to discuss the section on oil.

The CHAIRMAN. Yes.

Mr. GORDON. We have in opposition to this tax about 30 witnesses, not one of whom, with the exception of myself, testified before the Ways and Means Committee, and I am eliminating myself. The opposition has a number of witnesses here. I see on this page about 9, 6 of whom testified before the Ways and Means Committee. They testified not only on 1 day, but they testified on 2 days, and they had the greater portion of 2 days. We had before the Ways and Means Committee, I think, the sum total of about 30 minutes' time. In the division of this time, it appears that some consideration should be given to the fact that these men who are coming to testify for the proponents, have testified before the Ways and Means Committee, whereas those who are speaking in opposition to this tax did not so testify.

The CHAIRMAN. I am quite sure that the fact should be taken into consideration by the group in opposition to this tax, that those gentlemen who testified before the committee should cut their arguments down; but it makes it difficult for this committee to decide that because we lose time by it.

Senator KING. You are opposed to this 5-cent tax, are you?

Mr. GORDON. Yes, sir. Here is the situation, Mr. Chairman. There are 14 different groups on the list here, neither one of whom knows anything about the other one's business; road builders who use coconut oil, tanners who use coconut oil, rubber manufacturers who use coconut oil, soap manufacturers who use coconut oil. They know their own business, but they do not know the other fellow's. There are Filippinos, who are opposed to the Philippine angle. There are crushers, who are opposed to the American crusher angle. There are crushers that are opposed from the domestic angle. It is an absolute impossibility for one man to speak for those different groups. They will all have to speak. The least we can cut it down is to about

14 witnesses, and an hour is not enough, because none of them had an opportunity to get in before.

The CHAIRMAN. Mr. Gordon, this committee cannot take all that time. There are many of the committee who do not think this proposition should have been injected. I am not expressing any opinion on that, but there are innumerable other things in here, and we feel that 2 hours on this oil proposition should be sufficient. So they must confine themselves to 2 hours. I do not think the committee is going to sit any longer than that this afternoon, so those who are interested should get together on that proposition.

(Later in the day the following discussion was had:)

The CHAIRMAN. May I ask, did the opposition on this oil tax get together?

Mr. GORDON. We did.

The CHAIRMAN. Are you for it or against it?

Mr. GORDON. Against it.

The CHAIRMAN. How much time do you want?

Mr. GORDON. We ask that you place these names of witnesses in the record, who could not appear on account of this division of time.

The CHAIRMAN. All of you gentlemen can put briefs in the record.

Senator REED. This list of names will appear as witnesses who were here but could not be heard because of the shortness of time.

Senator WALCOTT. They can submit briefs.

WITNESSES OPPOSED TO EXCISE TAX ON COCONUT AND SESAME OILS, SECTION 602, TAX ON CERTAIN OILS

W. F. Williamson, San Francisco, Calif., representing El Dorado Oil Works.
Russell Colgate, Jersey City, N.J., Colgate-Palmolive-Peet Co.
L. F. Hoyt, Buffalo, N.Y., representing Larkin Co., Inc.
Hon. Pedro Guevara, Resident Commissioner, Philippine Islands, representing self.
G. M. Tisdale, representing United States Rubber Co.
John Coe, Naugatuck, Conn., representing Naugatuck Chemical Co.
J. D. Craig, Buffalo, N.Y., Spencer-Kellogg & Co.
R. W. Levenhagen, Cleveland, Ohio, Glidden Co.
R. H. Thurman, New York, N.Y., representing self.
Howard Beatty, Chicago, Ill., representing Durkee Famous Foods, Inc.
W. J. Petersen, Washington, D.C., representing Pacific American Steamship Association.
W. S. Culbertson, Washington, D.C., representing National Foreign Trade Council.
Hon. John McDuffie, Representative in Congress from Alabama, representing self.
F. M. Barnes, Cincinnati, Ohio, representing Procter & Gamble Co.
F. B. Williams, Middletown, N.Y., representing Fair Play Caramels, Inc.
Homer Banta, Burlington, Iowa, representing Iowa Soap Corporation.
S. H. Merrill, Los Angeles, Calif., representing Los Angeles Soap Co.
James H. Baker, Hoboken, N.J., representing Franklin Baker & Co.
John H. Wiles, Kansas City, Mo., representing Loose-Wiles Co.
J. E. Rowe, New York, N.Y., representing Ross & Rowe, Inc.
John B. Gordon, Washington, D.C., Bureau of Raw Materials for American Vegetable Oils and Fats Industries.
L. R. Sandahl, Des Moines, Iowa, representing F. W. Fitch Co.
Daniel McIver, Providence, R.I., representing textile soap manufacturers.
C. F. Young, Dayton, Ohio, representing Davies-Young Soap Co.
D. W. Corbin, Washington, D.C., Laundry Owners National Association.
V. Singson Encarnacion, secretary of finance and commerce, the Philippines, representing Philippine producers of coconuts.
Senator Elpidio Quirino, representing Philippine producers of coconuts.
Hon. Millard Tydings, United States Senator from Maryland.
Prescott Wild, Boston, Mass., tanning industry.

Senator WALCOTT. Do they all submit briefs?

Mr. GORDON. No.

The CHAIRMAN. There are several Senators and several Congressmen who have requested to be heard, and we have asked them to defer their appearance until we go into executive session, so we can expedite this for these people who have come here from a distance to be heard first.

So we are not hearing any Senators or Congressmen this afternoon. Señor Quirino.

Mr. GORDON. May he be heard last?

The CHAIRMAN. Very well.

STATEMENT OF JOHN P. COE, FACTORY MANAGER, THE NAUGATUCK CHEMICAL CO., NAUGATUCK, CONN.

Mr. COE. My name is John P. Coe, representing the Naugatuck Chemical Co., Naugatuck, Conn., representing also the United States Rubber Co. at New York.

Due to the shortness of time, I am speaking for both the Naugatuck Chemical Co., and the rubber company.

The Naugatuck Chemical Co. manufactures from coconut oil a chemical product which is known as laurex. I would like to show you a sample of it, just for your interest [exhibiting].

This chemical product is produced by the reaction of zinc oxide and coconut oil. You will hear a lot about coconut oil this afternoon. This is what it looks like [indicating].

Senator KING. What other oil takes the place of it?

Mr. COE. No other oil suitable for this purpose.

Senator WALCOTT. Because it does not contain lauric acid?

Mr. COE. Because it does not contain lauric acid.

It so happens that lauric acid is particularly beneficial to the vulcanization of rubber, therefore it is particularly beneficial to the life of pneumatic tires.

The CHAIRMAN. You have found no other substitute for it?

Mr. COE. We have found no other substitute for it.

We have found no other source of lauric acid.

The price at which this product is being sold is as high as we can get for it, because the tire industry, being very highly competitive cannot afford to pay any more than it is paying, therefore, if this tax is imposed, our cost will be increased by 45 percent, and we will be put out of business as far as this product is concerned.

Senator BARKLEY. If there is no substitute for it, all the tire manufacturers have to have it, and there is no competition among them. People who have automobiles have to have tires. Why is it you cannot——

Mr. COE. Pardon me. I did not mean to mislead the Senator. As such, it has no direct substitute, except it is made from coconut oil. There are other materials that may be used.

Senator COSTIGAN. Is lauric acid made synthetically?

Mr. COE. Not as far as I know.

Senator BARKLEY. What you mean is, you would still have to use it but you would have to pay more for it?

Mr. COE. No, I mean there are other materials which are not the equivalent, which would have to be used. I say they would have to be. I assume they would. It is possible it would continue to be used.

Senator WALCOTT. State what happened before you discovered this lauric acid.

Mr. COE. This product is a development of chemical research and improvement of past practice. A better quality of rubber is obtained by the use of this material than is obtained without it.

This is not an advertising talk. The proof of it is that it is sold at a higher price than substitute materials.

The CHAIRMAN. Do all of the rubber companies use it?

Mr. COE. No, Senator. It is used to the extent of about 2,500,000 pounds a year.

The CHAIRMAN. Two and a half million pounds a year?

Mr. COE. It is a new product.

The CHAIRMAN. Does Goodrich and Firestone use it?

Mr. COE. I cannot answer that directly.

The CHAIRMAN. You impressed me there with the statement that you had to have it to make rubber. How do they make rubber without it?

Mr. COE. I will go back a step, if I may.

A Voice (from among those present): There are several other rubber manufacturers that make the same product that he does out of coconut oil. In fact, I would say the majority of them do.

Mr. COE. This is not exactly a proprietary product. There is no one else that makes exactly the same thing.

The CHAIRMAN. They make it out of this coconut oil?

Mr. COE. That is correct.

The CHAIRMAN. That is what I wanted to know.

Mr. COE. It just happens that coconut oil is the only source of this raw material.

Senator COUZENS. Senator Walcott asked what you used before you discovered this.

Mr. COE. Several other materials. Stearic acid is one of them.

Senator COUZENS. Couldn't you revert to those commodities if this tax is prohibitive for you to use coconut oil?

Mr. COE. In the opinion of the manufacturers using it, stearic acid does not give as good results.

The CHAIRMAN. You are furnishing a brief?

Mr. COE. I have a statement prepared, and also one by Mr. Tisdale, of the United States Rubber Co.

The CHAIRMAN. Thank you very much.

Senator BARKLEY. Do you regard this tax as prohibitive?

Mr. COE. Yes, sir.

BRIEF OF JOHN P. COE, FACTORY MANAGER, THE NAUGATUCK CHEMICAL CO., NAUGATUCK, CONN., SPEAKING AGAINST THE PROPOSED EXCISE TAX OF 5 CENTS PER POUND ON COCONUT OIL

The Naugatuck Chemical Co. is a Connecticut corporation having its factory in Naugatuck, Conn. We manufacture a diversified line of chemical and allied products which are sold to a large number of industries and particularly we supply the rubber industry with chemicals designed to increase the life and quality of rubber articles. We employ 600 persons.

We manufacture for the rubber industry a chemical product known as laurex, which consists chiefly of zinc laurate, and for this product we require coconut oil as a raw material, this oil being the chief source of lauric acid. In the manufacture of this product we are using coconut oil to the extent of 2 million to 3 million pounds per year.

I present for your examination samples of the product laurex and of the raw materials, coconut oil and zinc oxide, from which it is made. The product contains the zinc salts of the fatty acids which occur in coconut oil, the one in greatest amount being zinc laurate.

Laurex is used by the rubber industry as a plasticizing agent and as an activator of the vulcanization of rubber and has particular value in the manufacture of pneumatic tires. Research into the chemistry of rubber vulcanization has developed the fact that the presence of small amounts of certain chemical substances greatly improves the strength and life of articles made from rubber and among other things that the presence of small amounts of fatty acid is essential. It has developed also that among the fatty acids lauric acid is particularly valuable and when it is used in combination with zinc, it possesses other advantages.

I present for your examination samples of vulcanized and unvulcanized rubber to illustrate the action of laurex in vulcanization.

At the present time laurex is sold for 9 cents per pound, but if this tax is imposed the cost will be increased to 13½ cents per pound, which increase is 45 percent. Because the price of laurex is already higher than that of substitute materials and because, according to my best information and belief, the tire industry, on account of the highly competitive situation which obtains in that industry, cannot afford to absorb this increased cost, I believe the imposition of the proposed tax will remove our product from the market.

We have in coconut oil a raw material which we cannot replace with other raw materials. The proposed tax will make it impossible for us to continue the manufacture and sale of our product. This will result in a loss of investment and of income to my company and a loss of employment to the community of Naugatuck, Conn. And since in that event we shall no longer be consuming coconut oil there will be no revenue from our consumption.

BRIEF OF G. M. TISDALE, DIRECTOR OF PURCHASES, U.S. RUBBER CO. RE: TAX ON COCONUT OIL

The U.S. Rubber Co. is a buyer of laurex, a product made by the Naugatuck Chemical Co. from coconut oil and zinc oxide. Its use in rubber goods, particularly pneumatic tires, definitely improves the quality of goods. No other article of commerce, except coconut oil, contains the high percentage of lauric acid and at the same time is available in sufficient quantity at a satisfactory cost figure.

If a tax of 5 cents per pound is placed on coconut oil, the price of laurex will be increased beyond the ability of the rubber industry to use this product. Such a result definitely makes the industry take a backward step in improved processes. There is no domestic product which can be susbstituted to give equal results, as it is lauric acid which is needed and none of our domestic oils contains this ingredient.

The majority of tires and tubes produced are in the small sizes for cars used by farmers and laborers. In 1933, through the cotton processing tax and the excise tax on tires and tubes, the U.S. Rubber Co. and its subsidiaries paid to the Federal Government approximately $5,700,000. To apply a 5-cent tax to coconut oil, assuming laurex would still be made, adds additional cost to tires without in any way aiding the use of domestic oils.

We respectfully suggest that this tax be not approved, as it prevents industry from using a needed article to aid in giving quality products, when no domestic oil has the necessary properties to permit substitution.

The U.S. Rubber Co. uses domestic materials wherever possible. Its purchases of foreign materials are made because no known domestic substitutes are available. Some of these are rubber, shellac, coconut oil, palm oil, tin, iodine, asbestos, balata, montan wax.

STATEMENT OF PRESCOTT WILD, REPRESENTING THE MARDEN WILD CORPORATION, BOSTON, MASS., AND REPRESENTING THE TANNING AND OIL INDUSTRY.

Mr. Wild. We manufacture from coconut oil, fat liquid for the dressing of leather, particularly white leather, and the lighter shades of leather. That oil goes into the leather and stays there. Coconut

oil has the peculiar characteristics that it will not oxidize, due to its lauric acid content, and low iodine value.

The CHAIRMAN. Is there any substitute for it?

Mr. WILD. Not that we have found.

The CHAIRMAN. In your industy?

Mr. WILD. Not that we know.

The CHAIRMAN. You have always used it?

Mr. WILD. We have used it 5 years.

The CHAIRMAN. What did you use before that?

Mr. WILD. I think combinations of castor oil and other ingredients, but white leather, you may remember, a few years back, when it aged, it would turn yellow. A pair of white kid gloves, the oil would oxidize in there, and accordingly turn yellow. The same thing is true when they are making the fancy colors. They are variants to change.

Senator COUZENS. Where do you get your products?

Mr. WILD. We buy it from dealers in this country.

Senator COUZENS. Where do they get it from?

Mr. WILD. The Philippine Islands.

The CHAIRMAN. Will you elaborate on the subject?

Mr. WILD. I might say, if the tax went through, that we operate a Canadian plant in Halifax, Nova Scotia, and we bring coconut oil from Ceylon to Halifax free of duty. Our manufacturing costs are less in Canada, and, if the tax went into effect, it would simply mean that we would have to shift our operations to our Canadian plant.

Senator BARKLEY. How much of this do you buy here and use?

Mr. WILD. I should say from 500—you are speaking of my particular company? Somewhere around 500 tons.

Senator BARKLEY. All of it comes from the Philippines?

Mr. WILD. We do not bring it direct ourselves. We buy it from Spencer-Kellogg in this country.

Senator BARKLEY. Is there any coconut oil coming into this country from any other point than the Philippines?

Mr. WILD. I do not believe so.

Senator HASTINGS. Is it not true that some, if not all, of the coconut oil manufactured in this country is manufactured from coconut pulp or some such substance that comes from the Philippines? The actual manufacturing part of it is done in this country?

Mr. WILD. I am not familiar with that. That is not in my line.

Senator HASTINGS. All right.

The CHAIRMAN. Very well. Thank you very much.

STATEMENT OF L. R. SANDAHL, DES MOINES, IOWA

Mr. SANDAHL. My name is L. R. Sandahl, and I represent the American Chemical Co., and the affiliated companies in the road-building end. We use coconut oil, a newly discovered process, whereby when bound with asphalt, makes a quick-drying process, and it is used for secondary roads. This process or method was only brought out about 3 years ago. There is a mechanical patent on the mixing of it, but there is no mechanical patent on the solution we furnish, because there are other people in the United States that make it.

The CHAIRMAN. What did they use before that?

Mr. SANDAHL. It is new. It is 3 years old. Nothing has ever been used, and it is the result of laboratory experiments.

The World's Fair in Chicago—the roadways there are all paved with our product, using our method. It is an ideal product for airports. In laying asphalt they used to rely on heat, but this is a cold process and a quick-drying method. According to our laboratory chemists, there is no product upon the market containing lauric acid that would do the work. If there were, we would use it, because we pay more for coconut oil than for anything which might possibly be a substitute for it. But this has qualities which make it hold up. The problem has always been in the laboratory that the escape of moisture was such that it would not harden even. This will set up and come to a breaking point in 45 minutes, and there is no other process known today in the laboratories that will do that. It is ideal for secondary roads.

Senator BARKLEY. You mean after you lay this material on a road, you can begin to travel over it in 45 minutes?

Mr. SANDAHL. We recommend 24 hours, but it sets in 45 minutes.

Senator BARKLEY. How long does the ordinary road, of concrete, for instance, have to be down before it will set?

Mr. SANDAHL. I cannot say. I have not been in that business. This is a new kind of process.

The CHAIRMAN. Is 5 cents a pound prohibitive?

Mr. SANDAHL. Absolutely. Our competition is with the crude-oil products. There is nothing else in the other lines to take the place of it, so the competition is what they call a cut-back in the petroleum industry, and if we have to go up 5 cents it would be 100 percent increase in our cost, and put us entirely out of the competition.

Senator HASTINGS. What is the retail price of coconut oil per pound?

Mr. SANDAHL. I don't know. Our base sells for 4½ cents a pound. That is the finished product, ready to go to the mixing plants. We have licensees throughout the United States that mix it.

We sell it in a base form, and they unite it with asphalt and concrete and put it in a finished form.

Senator KING. Do you think it gives a better road?

Mr. SANDAHL. Absolutely. It solidifies much faster and harder.

Senator KING. And a road would last much longer?

Mr. SANDAHL. Yes, sir.

The CHAIRMAN. Thank you very much.

Senator CONNALLY. It is used on secondary roads.

Mr. SANDAHL. Yes.

Senator CONNALLY. The tendency now is to permanent roads and concrete and things of that kind?

Mr. SANDAHL. Take, for instance, airports, and places like the World's Fair; and patchwork. There is an outlet in the fields there, because of the quick-drying properties of this product.

Mr. Chairman, I desire to present a brief with reference to the use of coconut oil in road building.

The CHAIRMAN. It will be received and incorporated in the record.

BRIEF SUBMITTED BY MR. L. R. SANDAHL WITH REFERENCE TO THE TAX ON COCONUT OIL

Coconut oil is made into a paste, or a soap, 95 percent of this paste consisting of coconut oil. The active properties that are found in coconut oil, which makes it essential in a product such as this, is lauric acid. Coconut oil is the only product known to chemists today to contain this element. Coconut oil contains 45 percent lauric acid, and it is the lauric acid content that makes our process possible.

This is an original discovery of the chemical laboratories perfected in the last 3 years, whereby, with the mixture of this paste with asphalt, it can be used as a paving material and used whereby paving can be laid without the necessity of heat, and the paving sets up in 45 minutes and it is usable for traffic in 24 hours. This is a new discovery and there is no substitute known at the present time for coconut oil.

At the World's Fair in Chicago the roads and walks were all laid with this process. Some of the outstanding airports in the country, such as the Tulsa airport, Oklahoma City airport, and many others have been laid with this process. There are 60 licensees located throughout the United States who have equipped their plants to make use of this patented process. A tax of 5 cents per pound imposed on coconut oil makes a 100 percent increase in the price of our paste to these licensees, which would mean the practical elimination of this industry for the reason that our competition is with what is known as a "cut-back", which is a by-product of the petroleum industry, so that by imposing this tax would not mean the consuming of more cottonseed oil, corn oil, or lard, such as is contended by the proponents of this bill. If it were possible for us to use any of these other items we would have been glad to have done so, because in the past many of these items have sold at a less price than coconut oil.

This industry, while only 3 years old, necessitated the perfecting of an organization at probably the worst time in the paving industry. In spite of this fact we used a half a million pounds of coconut oil last year.

Owing to the fact that this is a secret formula, reports show its classification as a soap product, whereas our product is used solely in the paving industry. It is true, however, that we make it into a soap base and the licensees add to it the asphalt, concrete, and the necessary ingredients to make up the roadway.

If the agricultural interests feel that coconut oil is stealing some of their rightful share of domestic business, why not separate the edible end of the industry from the unedible and place the tax on the oil used in the edible industry, rather than destroy the industrial usage of this product without any benefit to agriculture?

The price of our product is being sold today at 4½ cents per pound, which is about as high a price as we can get for the product in competition with the crude-oil competition. A tax of 5 cents per pound would necessarily increase our price 100 percent, destroying the industry.

We respectfully submit that you consider this phase of a new industry and recognize the fact that a tax of this kind not only destroys the capital investment but likewise destroys a new industry in the United States, without in the least measure affecting the agricultural byproducts.

Respectfully submitted.

L. R. SANDAHL,
F. W. FITCH CO.,
Des Moines, Iowa.

STATEMENT OF F. M. BARNES, CINCINNATI, OHIO, VICE PRESIDENT, PROCTER & GAMBLE CO., REPRESENTING THE AMERICAN LAUNDRY SOAP MANUFACTURERS ASSOCIATION

Mr. BARNES. I am speaking against this coconut-oil tax. The soap industry has progressed over a period of years in keeping with the development in the country generally. It would be impossible today, with our present mode of living, to use the kind and grade of soap that was produced 14 years ago, which was often referred to.

There has been a complete change, so far as the country as a whole is concerned. In the old days, when ordinary tallow soaps were made, the woman of the house, who had the task of rubbing the soap into the clothes, and then trying to rub the soap out of the clothes, found it to be most tiresome, back-breaking business on the part of the housewife.

Out of that situation developed the ordinary water-power machines that were used for washing, and from that we came to the electric-powered type of machines, which absolutely changed the character of the soap that was used. A tallow soap would not, a straight tallow soap would not and could not be used satisfactorily in that class of equipment.

The CHAIRMAN. They do not use much tallow soap now?

Mr. BARNES. It is blended with the vegetable oils, and that is the way the soapmaker is able to take care of the materials that are available to him. We have only available to us in the soap industry the recovered fats. Of the entire amount of the fats used in soap factories, which run 1,500,000,000 annually, only 20 percent or less than 20 percent comes directly from the kill of livestock or products in which the farmer is directly interested. The balance comes entirely from recovered material, recovered materials such as cottonseed oil.

The refining of cottonseed oil we get a refuse from. It is a very black substance, and that represents about 8 to 9 percent total weight. That substance is distilled and refined by special processes that produce fatty acids which compete with the tallows and greases, but, in order to use that material, and make a grade of soap that is soluble, quickly soluble, in water, that has a sudsing value, that will wash things that it is intended to wash, you must blend it with these vegetable oils. This is no new matter.

Coconut oil has been coming into this country for a long period of years.

The CHAIRMAN. You say "vegetable oils." Are you talking about this particular kind of oil now?

Mr. BARNES. I am talking about coconut oil. Coconut oil, palm oil, olive oil, are three oils that are used to blend with the recovered fat that we have in this country to produce a soap that is satisfactory to the people in this country today.

The CHAIRMAN. Where do you get the palm oil?

Mr. BARNES. Palm oil comes from the Congo, very largely, and from the Dutch East Indies.

The CHAIRMAN. Do you use whale oil?

Mr. BARNES. Some whale oil comes in.

Senator HASTINGS. What about fish oil generally? Can you use fish oils?

Mr. BARNES. Fish oils are in the same class with these recovered fats. We can only use fish oil as a substitute.

The CHAIRMAN. If we are going to put a tax on this, why are not the same arguments used to put it on fish oil?

Mr. BARNES. There is a tariff.

The CHAIRMAN. It does not amount to anything like 5 cents a pound.

Mr. BARNES. There is no fish oil coming in that I know of.

The CHAIRMAN. What about whale oil?

Mr. BARNES. That is entirely a different character of oil. It is an oil that is an animal oil. It is a mammal, and you know, the character of it is entirely different from fish oils. Fish oils are produced in this country. We have a production on the Atlantic coast here of about 18,000,000 pounds a year. Some years they get up to 25,000,000.

Senator CONNALLY. Let me ask you a question. What about including the palm-kernel oil, sunflower oil, and whale oil and fish oil? Are they all in the same category with these other oils? Are they all used for the same purpose?

Mr. BARNES. No. There are varied uses for all of these oils.

The CHAIRMAN. You do not use them in the soap industry at all?

Mr. BARNES. Which?

The CHAIRMAN. Palm-kernel oil.

Mr. BARNES. The production of palm-kernel oil is not heavy. It is not used in our industry. It is used in the confectionery and candy trade. I say that because I happen to know that is a fact.

Senator KING. Is there any oil that will take the place of the coconut oil?

Mr. BARNES. There is absolutely no oil that will take the place of coconut oil in the soap industry. That is due entirely to the lauric acid.

Senator HASTINGS. Fish oil would not do it?

Mr. BARNES. Fish oil can only take the place of tallow, in the blend of these fats. For instance, the largest selling soap in the United States, and I mean of each of the prominent manufacturers—not our own particular company—are a blend of 50 percent coconut oil—in some districts it runs 55 percent—and the balance tallow or tallow substitutes.

If you take soybean oil, cottonseed oil, or fish oil, they must substitute in the method of manufacture that is going on today, to produce the kind of soap that is satisfactory to the people.

Senator BARKLEY. In other words, you take these oils like fish oil or cottonseed oil that are used in soaps, instead of the fats of meats, and you use them in combination with the coconut oil.

Mr. BARNES. That is correct.

The CHAIRMAN. I wish that you or some witness here would put into the record what percentage of this coconut oil that is imported goes into the soap industry.

Mr. BARNES. Seventy percent goes into the soap industry, and the allied uses which are inedible; and the remaining 30 percent goes into oleomargarine.

Senator MCADOO. What percentage goes to oleomargarine?

Mr. BARNES. The figure is about 22 percent.

Senator MCADOO. What is the remainder used for? Rubber tires?

Mr. BARNES. In the candy and confectionery trade. That is quite a large outlet for that material. They use it as a filler for candy, and they use it in cooking, for these small cakes.

Senator MCADOO. Do they use it in the rubber industry at all?

Mr. BARNES. They use it. They just testified to that fact.

Senator KING. If you did not use coconut oil, you would not use as much tallow, would you? In other words, the consumption of tallow for soap is increased by the use of coconut oil?

Mr. BARNES. We are using every pound of tallow that is available to us in this country. There is no surplus of tallow.

Senator KING. The more coconut oil you use, the more tallow you would use, if you could get it.

Mr. BARNES. And the consumption of soap has been growing faster than these materials have been available to us.

The CHAIRMAN. How about sesame oil?

Mr. BARNES. We do not have any interest in sesame oil. That is entirely an oil that goes very largely into what is known as salad oil trade.

Senator HASTINGS. There is a surplus of fish oil in this country, isn't there?

Mr. BARNES. No.

Senator REED. Tell us what would happen to your industry if this bill were passed in its present form. Would you stop using coconut oil?

Mr. BARNES. No, we could not.

The CHAIRMAN. You would have to increase the cost of your soap?

Mr. BARNES. We would have to increase the cost of our soap.

Senator REED. By what percentage?

Mr. BARNES. It would vary, depending entirely on the grade of soap that you produce.

Senator REED. Take one like Ivory soap.

Mr. BARNES. A soap in the toilet class would run less in coconut oil, where the very heavy consumption exists.

Senator REED. Take laundry soaps.

Mr. BARNES. In laundry soaps, the people that I have spoken to—well, it would be an advance of approximately a cent a bar.

Senator MCADOO. You mean a 5-cent bar would be 6 cents?

Mr. BARNES. In other words, a 3-cent bar would be 4 cents.

Senator BARKLEY. What is the weight of the bar?

Mr. BARNES. Eight and a half to nine ounces.

Senator MCADOO. You mean a 3-cent bar would be 4 cents?

Mr. BARNES. Yes, sir.

Senator MCADOO. What would a 5-cent bar be? Would a 6-cent bar be 8 cents?

Mr. BARNES. I will come to that. We have in this country, and if you will look at those sheets, a very peculiar condition. A very great section of this country has a very hard water. The map there will show it to you. The hard water districts are our agricultural districts, to a very large extent. The South has soft water, and that carries right up along the Atlantic coast. It is true of the extreme northwest.

We furnish a soap in that extreme hard water district that is marked there [indicating]. We make a special kind, and the other manufacturers do the same thing, that is 100 percent coconut-oil soap.

The CHAIRMAN. We in Mississippi do not get very much of that.

Mr. BARNES. You don't need to.

Senator BARKLEY. You don't mean they don't need soap. [Laughter.]

Mr. BARNES. They don't need that kind of soap.

Senator MCADOO. That is an unwashed Democratic State.

The CHAIRMAN. You have 1 minute more.

Mr. BARNES. That kind of soap is selling today at a nickel. It would sell at 7 cents.

Senator CONNALLY. I want to ask you a question. Your time is running out, however——

Senator BARKLEY (interposing). Let me make this suggestion. I realize how valuable time is, but it seems to me it is more valuable for us to get the facts in reference to this matter than it is for us to wind up these hearings at any particular minute or hour.

Up to the present time these hearings have been unsatisfactory because nobody has been able to develop the subject, and if it takes a few more minutes for these gentlemen to give the facts to us, I think we should let them have that additional time.

Senator MCADOO. Mr. Chairman, I would like to second that motion.

The CHAIRMAN. It is perfectly all right for the chairman to let these people proceed for hours and hours. It did seem to me that an hour was enough, and we left it to these people to allocate their time. I appreciate that the witness has had questions put to him, and it has monopolized his time. However, it has enabled him to bring some pertinent facts into the foreground, but if you do not want to be limited on these propositions, we will let it run on.

Senator BARKLEY. I did not make the suggestion that there be no limitation, but I merely suggested that a few minutes over an hour would not hurt anybody.

The CHAIRMAN. Have you about finished your statement?

Mr. BARNES. I was just going on.

Senator MCADOO. I want to urge that we extend the time for this hearing on this particular matter, because it is a very important matter.

The CHAIRMAN. How much would you suggest?

Senator MCADOO. We should have 30 minutes more. I think an hour and a half is really necessary.

The CHAIRMAN. We will give 30 minutes additional to each side. How much of that time do you want to give this witness?

Mr. GORDON. As much as he wants.

Senator MCADOO. I was unavoidably called out. Has Mr. Merrill taken the stand yet?

The CHAIRMAN. No.

Senator HASTINGS. That is a very important witness.

Mr. BARNES. Going back to the fish oil, our competition in the fish oil is the paint and varnish trade, and linoleum and leather, so that that market is not open entirely to the soap interests.

In other words, we do not compete. And when you go out to California, a very large percentage of the production of fish oil in California goes into edible compounds, so that we have competition there, and it is not a matter that rests with the soap interests entirely.

On the cottonseed oil proposition, our company is very heavily interested in cottonseed oil mills in the South.

Senator CONNALLY. What is your company?

Mr. BARNES. Procter & Gamble Co. We have a very heavy investment. We have an investment not only in crushing mills, but we have an investment in plants. We think that we know something about the cottonseed-oil business, and its competition.

The statement is made—well, take cottonseed oil in the place of this coconut oil. Cottonseed oil grew entirely out of the soap class. It has been in the edible class for the last 10 years. It would be a step backward to try to force it back on a level of the price level of the fats it would have to compete with.

The price level of edible fats in this country averages, over a long period of years, at least 4 cents per pound over the level of the inedible fats. Approximately 77 percent of all of the cottonseed oil that is produced goes into lard compound, so that the competition of that fixes the price of cottonseed oil, and in turn the price of cottonseed is the market price of pure lard. It is the primary commodity, and the primary commodity of such a tremendous production that it is the determining factor, and is always pressing down on the price at which we who are in the refining business and marketing lard compound and lard substitutes, are continually up against. Right today, the price of cottonseed shortening or lard compound, as we refer to it, is higher than the price of pure lard, and I am speaking of the average production, and it is bothering us, because we know, who are in the business, that that condition cannot stand except at the disadvantage of the consumption of our own product.

Senator BARKLEY. To what extent would the consumption of cottonseed oil increase if you add this tax to the price of coconut oil?

Mr. BARNES. Senator, it would not, as far as the soap industry is concerned, it would not be increased 1 pound.

Senator McADOO. You do not come into competition at all, that is, cottonseed oil does not come into competition at all with coconut oil in soap manufacture.

Mr. BARNES. Absolutely not. It does come in competition in the edible products.

Senator HASTINGS. Let me inquire. If I am correctly informed, the States of Oklahoma, Kansas, and Nebraska are the hard-water countries. Do you mean to say that you cannot make a soap that is suitable for that country except by the use of coconut oil?

Mr. BARNES. Absolutely. That will give you the satisfactory usage. Of course, you can make soap out of anything. Anybody knows that.

Senator HASTINGS. How long has that particular kind of soap including coconut oil, been used in those States?

Mr. BARNES. For a great many years. We have right in Cincinnati, we have the city of Norwood, 100 percent, with the city limits right around it. Up in the Miami Valley, we have Dayton, and cities of that caliber, that they cannot use anything else but 100 percent coconut-oil soap in their bathrooms. It is just impossible.

Senator McADOO. On account of the hard water?

Mr. BARNES. The water is that hard. California has hard water.

Senator McADOO. I know. We have very hard water.

Senator GORE. When did the importation of this coconut oil begin, in substantial quantities?

Mr. BARNES. Since 1906 in quantities. And when I say quantities——

Senator GORE (interrupting). Give it to us in 1910, 1920, and 1930.

Mr. BARNES. In 1910 it was 38,000 tons; in 1920 it was 157,000 tons. This is the coconut oil that came into the country. In 1932 it was 238,000 tons.

Senator BARKLEY. The hardness or the softness of the water affects the latherability of the soap, doesn't it?

Mr. BARNES. Absolutely. Coconut-oil soap is the only soap—if I could show you a chart here which I could file, showing the chemical analyses of all of these oils, you will see very quickly why coconut oil is so outstanding.

The CHAIRMAN. May I ask you why there has been such a great importation recently? In a 7-month period this year, there has been a 63 percent increase. Was there an increase in the last year?

Mr. BARNES. Last year; yes, sir.

The CHAIRMAN. Why is that?

Mr. BARNES. That is because the shipments were held back in 1932 on account of the depressed price level; in other words, there was quite a holding back of the production which came in in 1933.

Senator GORE. What was it in 1931?

Mr. BARNES. In 1931 it was 273,000 tons.

Senator GORE. What was it in 1932?

Mr. BARNES. Two hundred thirty-eight thousand tons.

Senator GORE. Can you give in percentages the 4 or 5 principal uses of coconut oil?

Senator MCADOO. He gave that a moment ago.

Senator GORE. I beg your pardon.

Mr. BARNES. The soap industry is 70 percent, margarine is about 22 percent, and the remainder goes into the candy and confectionery trade.

Senator GORE. I read a statement saying that oleomargarine was forbidden in Canada, and that butter was lower in Canada than in this country. Is that a fact?

Mr. BARNES. I did not hear that question.

Senator GORE. I have seen the statement that notwithstanding the fact that oleomargarine is prohibited in Canada, the price of butter is lower in Canada than it is in this country.

Mr. BARNES. I know nothing of the oleomargarine situation.

The CHAIRMAN. Let me suggest that you put into the record—I am sure you have it—the importations of coconut oil, as well as copra, from about 1913 up to date, annually.

Mr. BARNES. I will be very glad to.

The CHAIRMAN. Go back to the proposition to show this large increase during the last year. It has been called to my attention that it was thought that a quota would be fixed on the importation of coconut oil, and that it was due perhaps to that idea or influence that brought more of it in.

Mr. BARNES. They have reached the peak of their production in the islands. This came naturally as the result of the war and the demands during that period. That demand was on account of the high glycerin content.

Senator KING. Isn't it a fact that anticipating the passage of the bill, which limited the importation of it, that they did rush in great quantities prior to the passage of that bill?

Mr. BARNES. I do not know.

Senator GORE. Can you give the price for each of these years, 1910, 1920, and 1930?

Mr. BARNES. I cannot, offhand. I will furnish it for the record.

Senator GORE. What is it ruling at now?

Mr. BARNES. Coconut oil today is 4¾ cents New York. I was just going to come to that to show how these oils have their natural channels. For instance, cottonseed oil is selling at 5 cents a pound, New York. That is not refined, but the crude, just as it comes from the mills.

Senator BARKLEY. Wholesale?

Mr. BARNES. Tank cars.

The CHAIRMAN. It is reported to me that since the passage of this bill in the house, cottonseed oil has gone up in price. Do you know anything about that?

Mr. BARNES. I do, but not as the result of the coconut oil, but as the result of putting the processing taxes on hogs, which has raised the hog price from 2½ to about 4⅝ cents a pound. That brought up the price of the lard with it, and permitted the compound to be sold at a higher level, which brought up the price of crude oil in proportion.

The CHAIRMAN. We will thank you if you will put into the record your brief, because you are familiar with this proposition. Are there any other questions?

Senator CONNALLY. You represent the Procter & Gamble Co., and you own a great many of the oil mills in the South?

Mr. BARNES. We do not own a great many. We have 12 oil mills.

Senator CONNALLY. You bought those because you wanted to get cottonseed oil to make into soap?

Mr. BARNES. No, sir.

Senator CONNALLY. Why did you do it?

Mr. BARNES. We are also large edible-fat people.

Senator CONNALLY. Don't you use a lot of that oil in your soap?

Mr. BARNES. Absolutely not.

Senator CONNALLY. None of it at all?

Mr. BARNES. No, sir. We make lard compound and we make salad oil, cooking oils, also.

Senator CONNALLY. Then you are in a good many other businesses besides soap.

Mr. BARNES. Yes, sir.

Senator CONNALLY. You say this would cause an increase of 1 cent a bar in the price of soap?

Senator McADOO. For a 3-cent bar?

Mr. BARNES. Yes, sir.

Senator CONNALLY. In other words you get 3 cents for it wholesale.

Mr. BARNES. That is the consumer price.

Senator CONNALLY. What do you get for that same 3-cent bar?

Mr. BARNES. We probably get about 20 percent less.

Senator CONNALLY. Don't you know? You are in the soap business.

Mr. BARNES. I can only say approximately, because it varies.

Senator CONNALLY. Say 2½ cents a bar.

Mr. BARNES. They figure 20 percent distribution cost and wholesaler's profit.

Senator CONNALLY. Do you mean to say that if we raise the tax on coconut oil alone, that that would increase every bar of soap 1 cent that you sell?

Mr. BARNES. I will say this, Senator, and I will say further than I am speaking only on the coconut oil.

Senator CONNALLY. You are talking about the soap which is purely coconut oil?

Mr. BARNES. If nothing else is advanced, and coconut oil represents only 25 percent of the raw material that goes into the soap. If the advance is only on the coconut oil and none of these other commodities that we use benefit by it, and the contention of course is that they will benefit, otherwise there is no reason for the tax—it would be equivalent of the heaviest brands of soap, of laundry soap, 1 cent per bar to the retailer, and we feel that is conservative.

Senator CONNALLY. You say it costs one fifth of your total cost for making this soap with the coconut oil?

Mr. BARNES. Yes.

Senator CONNALLY. You get 2½ cents a bar for it. That means you pay a half cent for the coconut oil that is in it, and you are going to raise the price of the soap a cent?

Mr. BARNES. How do you figure that?

Senator CONNALLY. You said 20 percent is the cost of making the soap with the coconut oil.

Mr. BARNES. No, I did not say that. I said one quarter of the cost of the fats that will go into a bar, and there are other factors too that go into it, and——

Senator CONNALLY (interrupting). Of course the fats then would cost less. One quarter of the cost of the fats alone would be—if the bar costs 2½ cents——

Mr. BARNES (interrupting). This is a 200 percent tax on coconut oil.

Senator CONNALLY. Let us stick to this. You say one quarter of that 2½ cents is oil and fats, don't you?

Mr. BARNES. No.

Senator CONNALLY. I thought you did.

Mr. BARNES. I said one quarter of all of the fats that go into the soap kettle is coconut oil.

Senator CONNALLY. What about the cost? Did you say anything about one quarter of the cost.

Mr. BARNES. One quarter of the total quantity of coconut oil that goes into the soap kettle represents one quarter of the total cost of all fats that go into the soap kettle. There are a good many other things that go into making soap.

Senator GEORGE. How much does a bar of soap cost? You just said it would put it up 1 cent. How much does it cost? That is what the Senator is asking.

Senator HASTINGS. One that retails for 3 cents.

Senator GEORGE. You say this tax would increase a 3-cent bar of soap, 1 cent, and you certainly ought to be able to tell us how much coconut oil you use in that bar of soap.

Senator CONNALLY. And what it costs.

Mr. BARNES. The cost of the coconut oil would be approximately 3 cents a pound.

Senator CONNALLY. How much of it is in a bar of soap? That is what we want to know.

Mr. BARNES. In a bar of soap of that kind it would represent 20 percent.

Senator GEORGE. Now you are going back to percentages. You came here and made the flat statement that a 3-cent bar of laundry

soap would be advanced in price 1 cent if this tax is put on. Why can't you break it down and give us the figures? Tell us exactly what your coconut oil costs you now?

Mr. BARNES. It is very difficult to break it down on a bar of soap. I can do it on a box.

Senator BARKLEY. You said a while ago——

Senator HASTINGS (interrupting). Let us take it on a box.

Senator GEORGE. He did not say on a box.

Senator BARKLEY. A while ago you estimated that the cost of coconut oil would be half a cent in a 2½-cent bar, didn't you? You said that the quantity of coconut oil represented one quarter of what went into the kettle. Does that represent one quarter of the cost too?

Mr. BARNES. It would represent one quarter.

Senator CONNALLY. What percent of the cost of a bar of soap is represented by the fats in it?

That is what I asked you three times.

Senator HASTINGS. Let us take a box of soap. I think it is not quite so difficult to figure.

Senator MCADOO. A bar is all right.

Senator KING. I do not think we should ignore the fact of the superior quality of the soap made of coconut oil.

Senator CONNALLY. A man that gets a superior soap should pay a superior price.

Mr. BARNES. Do you want it for ordinary laundry soap?

Senator WALCOTT. For a 3-cent bar of laundry soap.

Mr. BARNES. One half of the weight of that would be coconut oil.

Senator WALCOTT. What would be the value of that coconut oil?

Mr. BARNES. Coconut oil under the present conditions is 3 cents a pound.

Senator WALCOTT. That is half of the weight of the bar of soap.

Mr. BARNES. That is half of the weight of the bar of soap. In the fats that go into it, it would be about 14 or 13 pounds.

Senator CONNALLY. A box, or what?

Mr. BARNES. A box.

Senator HASTINGS. How many bars in a box?

Mr. BARNES. It depends on how it is packed.

Senator CONNALLY. Let me ask you a question. You said that this was going to cost a cent a bar more. How did you arrive at that?

Mr. BARNES. I will tell you how I arrived at it. Six tenths of that 1 cent represented our own cost, and the balance represented costs that would be added to the box of soap before it reached the consumer.

Senator CONNALLY. You have some other costs besides coconut oil. Does the cost of that bar of soap——

Mr. BARNES (interrupting). This is in the increase.

Senator CONNALLY. You take the increase and figure backwards. I want to see where you got the increase.

Mr. BARNES. You can take 13 pounds of coconut oil and figure it 5 cents a pound.

Senator CONNALLY. That is 65 cents. That is very simple. But what do we know when we get through with that?

Mr. BARNES. A box of soap is selling at $2.38.

Senator HASTINGS. How many bars in it?

Senator CONNALLY. Of that $2.38, how much oil?

Mr. BARNES. 65 cents.

Senator McAdoo. That is for the coconut oil?
Mr. Barnes. Yes.
Senator Walcott. At the present price?
Mr. Barnes. Yes, sir.
Senator Connally. How many bars in that box?
Mr. Barnes. One hundred bars. Those bars are 8½ ounces.
Senator Connally. So you get 65 cents for the coconut oil out of 100 bars of soap. That means that it costs 6½ mills.
Mr. Barnes. I figured 6 mills.
Senator Connally. If you had told me that before, we would have gotten along better. Six mills is the cost of all of the coconut oil in there.
Mr. Barnes. If that is taxed——
Senator Connally (interrupting). This is not all tax. You have to pay the Philippine man something for his coconut oil, don't you?
Mr. Barnes. Five cents a pound is the tax that is being talked of here.
Senator Connally. Are you figuring the tax outside of the other items?
Mr. Barnes. Yes, sir.
Senator Reed. Will you let me interrupt a minute? I think I can simplify this. Take a unit of 10 pounds of soap. We will say that one quarter of the weight of that is coconut oil.
Mr. Barnes. Yes.
Senator Hastings. That is 2½ pounds.
Senator Reed. That is 2½ pounds. The cost of 2½ pounds of coconut oil is 7½ cents, isn't it?
Senator Connally. 12½ cents.
Mr. Barnes. 3 cents a pound.
Senator Reed. That is 7½ cents worth of coconut oil goes into 10 pounds of soap. The tax on that coconut oil is 2½ times 5 cents, which is 12½ cents added to the 10 pounds. And you get 14½, 11-ounce cakes in 10 pounds of soap. So that against 14½ cakes of soap you have 12½ cents for tax. Is that right?
Mr. Barnes. Yes, sir.
Senator Reed. Which is pretty nearly 1 cent a bar.
Mr. Barnes. Yes. Our proportion of that is of course less.
The Chairman. If you have a brief that you want to file, you may.
Senator Connally. I want to ask Mr. Barnes another question.
Now, you are taking coconut oil, itself, 100 percent coconut oil soap, aren't you?
Mr. Barnes. Fifty percent.
Senator Connally. Fifty percent? Only 50 percent coconut oil?
Mr. Barnes. Yes.
Senator Connally. Now, the other soaps that do not use coconut oil, it would not affect their price at all?
Mr. Barnes. No.
Senator Connally. It would still stay on the soap?
Mr. Barnes. It would not be affected by the tax. There are certain soaps that are made from——
Senator Hastings. Some of it is 100 percent.

BRIEF OF F. M. BARNES, VICE PRESIDENT THE PROCTER & GAMBLE CO., ON BEHALF OF THE AMERICAN LAUNDRY SOAP MANUFACTURERS

Why the excise tax on coconut oil now before the Senate would, if passed, bring about through increased soap prices, the greatest tax ever levied on a daily necessity of life, affecting the health and welfare of our entire Nation.

Read the following statements of health authorities, hospital superintendents, economists, and business men who oppose the tax on the ground that it is not in the best public interest, and that vastly more people would be harmed than helped by its passage.

This symposium was conducted by the following men who became interested in the proposed tax at the suggestion of the public relations department of the Procter & Gamble Co.: Bert W. Caldwell, executive secretary, American Hospital Association, Chicago, Ill.; Homer N. Calver, American Public Health Association, New York, N.Y.; E. O. Dahl, editor Hotel Management Magazine, New York, N.Y.; Warren M. Persons, economist, 12 East Forty-first Street, New York, N.Y.

HEALTH AUTHORITIES AND HOSPITAL HEADS

Mr. Calver and Mr. Caldwell, the interest of public welfare, sent the following telegram to health authorities and hospital heads:

"In the interest of personal and public health your attention is called to proposed tax of 5 cents per pound on coconut oil in tax bill now pending in Congress. This oil is important ingredient in soap and proposed tax if enacted will increase price of soap approximately 50 percent. For hospitals this would mean an average increase in cost of $10 per year per bed. For American people it would mean roughly $150,000,000 increase in Nation's annual soap bill. In view of this threatened increase in cost of medical and sanitary activities and cleanliness generally will you give me 50-word statement which can be used for possible publication to focus public attention on possible dangers to public health. Please wire me your statement day letter, collect."

All of the replies received are listed on the following pages.

Dr. A. C. Bachmeyer, superintendent Cincinnati General Hospital, says that increasing the cost of soap to hospitals and the public will impose great additional expense and increase health hazards. That cleanliness is fundamental to public health and hospitals are now facing huge operating deficits, and such a tax presents real dangers to public health. He urges strong opposition.

Dr. Bernard Langdon Wyatt, of Tucson, Ariz., says that the oil levy in the tax bill now before Congress is an unwarranted penalization of personal cleanliness and unjustifiable addition to the cost of hospitalization and medical care. Its passage would be as backward a step as the French window tax which put a premium on free air and sunlight.

Dr. Ira S. Wile, of New York, says that soap is an index of civilization and to reduce its use by increasing cost for medical, sanitary, and hygienic purposes is unwise. That soap as a cleanser is an essential for public and individual health, and the proposed taxing of coconut oil, an important soap ingredient, is contrary to a clean deal for the public.

Dr. J. C. Geiger, director of public health, San Francisco, says that the proposed tax will triple the annual expenditure for soap in one San Francisco County hospital, and that this luxury tax on a public health necessity at a time when all agencies are striving to maintain personal hygiene and morale of the low-income group, is contrary to all principles of democracy and the national recovery program, and disease prevention.

Dr. J. C. Sleet, acting health commissioner of the city of Norfolk, says that in behalf of public health, he is decidedly opposed to the 5-cent per pound tax bill on coconut oil now pending in Congress, as this oil is a necessary ingredient of soap and the tax would greatly increase the cost of cleanliness, unquestionably being a health detriment to our public.

Dr. Irving S. Barksdale, city health commissioner, Greenville, S.C., says that they have had recently much trouble with epidemics of the itch and ringworm of the scalp among the poor of Greenville, and if Congress puts this tax or embargo on soap manufacture, everyone will have these filthy diseases. His one wish will then be that the entire Congress visit Greenville and catch these diseases themselves, and this would convince them of their folly.

Dr. George A. Soper, of Great Neck, N.Y., says he is thoroughly opposed to anything which would make it harder for people to keep themselves and their

surroundings clean. He looks upon soap as one of the greatest helps to health and sanitation ever invented and to increase its cost would restrict its use, and should be opposed.

Dr. M. D. Ailes, director of health, Akron, Ohio, says that for cleanliness and health, soap is a necessity—a necessity for the poor, no matter how poor, as well as for the rich, and its benefits should not be sacrificed. It is one product that should cost less, and certainly nothing should be done to increase its price.

William S. Kirschbaum, agent and executive officer, New Bedford, Mass., says that hospital expenses are already high enough, without increasing the cost, and if the proposed tax of 5 cents per pound on coconut oil will increase the cost per bed in hospitals $10 a year, the bill should be killed. Why penalize those who have the care of the sick, and I know the New Bedford Board of Health will bear me out in this statement.

Dr. Robert Spurr Weston, of Boston, Mass., says he believes the tax on coconut oil is unfair to producer, burdensome to the consumer, and would impair public health and cleanliness, and would be especially burdensome to users of hard water in the West. It would be better economics, by far, to tax all commodities a little, than one so necessary so much.

Dr. B. B. Jaffa, health officer, Denver, Colo., says that under present economic strain any increase in operating expenses will have a marked effect in decreasing efficiency and curtailing essential activities of institutions devoted to public welfare, and in view of the general improvement in health conditions and the reduction in disease, greatly due to cleanliness and health-education campaigns, the proposed tax would be a backward step in public health.

Dr. Nelson C. Dysart, health commissioner, Columbus, Ohio, regards as pernicious, the proposed tax on coconut oil, and in the interests of hygiene and health says the price of soap should be kept within easy of everyone, and particularly the poor who would, of course, be the hardest hit by such a tax as proposed.

Dr. George C. Ruhland, commissioner of health, Syracuse, N.Y., says the proposed tax on coconut oil seems highly undesirable as tending to increase materially the cost of soaps, not only to the public in general, but especially to hospitals where soaps of coconut-oil base are largely used. He says the tax would be at the expense of hospitals and public sanitation.

Dr. James R. Smith, director of health, Erie, Pa., protests against the proposed tax on coconut oil. He says that from a public-health standpoint, cleanliness is a necessary adjunct to health, and that soap, of which coconut oil is a component part, should be available, especially to the portion of our people who are financially unfortunate.

Dr. F. O. Bates, president, South Carolina Hospital Association, of Charleston, S.C., says that the hospitals of South Carolina oppose the proposed excise tax of 5 cents per pound on soap-making oils and fats, because it means an unjust and unwarranted increase in the cost of a commodity absolutely necessary in the care of the sick. He says the tax will add greatly to the operating costs of hospitals when their financial resources and credit extended are breaking a point in furnishing hospitalization in increased number to needy charity patients. It will be a direct tax on hospital charity.

Dr. Clarence H. Baum, president, Hospital Association of Illinois, Danville, Ill., says the proposed tax on soap ingredients will add millions of dollars to hospital overhead, and as hospital resources are exhaused, the extra tax will be tragic as soap is necessary. Many charity cases will have to be refused care if extra cost is imposed, as 20 percent of the patients now are free. The Government is helping business; we trust it will aid the hospitals.

B. W. Stewart, president, the Ohio Hospital Association, Youngstown, Ohio, says that the cost of operating hospitals has been increasing rapidly with scarcely any increase in income, and the hospitals already owe thousands of dollars for merchandise and unpaid pay rolls. Any legislation, such as the excise tax on soap-making oils and fats which will increase hospital costs, will be a decided hardship on voluntary hospitals, as the hospitals have spent millions of dollars in caring for the sick unemployed.

A. E. Hardgrove, executive secretary, Ohio Hospital Association, Akron, Ohio, says the Ohio hospitals are vigorously opposed to the proposed excise tax on soap-making fats. He says the demands for hospital care of indigent sick without governmental aid available for other relief, has placed them in desperate financial condition. The burden now carried by hospitals at the expense of wages and hours of employees cannot be increased, and the Federal Government must recognize the part contributed by the hospitals as relief agency and protect their financial standing.

E. C. Polhman, secretary, Iowa Hospital Association, Iowa City, Iowa, on behalf of the Iowa hospitals, wishes to respectfully protest against the excise tax on soap-making ingredients, unless charitable institutions are exempted. He says that the greatly increased service to charity patients without compensating public support, makes necessary every economy in all hospitals, and any additional burden must result in lessened service to charity patients.

Albert G. Hahn, executive secretary, Indiana Hospital Association, Evansville, Ind., says the Indiana hospitals cannot continue serving increasing number of charity and part pay patients if taxes on commodities continue increasing. He also says that the excise tax on soap making oil is a malicious legislation affecting health and sanitation of our Nation's hospitals that are now borrowing to meet current expenses with the credit limit near. He urges legislators to stop the measure.

A. M. Calvin, secretary, Minnesota Hospital Association, St. Paul, Minn., says voluntary hospitals are greatly burdened through caring for patients unable to pay for services rendered, and the proposed excise tax on soap-making oils and fats will add to this heavy load. He says the City Hospital of Minneapolis is now under quarantine and voluntary hospitals are offering their beds for community welfare. Hospitals should be exempt from increased taxation of this kind.

Fred M. Walker, secretary, Florida Hospital Association, Jacksonville, Fla., says the hospitals are unable to meet the needs of deserving charity patients at present, and higher tax upon oils and fats of soap will be reflected in reduced volume of charity service with consequent distress and human sacrifice. It will place a penalty upon maintenance of sanitation and health.

Gladys Brandt, vice president Indiana Hospital Association, Logansport, Ind., says that every hospital should oppose all excise taxes on essential commodities, as many hospitals have exhausted reserve funds and credit is limited; other hospitals feel the alarm of diminishing resources. All are listed as increasing number of worthy charity patients and excise taxes are inconsistent with the free service furnished indigents.

Lee C. Gammill, president Arkansas Hospital Council, Little Rock, says the Arkansas hospitals are seriously concerned about efforts to impose tax on soap-making oils and fats, as our hospitals are bankrupt with patients unable to pay. He says that continued increase of commodity cost without any relief is fast breaking down hospital service, and it is imperative that every effort be made to prevent taxation of hospitalization.

Carl P. Wright, New York Hospital Association, Syracuse, N.Y., says that the proposed tax on soap-making oil is unjust and unwarranted, and adds additional burden to voluntary hospitals now in desperate financial straits because of terrific increase in charity work, and decreased incomes and contributions. He says it will mean disaster to 500 New York State hospitals, and vigorously protests this unjust levy. He also adds, "Are we the forgotten man"?

V. Ray Alexander, executive secretary Missouri Hospital Association, St. Louis, Mo., says the Missouri voluntary nonprofit hospitals regard the proposed 5 cents per pound excise soap-making oils and fats tax prohibitive, and a financial burden and jeopardy to health standards of cleanliness and sanitation. He says that further increased costs will impair the care of indigents and possibly force closing many voluntary hospitals, reacting against public welfare. He protests vigorously.

Carolyn E. Davis, president Northwest Hospital Association, Portland, Oreg., says the Northwest feels that the American Hospital Association should oppose the excise tax on soap-making oils and fats. She says the increased cost on an essential commodity will be a million dollars annually and hospitals are struggling to meet increased charity work now. It will be a direct tax on hospital charity creating unnecessary hardship and suffering upon needy sick.

R. L. Roy, Jr., secretary Oklahoma State Hospital Association, Oklahoma City, Okla., says the Oklahoma hospitals cannot bear the additional burden imposed by the proposed excise tax on soap-making oil. Charity has increased and the majority of other hospital cases are part pay only. Many of our hospitals are now defaulting financial obligations and cannot survive even under present prices. Our health and sanitation is at issue and must be safeguarded.

Frank J. Walter, Colorado Hospital Association, Denver, Colo., says the Midwest hospitals are concerned over the proposed excise tax on soap-making oils and fats. He says that their hospitals are already overburdened giving medical care to unemployed, and such taxes will increase their operating expenses and

lessen their ability to give services to charity, and they feel this would not be in keeping with the President's program.

Dr. A. Hieronymous, health officer, Oakland, Calif., says that the proposed tax on coconut oil, increasing the price of soap, would add to the present burden of high cost of medical care, and public-health activities, hospitals, clinics, general sanitation and cleanliness would be handicapped. Food and milk handlers must wash frequently with soap and water, and this practice would be endangered.

Lester A. Round, director Rhode Island Public Health Commission, Providence, R.I., says that soap is one of the most valuable accessories available to prevent the spread of infectious diseases and its universal availability enhances its value tremendously. He says nothing should be done to limit its use.

M. P. Ravenel, director of health, Columbia, Mo., says he believes the proposed tax of 5 cents per pound on coconut oil will impose unjustifiable burden on consumers of soap and increase the soap cost estimated at $150,000,000 annually. He says that the hospitals and charitable institutions will be hard hit and medical and sanitary activities will suffer severely.

Dr. Leon Banov, city-county health officer, Charleston, S.C., says that as a health factor, America needs reasonably priced soap more than it does the proverbial nickel cigar. The proposed tax of 5 cents per pound on coconut oil threatens unnecessary burden on all public-health agencies attempting to educate the public in elemental lessons of cleanliness as a safeguard against communicable diseases.

Dr. H. Sheridan Baketel, Jersey City, N.J. says that cleanliness is next to godliness, but there will be a marked decrease in cleanliness if any tax is put on oil for soap which would so materially increase the Nation's annual soap bill. He says that public health should not be taxed.

W. S. McNary, of the Colorado Hospital Association, Denver, Colo., says the Colorado Hospital Association again protests against the imposition of the proposed excise tax on soap-making oils and fats. He says they feel the President's recovery program does not intend additional burden on public and private hospitals which are already carrying almost unbearable charity loads.

H. E. Bishop, executive secretary hospital association, of Pennsylvania, Sayre, Pa., says it is absolutely necessary that voluntary hospitals of the United States be exempt from the tax of 5 cents per pound on soap-making oils as passed by the House. Our hospitals are struggling with greatest financial problems in their history, due to the greatly increased load of free work they must accept because of unemployment and this additional unnecessary burden would be unfair.

W. B. Grayson, State health officer, Little Rock, Ark., says that as coconut oil is used extensively in manufacturing soap, if taxed, it will decrease substantially the sales of this disease-preventing commodity, and it is generally known that where filth prevails, disease claims its toll. The liberal and universal use of soap as a detergent no doubt prevents more illness than all other preventive means combined.

Dr. John G. Abele, city health officer, Portland, Oreg., says that a tax on any ingredient of soap is a crime against the health of our American people. For years we have taught the public that cleanliness is on par with godliness and now we are to be taxed for being clean, for of such is the burden of heaven.

The following either were not familiar enough with the subject to make a statement, or else were in favor of the tax:

Mr. James M. Parrott, Raleigh, N.C., advises he is not sufficiently advised as to the matter to justify an opinion and therefore declines to express one.

Mr. J. P. Kennedy, health officer, Atlanta, Ga., says that we of this section are in favor of the proposed tax on coconut oil.

Thomas Parran, Jr., commissioner of health, Albany, N.Y., says he is strongly in favor of the proposed tax of 5 cents per pound on coconut oil as the agricultural considerations far outweigh the indirect public-health aspects which concern Mr. Calver.

S. R. McKelvey, Denver, Colo., says he is not prepared to safely give a statement for publication relative to the coconut-oil tax.

Charles D. Howard, State board of health, Concord, N.H., says he feels they are insufficiently familiar with all angles of the coconut-oil tax proposal. As it appears, the State farm board and local dairymen are actively championing this proposal and he believes it expedient not to make a statement.

Dr. Charles W. Decker, president Southern California Public Health Association, Los Angeles, Calif., says that the proposed 5 cents tax per pound on coconut oil will do great good in upholding American standards of living for dairy farmers of the United States—that the advantage of wholesome butter as a food for children far more than offsets increase, if any, in the cost price of soap.

ECONOMISTS

Mr. Persons sent the following telegram to leading economists:

"In the interests of the private and the public health, may I not draw your attention to a tax provision in the proposed tax bill now pending in Congress? This provision provides for a tax on coconut oil which will raise the price of soap 50 percent and thus increase the costs of cleanliness to millions of people and the costs of hospitalization and other public-health activities connected with cleanliness very greatly. The proposed tax of 5 cents per pound on coconut oil, one of the most important ingredients used in soap making, represents an impost of 200 percent on the present value of this raw material, which sells in world markets for about 2½ cents per pound. I understand that the tax has been inserted into the tax bill by the butter interests, who are conducting a vigorous campaign to rid themselves of competition of this oil, oleo, tallow, fish, and cottonseed oils for all purposes. The proposed provision, if enacted, will increase the cost of soap per hospital bed per year $10 and will increase the total annual soap bill of the American people $150,000,000. Public attention must be focused and public interest aroused on the dangers to the public health and pocketbook if such a tax proposal goes through. May I not have your 50-word day letter collect for possible publication on this issue?"

All of the replies received are listed in the following pages.

Glenn E. Hoover, professor of economics, Mills College, San Francisco, says the farmer has always been the fair-haired boy at Washington, but if his spokesmen greedily insist upon a prohibitive tax on copra—in other words, on soap and therefore the health of the American people—the patience of the Nation will be exhausted.

M. C. Rorty, economist, Lusby, Md., says that any further restrictions on imports, whether of coconut oil or manufactured goods, will react with ultimate certainty to reduce the volume of our basic exports, among which wheat and cotton are important items.

John H. Cover, economist, University of Chicago, Chicago, Ill., says that the adjustment of tariffs downward scientifically is long over due—that is particularly true of consumer goods and of ingredients entering into preparation of commodities for general consumption, and increased duties on articles in this field would be a travesty.

Frank D. Graham, economist, Princeton University, Princeton, N.J., says that the proposed tax on coconut oil, like many other such taxes, is prima facie strongly detrimental to national economic interest. The presumption is all against them. Secretary Wallace himself, in the pamphlet America Must Choose, has shown that even for those they are supposed to benefit, such imposts are futile.

Lewis H. Haney, economist, New York, N.Y., says he considers a tax on coconut oil unwise as tending to raise the cost of living. It would further restrict foreign trade and be in conflict with tariff moderation. Any artificial rise in butter prices would hurt the butter market.

E. E. Agger, professor of economics, Rutgers University, New Brunswick, N.J., says that from the point of view of public policy, tax on coconut oil would be indefensible, equivalent fiscally to sales tax upon necessities of life, aggravating already serious tax burden on low-income groups and raising the cost of living of masses, tending in consequence to slow down pace and narrow scope of recovery.

John J. Quigley, Ph.D., New York University, New York, N.Y., says that the proposed Federal tax on coconut oil seems certain to injure a majority of our citizens. Prices of products made from it will be greatly increased, perhaps by more than the tax to the detriment of importers, and of consumers, and the resulting revenue to the Government is hardly a compensation.

Walter Spahr, professor of economics, New York University, Bellerose, N.Y., says he would consider it extremely unwise and inimical to public interest to increase radically the cost of soap, and consequently the cost of health, by pledging a tax of five cents per pound on coconut oil.

Gordon S. Watkins, professor of economics, University of California, Los Angeles, Calif., says he is unqualifiedly opposed to the proposed import duty of 5 cents a pound on coconut oil. The tax is unnecessary and unjust and the imposition of such a tax would involve the sacrifice of the health and welfare of the people at large, to the selfish interest of those who are motivated completely by profits.

Alvin B. Biscoe, professor of economics, Bucknell University, Lewisburg, Pa., says that the demand for soap is not sufficiently elastic to maintain present sales with 200 percent increase in cost of coconut oil. Decreased use of soap must

endanger private and public health through risk of infections and epidemics. He says he considers the proposed tax on coconut oil inimical to social welfare.

J. E. Pope, professor of economics, University of Michigan, Ann Arbor, Mich., says the tax on cocoanut oil and similar fats in both senseless and futile, and I am sure would be opposed by farmers if they understood the situation. Any slight profits to them from its imposition would be offset many times by inevitable increase in the cost of soap and other products which farmers must buy and of which these fats are vital ingredients.

Don C. Barrett, professor of economics, Haverford College, Haverford, Pa., says the tax of 5 cents per pound on coconut oil in the tax bill now before Congress is unwarranted and against the public welfare. The increased financial burden such a tax would impose upon hospitals of the country alone, in cost of soap, ought to condemn it.

John Parke Young, economist, Pasadena, Calif., desires to register a protest against the high tax on coconut oil proposed in tax bill pending in Congress. He says this tax would greatly increase the price of soap to masses, and the use of an important necessity like soap, vital to health and welfare of everyone, should not be repressed by excessive taxation.

G. A. Kleene, professor of economics, Trinity College, Hartford, Conn., says he is emphatically opposed to the taxation of coconut oil which is so indispensable an ingredient of soap that the proposed bill would lay a burden on a whole population and especially on hospitals and other health activities.

Prof. C. E. Turner, Massachusetts Institute of Technology, Cambridge, Mass., says that soap is such a fundamental factor in the maintenance of cleanliness and in the prevention of disease, that a sharp increase in costs to hospitals and to the poor would be most regretable.

Marcus Whitman, University of Alabama, Tuscaloosa, Ala., says that as coconut oil is used for making consumers goods' that are prime necessities, not luxuries, logically it should not be subject to excise taxation. At present the people on county relief rolls are asking for soap and cleaning compounds, and the tax proposed will substantially increase the cost of Government relief.

E. L. Bogart, University of Illinois, Champaign, Ill., says he wishes to join in protest against the proposed tax of 5 cents per pound on coconut oil inserted in tax bill now before Congress. He says the pervision of protective private and public health in indefensible—coconut oil is an essential raw material.

G. B. Roorbach, Harvard Graduate School of Business, Cambridge, Mass., says that unreasonable import duties such as those proposed on coconut oils are to be condemned as subversive to the best interests of the country and all its people, and eventually to the dairy interest itself—it is an unjust, foolish, and unnecessary taxation.

Herbert F. Fraser, Swarthmore College, Swarthmore, Pa., says he is strongly opposed to duty amounting to 200 percent ad valorem. I support your opposition on the basis of reasons and facts given in telegram. Butter interests should be given subsidy direct from the Treasury if they must have support, which I doubt.

Spurgeon Bell, Ohio State University, Columbus, Ohio, says that we can count on him as opposed to the tax on coconut oil. He does not favor sales tax on the ordinary necessaries of life and particularly those having bearing on public health.

BUSINESS EXECUTIVES

Mr. Dahl sent the following telegram to a group of representative hotel executives:

"In your interest and that of public health your attention is called to proposed tax of 5 cents per pound on coconut oil in tax bill now pending in Congress. This oil is important ingredient in soap. The tax represents an impost of 200 percent on the present value of this raw material which sells in world markets for about 2½ cents per pound. Proposed tax, if enacted, will materially increase the price of soap. In view of this threatened increase in costs and dangers to sanitary activities and cleanliness generally will you give us a 50-word statement which can be used for possible publication to focus public attention on this matter? Please wire us your statement night letter collect."

All of the replies received are listed on the following pages.

Franklin Moore, manager Penn Harris Hotel, Harrisburg, Pa., says the proposed tax of 5 cents per pound on coconut oil is only one more illustration of deplorable governmental trend. The political goose that laid the golden eggs will expire when Americans are aroused to realization of impossibility of perpetuat-

ing American principles of liberty and opportunity for individual achievement under already top heavy bureaucracy.

H. P. Somerville, the Willard, Washington, D.C., says that the proposed 5-cent tax on coconut oil is not just another nuisance tax, but one that affects every individual in the country who uses soap, as it would probably result in doubling the price of this universal and necessary article of daily sanitation and cleanliness throughout the entire community.

J. M. Davenport, Davenport Hotel, Spokane, Wash., says that the proposed tax of 5 cents per pound on coconut oil, if enacted, will do a gross injustice to all consumers and would necessitate severe increased cost which would tend to reduce the use of the commodity to such an extent as to endanger public health and sanitation.

James Woods, president Woods Drury Co., San Francisco, Calif., emphatically urges against the proposed tax on coconut oil as included in congressional bill now pending. He says the tax would materially increase the price of soaps now used for cleaning in hotels and public buildings, and tend to curtail established methods of public sanitation. The proposed tax also discriminates against profitable import now entering Pacific ports.

James E. Knott, Knott Hotels, New York, N.Y., says the proposed tax on coconut oil used for soap most certainly comes under the nuisance category, and discouraging use of soap in this day and age should be furthest from all minds, including our lawmakers. This impost of 200 percent tends toward unsanitary conditions.

Allis Hotel Co., Kansas City, Mo., says the proposed increase in tax on coconut oil which would automatically force higher price on the cost of soap for hotel use must be opposed, as supplies for hotel use have constantly increased with no attending increase in hotel rates. We trust that the tax on coconut oil will be defeated so at least the price of soap can remain the same.

Mr. F. W. McKenzie, president, the Tolman Laundry, Washington, D.C., says that General Johnson in his letter submitting the laundry code to the President has aptly stated conditions of laundry industry, and the addition of tax on soap-making oils and fats will prove ruinous. I urge you to use every effort to secure elimination of this provision from tax bill.

C. C. Craig, president, Community Laundry, Los Angeles, Calif., says that the tax now pending in Senate will double their soap costs and they are already carrying as much burden as they can possibly stagger along under with labor regulation and increased taxes. He asks us to make every effort to head this off.

B. C. McClellan, chairman of the board, Laundry and Dry Cleaning Service, Inc., New Orleans, La., says the laundry business in Louisiana is suffering materially due to the depression, and if the tax on oil used in the manufacture of soap is passed it will create a great hardship on the industry, as they are in no position to absorb this additional cost, and if passed along to the customer will greatly reduce their volume—the tax is a decidedly uneconomic one.

Mr. Tom G. Leachman, Dallas, Tex., says their laundry industry rendering service only has been sorely pressed by processing taxes on cotton goods and other supplies. The 5 cents per pound excise tax on coconut oil practically doubles their soap expense at a time when they cannot bear it. Over 2,000 employees in Dallas, Tex., depend on this industry for a living. Certainly we should have favorable consideration.

Copra and coconut oil imports

[Tons of 2,000 pounds]

Year	Copra	Copra as oil—63 percent	Coconut oil	Total
1900	114	72		72
1905	113	71		71
1907	3,532	2,225	17,772	19,997
1908	7,061	4,448	22,711	27,159
1909	11,871	7,479	26,151	33,630
1910	10,415	6,561	24,017	30,578
1911	19,041	11,995	25,561	37,556
1912	32,253	20,319	23,011	43,330
1913	17,142	10,799	25,247	36,046
1914	22,719	14,312	37,193	51,505
1915	44,345	27,927	31,625	59,552

Copra and coconut oil imports—Continued

[Tons of 2,000 pounds]

Year	Copra	Copra as oil—63 percent	Coconut oil	Total
1916	54,254	34,180	33,287	67,467
1917	123,522	77,819	39,680	117,499
1918 [1]	215,250	135,607	179,598	315,206
1919	128,958	81,244	140,532	221,776
1920	107,594	67,784	107,007	174,791
1921	94,660	59,636	46,212	105,848
1922	134,478	84,721	112,077	196,798
1923	166,487	104,886	90,350	195,236
1924	145,532	91,685	112,317	204,002
1925	182,038	114,683	116,249	230,932
1926	228,799	144,143	122,565	266,708
1927	275,497	173,563	146,685	330,248
1928	250,995	158,127	145,318	303,445
1929	285,456	179,837	205,968	385,805
1930	297,669	187,531	158,960	346,491
1931	229,473	144,568	162,587	307,155
1932	226,724	142,836	124,558	267,394
1933	330,436	208,175	158,039	366,214

[1] Includes figures for 18 months on account of change in statistics from fiscal to calendar year. Years 1900 to 1917, inclusive, are for year ending June 30.

SOAP PRICES

The soap industry has, through increased efficiency in manufacturing and distribution generally, plus increased volume, been able to produce the highest-grade soap at the lowest prices in history. As an example, the prices on P & G, the white naphtha, the largest selling bar laundry soap in the United States, are:

1908–15, 4.8 cents per pound .... 11-ounce bar.. 3.34
1916, 5.4 cents per pound .... do.... 3.70
1917, 7.2 cents per pound .... do.... 4.96
1920, 8.7 cents per pound .... do.... 6.01
1924, 6 cents per pound .... do.... 4.10
1929, 6.6 cents per pound .... do.... 4.56
1930, 5.8 cents per pound .... do.... 3.97
1931, 5.5 cents per pound .... do.... 3.79
1932, 5.4 cents per pound .... do.... 3.68
1933, 4.3 cents per pound .... do.... 2.95
1934, 4.1 cents per pound .... do.... 2.82

Additional Brief of F. M. Barnes

THE LIVESTOCK PRODUCER AND THE COCONUT OIL TAX

It is urged that the tax will restore to the producers of livestock a market for tallow that could enter into the manufacture of soap.

The domestic fats consumed in the soap kettle now are essentially of the same character as those which were consumed in 1922, viz., inedible tallow produced from refuse materials, collected from the restaurants, hotels, boarding houses and retail meat stores, for all of which the meat price has been paid before it reached the hands of the refuse processor or tallow renderer, and the inedible tallow and grease in 1912 constituted 46 percent compared to 45 percent of the total in 1932, showing that the ratio has remained practically constant with respect to its consumption in the soap kettle.

In further connection with the consumption of domestic oils and fats in the soap kettle, we would call attention to the fact that the United States Bureau of the Census shows in its record of factory consumption of oils and fats for the year 1932 that the soap industry consumed practically 900 million pounds of domestic oils and fats. This represents an increase of 50 percent in the consumption of domestic oils and fats for 1932 as compared to 1912. Obviously, such increase as has occurred in foreign oils and fats has not been at the expense of domestic oils and fats. It is apparent that the imported oils and fats have served to carry the domestic oils and fats into consumption in the soap kettle.

Should the tallow renderer be able to participate in any increase of price of domestic fats and oils resulting from the excise tax on coconut oil, it could be only to the extent of the tariff duty on tallow. This duty is ½ cent per pound in the 1930 Tariff Act. *Any increase in the price of tallow over the world price level in excess of ½ cent per pound would invite imports of New Zealand, Australian, and Argentine tallow.*

As explained in the memorandum concerning the cotton grower the soap maker buys coconut oil because of its free-lathering properties which are imparted to it by its high lauric-acid content. Since tallow contains no lauric acid it has no free-lathering qualities and cannot be used to supplant coconut oil in soap. Coconut oil in place of competing with tallow in soap actually carries tallow into consumption in the soap kettle.

The Packers' Encyclopedia, page 131 (photostat attached) shows that the yield of inedible tallow in the packing house amounts to 5.36 pounds per 1,000-pound steer. Should, by any possibility, the price of tallow be advanced to the full extent of the ½-cent per pound tariff on same, as a result of the levying of the 5-cent excise tax on coconut oil, the total net return to the meat packer per 1,000-pound steer could not exceed 2.68 cents.

INEDIBLE TANKAGE YIELDS

The following tests on the yields of various products which may be obtained by rendering in the inedible tanks will be of interest to all superintendents and tankhouse men.

No. 1 white grease test.—Test on 5,600 hogs to find the yield of no. 1 white grease. In addition to the regular inedible offal, the following pieces were rendered: 1 dead hog, 28 condemned hogs, 30 condemned heads. The white grease recovered in this test amounted to 15,300 pounds, or 2.73 pounds per hog.

Yellow grease test.—The following is a test on 3,432 hogs to find the yield of yellow grease:

Inedible tankage yields

Products to tank	Total pounds	Pounds per hog
Pig bags	6,243	1.819
Lungs	5,141	1.498
Catch basin skimmings	4,257	1.240
Floor scrap	662	.193
Total green product	16,303	4.750
Yield of yellow grease	1,320	.39

Tallow yields.—The following test is one which indicates in a general way the yield of tallows which are obtained from cattle:

	Pounds per head
Edible tallow	1.13
Prime tallow	4.41
No. 2 tallow	.95
Brown grease	1.23
Total	7.72

The tallow from calves is indicated by the following test:

	Pound per head
No. 1 tallow	0.45
Brown grease	.65

The tallow yield from sheep is indicated by the following test:

	Pound per head
No. 1 tallow	0.19
No. 2 tallow	.28
Brown grease	.19

Tests on condemned offal.—The following yield of condemned viscera has an important bearing, as it is necessary to know this in order to calculate the losses on condemned cattle:

Green product tanked: 14 sets viscera, 8 paunches, 16 sets guts, 68 pieces liver. Total weight 9,563 pounds. Yield no. 2 tallow, 701 pounds or 7.33 percent. Pressed tankage (10 percent moisture basis) 769 pounds or 8.04 percent.

In addition, of course, there was a yield of tank water, which, depending on the individual case, should be analyzed and its value calculated in determining the value of the offal.

Following is a test on condemned hog viscera: 192 sets. Weight 4,430 pounds. Yield no. 2 white grease 340 pounds or 7.67 percent; pressed tankage (10 percent moisture basis) 204 pounds or 4.60 percent.

The value of the tank water in this case should be determined and enter into the calculation also.

THE HOG RAISER AND THE COCONUT OIL TAX

It is urged that the hog raiser will be benefited in that the tax will tend to reduce the existing large surplus of lard.

The inference to be drawn from the contention above noted, is that coconut oil competes with lard and lard compounds, whereas, on the basis of statistics compiled by the Bureau of the Census for 1932, coconut oil constituted less than 1 percent of the fats and oils used in lard compounds and vegetable shortenings, which commodities are the only real competitors of lard. Furthermore, it should be pointed out that coconut oil is one of the few oils which is completely lacking in shortening properties, and obviously it cannot be used to any appreciable extent in this field, regardless of price considerations.

The annual exportation of lard amounts to about 600,000,000 pounds. The use of coconut oil in lard substitute in 1932 amounted to less than one and one half percent of this exportation and only one half of one percent of the total production.

Lard substitutes, as made in the United States, are composed almost entirely of domestic vegetable and animal oils and fats. In 1932 77 percent of our domestic cottonseed oil was consumed in this channel. The balance was consumed in salad and cooking oils. Only .2 of one percent was consumed in nonedible or industrial channels. This was so-called "off-grade" oil unfit for edible usage.

THE COTTON GROWER AND THE COCONUT OIL EXCISE TAX

It is contended that the cotton grower will likewise be benefited by an increase in the market for cottonseed oil.

This statement does not take into consideration the fact that under present-day conditions cottonseed oil is consumed practically entirely in edible channels and is virtually not used at all in the soap kettle, which is the chief outlet for coconut oil. The consumption of cottonseed oil in the soap kettle in the year 1932 was only 0.23 of 1 percent of the total oils and fats consumed there on the basis of the United States Bureau of the Census figures for factory consumption of oils and fats, despite the fact that during that year coconut oil sold at a materially higher price than did cottonseed oil. (Coconut oil averaged during 1932, 3.57 cents per pound in price as compared to 3.07 cents per pound for cottonseed oil.)

Coconut oil is used in the soap kettle because of its very high content of lauric acid, which imparts an extremely free lathering quality to soap made therefrom. Cottonseed oil contains no lauric acid and, therefore, could not impart any free lathering qualities to the soap. In addition, it has decidedly objectionable qualities in that it possesses an excessively high quantity of linolic acid which is readily oxidizable and hence promotes rancidity when used in the manufacture of soap. Coconut oil contains no linolic or other acids which are oxidizable. These inherent differences in the chemical make-up of coconut oil and cottonseed oil prohibit any degree of inerchangeability of the two oils in the manufacture of soap.

In the essence, when a soap manufacturer purchases coconut oil he is buying lauric acids. He will not buy cottonseed oil when he needs lauric acids, for the simple reason that cottonseed oil contains no lauric acid. Were cottonseed oil to be used in the soap kettle it would be merely as an inferior substitute for inedible tallow. Before it can be so used it must be hydrogenated. This costs at least 1 cent per pound. Since tallow bears a tariff duty of only one half cent per pound it is obvious that it would be far cheaper to import tallow from Australia and the Argentine in preference to processing cottonseed oil to simulate tallow.

According to the records of the Department of Commerce and the Department of Agriculture, the consumption of edible fats and oils in the United States for the year 1932 was equivalent to 73.6 percent of the total domestic consumption.

Of this quantity the major portion was made up of 3 fats, namely, butter, 39 percent; lard, 33 percent; and cottonseed oil, 20 percent; or in other words, these 3 oils constituted 92 percent of the total food oils and fats consumed. Another 3.82 percent was made up of oleo oil, oleo stearine, corn oil, peanut oil, edible tallow, and olive oil. The net prices at which these oils and fats (all domestic except the major part of the olive oil) sold for food purposes were materially higher than would have been procured had they been utilized in the soap kettle. In connection with this, we would point out that the 10-year average price of oils and fats used for edible purposes in the United States, exclusive of butter, for the period from 1923 to 1932, as shown by the Oil, Paint, and Drug Reporter, principal trade journal of the oils and fats industry, was 11.04 cents per pound, whereas during this same period the price of the oils and fats used for soap and miscellaneous industrial purposes averaged 6.95 cents per pound, a price difference in favor of the edible oils and fats of 4.09 cents per pound.

THE DAIRYMAN AND THE COCONUT-OIL EXCISE TAX

Seventy percent of the coconut oil imports are used in three industrial products: Soap, rubber-automobile tires, and the tanning of leather. The dairyman produces nothing which these three industries use.

The soap maker, the rubber-tire maker, and the tanner cannot object to the tax being levied upon edible coconut oil which is used in the manufacture of butter sustitutes. We believe that the opinion of dairy economists will bear more weight than ours in respect to the amount of benefit which a tax upon edible coconut oil would confer upon the dairyman.

The dairy economists state that the price differential between butter substitutes and butter itself is so great that if it were granted that the proposed tax would increase, even materially, the cost of butter substitute, it could not increase the price of butter or increase its sale.

That coconut-oil competition, whether in the form of nut margarine or otherwise, does not affect the price of butter, is evidenced by the fact that in Canada, where the competition of substitutes has not existed because of legislative edict, the price of butter has commonly averaged below the price of butter in the United States.

WHY AN EXCISE TAX ON COCONUT OIL OR OTHER FOREIGN VEGETABLE OILS USED IN THE MANUFACTURE OF SOAP WILL NOT BENEFIT THE PEOPLE OF THE UNITED STATES

On behalf of the soap industry of the United States, we desire to bring to your attention section 602 of the House revenue bill no. 7835 placing an excise tax of 5 cents per pound on coconut oil and sesame oil which is now up for consideration before the Senate Finance Committee.

The effect of such a measure will be far-reaching in the United States, affecting the welfare of our employees and the health of the country and for reasons covered in this statement, which explanation immediately follows, we ask for the elimination of this item from the revenue bill or its amendment in order that coconut oil may be imported into this country free of tax when used in soap or other inedible products.

First. This excise tax of 5 cents per pound is, in effect, placing a tariff on coconut oil which today is imported entirely from the Philippine Islands and it is a discriminatory tax which singles out coconut oil (sesame oil is no factor in our imports).

Second. The soap industry has never asked for tariff protection on their manufactured products and the present tariff bill on soap into the United States is as follows:

"Par. 80. Soap: Castile 15 per centum ad valorem; toilet, 30 per centum ad valorem; all other soap and soap powder, not specially provided for, 15 per centum ad valorem."

(Toilet soaps only represent 9 percent of the soap business in the United States.)

The effect of this tax if permitted to stand will permit an unhampered importation of foreign-produced soaps, permitting soap manufacturers in Canada, England, and Central Europe to ship soap freely into the United States. This excise tax on coconut oil is equivalent to three times the import tax on soap.

Third. This tax will affect in a disastrous way an industry in this country representing 248 manufacturing plants; an investment of approximately $600,000,000, producing soap to the value of $300,000,000, employing approximately

25,000 people. It will curtail employment and affect seriously the welfare of our people.

Fourth. It will create higher prices for soap. Our best opinion is that this will bring an advance of 50 percent in the selling price of soap to the consumer in the United States, which under present depressed conditions will put the greatest tax on our people which this country has ever seen on a common necessity of life.

Fifth. The Revenue Act of 1932, which is now being amended in paragraph 603 carries an excise tax of 5 percent on toilet soaps which are largely made from coconut oil which is in effect doubling taxation.

Sixth. It is freely admitted by the health authorities, the medical profession, and the hospitals that the free use of soap is the most important factor in preserving the health of the country.

Seventh. When the House committee passed this tax, I feel sure that sufficient consideration was not given to the effect it would have on the soap industry and the country. Soap enters into every phase of our American life—in the home, the hotels, the hospitals, offices, shops, stores, schools, factories, steam laundries and various industries, particularly the silk and woolen industries and is the outstanding element in preserving the health of our people. Outstanding medical authorities have frequently stated that the frequent washing of the hands with good soap is the greatest factor in preserving the health of the people of this country.

Eighth. The one real byproduct of soap making is glycerin, which is recovered from the soap lyes and through distillation we secure the chemically pure glycerin that is used in the drug trade and through so many channels affecting the welfare of our people, and into the dynamite grade which is so necessary to the powder industry not only in times of peace, but in times of war. Coconut oil is the highest yielding glycerin factor of all the fats and oils and contains approximately 40 percent more glycerin than animal fats. A break down in the production of glycerin on the part of the soap manufacturers in our opinion, would be a very serious menace to the country. During the World War ships were provided to bring in copra and coconut oil in order to increase the output of glycerin.

Ninth. As we understand it in this excise tax was not intended as a revenue measure primarily but solely as a prohibitive tariff as press dispatches talked of giving the money collected back to the Philippines. Therefore, the people of this country are being heavily penalized without any compensating benefits recurring to the farming communities when a soap oil is taxed in this manner.

Tenth. For the past 12 years certain interests in this country—fish oil representatives, renderers of recovered fats, and certain interests representing dairy and farming groups have been fighting for higher tariffs on import vegetable oils, without recognizing the fact that certain of these oils for inedible usage are absolutely essential to the welfare of the country and furthermore, are necessary in order to use and make a good soap out of their recovered fats which are available to the soap industry in the United States.

Eleventh. This excise tax makes no distinction between the oil used for edible purposes and the oil used for technical or inedible purposes whereas it rightfully should.

The soap industry has contended repeatedly that inasmuch as our own production of oils and fats in this country were largely edible and consumed as such that tariff or tax action should be against these oils only when used for edible purposes and to permit the free entry of these oils when denatured for soap or technical usage, which is the proper solution of this matter and a solution that is to the best interests of the country.

Twelfth. The soap industry the world over has always been given preferential treatment in connection with raw materials. This is true today in Canada, England, Germany, and other countries. As we pointed out in a preceding paragraph, due largely to the effect it has on the health of the people and to the byproduct glycerin which is so necessary in munitions.

Thirteenth. Every product the soap industry buys in the United States is a byproduct of agriculture or animal production and of such minor importance that it has no bearing on the major production. We would not raise cattle for tallow; we would not raise hogs for grease; we would not raise cotton for cotton oil. Furthermore, every effort is being made by our Government to reduce these productions and plans are in effect to reduce the supply of hogs and cotton. Cattle has just been added to the list of controlled productions, the aggregate effect of which policy of control is to reduce the supply of animal and vegetable fats in the United States.

Coconut oil, on account of its peculiar qualities, permitting free sudsing and lathering in hard water (and a great deal of the country still has hard water) is

necessary to the soap industry to blend with the animal fats and produces a soap that can be freely and satisfactorily used by the people of this country.

There are a great many facts to be considered and we are attempting in the following paragraphs to point out items of general interest in connection with the effect of this excise tax on the soap industries.

This tax is aimed primarily at the consumption of coconut oil in the edible industry. The 1933 census figures have not as yet been published by the Government Census Department. The figures for the calendar year 1932 show the consumption of coconut oil as follows:

	Pounds
Soap	376, 056, 000
Oleomargarine	123, 219, 000
Confectionery, other edible	49, 185, 000
Miscellaneous, inedible	1, 055, 000
Total	549, 515, 000

You will see from the above statement that 70 percent of the coconut oil consumed was in soap and other inedible usage and 30 percent was consumed in edible channels. The use of soap and the character of soap has changed materially over some years ago. The development of home power washing machines has made it necessary to have a quick sudsing soap product. In the same way a great many silk and wool articles of apparel are washed in the bathroom where quick sudsing soaps are required. The public today wants a good soap at a reasonable price.

Over a large part of the United States, hard water is quite common and a quick sudsing or free lathering soap is absolutely essential to proper handling.

To make white soaps and soaps that have a free sudsing or lathering property and a soap that can be used in hard water, coconut oil is absolutely essential. Furthermore, to use the low grade animal fats and vegetable oil foots (refuse from refining vegetable oils) that are available to the soap maker in the United States, imported oils must be blended with them, as represented by the importations of coconut oil, palm oil, and sulphurated olive oil to produce soaps that are satisfactory for the general use in the United States today.

The use of coconut oil in soap has not been at the expense of domestic fats and oils, but is necessary to carry these productions of recovered animal fats and oils and make a satisfactory soap as the increase in the production of fats and oils in the United States available to the soap kettle has been entirely recovered fats in which the farmer, dairyman, or cattleman has no interest.

The increase in the production of tallows and greases has come entirely from rendering establishments who collect the butcher-shop, restaurant, and hotel scraps and from rendered animals. Today 70 percent of all the tallow and grease produced in the United States comes from this source and only 30 percent of the production actually comes directly from the kill of livestock in the packing-house plants.

In the refining of cottonseed oil, depending on the quality of the seed, there is a loss of 8 to 9 percent in weight, which is referred to by the refining interests as cottonseed foots. These foots are taken by the soap manufacturer and distilled and used as a secondary fat.

Every pound of refined cottonseed oil produced is used edibly.

In the case of all of the above, the cattle, hog, and sheep raiser has been paid the meat price and the refiner has paid the cotton oil price and the loss in refining becomes one of the items of cost in the conversion of the product and does not directly affect the price paid for cottonseed.

The soap manufacturer is in the unfortunate position of producing none of his raw materials in the form of fats and oils, but is entirely dependent upon such fats and oils as are available in the United States and on importations from outside countries. We are using in the soap kettle every pound of material that is available in the United States in the form of fats and oils. The supply is wholly inadequate and we particularly call your attention to the following usage and origin of fats in the soap kettle: In 1932, 58 percent of the fats were of United States origin and 42 percent were imported.

During the last 20 years the soap industry has increased its production 66 percent, or from 1,900,000,000 pounds in 1912, to 3,168,985,000 pounds in 1932.

Of the 600,000,000 pounds of domestic fats and oils produced and used in the soap kettle in 1912, 40 percent of this quantity, or 240,000,000 pounds, represented recovered fats.

In 1932 out of a total of 900,000,000 pounds of domestic fats and oils consumed in the soap industry and produced in the United States, 50 percent represented recovered fats.

This shows that the enlarged use of coconut oil and other imported soap oils has not been at the expense of domestic oils and fats; certainly not of the recovered fats.

There is no possible way whereby any excise tax or tariff can affect the farmer's original production from which these items are recovered. They represent recovered tallows and greases, which as we have already explained, reach the soap kettle:

(A) Through the renderers in the form of the scraps from the sale of meats in the butcher shops, hotels, restaurants, etc., so that the meat price has already been paid on every pound of it by the consumer.

(B) From grease recovered by the city reduction plants which handle the accumulation of household scraps.

(C) The refuse of refining edible oils, which is a very black gummy stock, which it is necessary to distill and from which we obtain three products, viz, tar, glycerin, and fatty acids; the latter being used in soap.

The soap makers of the United States for the last 10 years have had to maintain a continual fight to protect their supply of raw materials against certain interests in Washington who pose as representing various farm groups, behind whom has been a group of rendering establishments who render tallow and greases from shop fats and certain fish oil interests along the Atlantic coast. We have no quarrel with these people in their desires and our statement is and has been that it would be impossible for the soap industry to consume satisfactorily the production of low-grade tallows and greases on the part of rendering establishments and the low-grade fish oils produced on the Atlantic coast, unless we had higher grade materials to blend with them, which higher grade materials are not available to the soap kettle in the United States.

We have contended that if this group is sincere in their opposition from the standpoint of the farmer and dairyman's interests, their interest should be confined to the edible situation and not to the inedible consumption of these imported oils.

The denaturing of vegetable oils can be done cheaply and effectively and as there is no oil produced in the United States available to the soap kettle, there is no reason for penalizing the soap manufacturer because some of the oils imported are used edibly.

This action to levy the 5-cent excise tax on coconut oil would increase the price of soap sharply to the entire consuming public without any compensating benefits to the farmer. The tallow renderers are clamoring for this legislation. They collect butcher-shop scraps, restaurant and hotel scraps, and render them, which source of supply as we will show later, represents 70 percent of all the tallow and grease produced in the United States.

The farmer has already received the meat price so that no possible benefit can recur to him.

The price the renderer pays the butcher shops, hotels, restaurants, etc., from which he collects, depends entirely on the price at which he sells his production from these pick-ups and is represented by tallow, grease, cracklings, and fertilizer, no possible benefit recurring to the farmer as the product has been sold as meat to the consumer at the meat price. The remaining 30 percent of our tallows and greases comes from the kill of livestock and in order that you may have a clear idea as to what extent this affects the price of livestock, we show in the following table:

Yields of inedible fats derived from the slaughter of hogs, cattle, calves, and sheep

[Packers encyclopedia]

		Pounds
Hogs:		
White grease	per hog	2.73
Yellow grease	do	.39
Total		3.12
Cattle:		
Inedible prime tallow	per head	4.41
No. 2 tallow	do	.95
Brown grease	do	1.23
Total		6.59

Yields of inedible fats derived from the slaughter of hogs, cattle, calves, and sheep—Continued

		Pounds
Calves:		
No. 1 tallow	per head	.45
Brown grease	do	.65
Total		1.1
Sheep:		
No. 1 tallow	per head	.19
No. 2 tallow	do	.28
Brown grease	do	.19
Total		.66

The tallow from a 1,000-pound steer is worth 3½ cents per pound or 23 cents. The gross value of the steer is between $55 and $60.

The grease from an average weight hog of 240 pounds is 3 pounds at a price of 3 cents per pound, or 9 cents, while the average hog is worth $11.25.

The tallow and grease from a calf is 1 pound and would be worth 3½ cents, while the calf is worth approximately $8.

The tallow from a sheep is 0.6 of a pound, and at a price of 3½ cents would be worth 2 cents, while the sheep is worth approximately $6.50.

Number of animals slaughtered

Year	Cattle	Calves	Sheep	Swine
1910	13,541,000	6,553,000	14,797,000	47,076,000
1927	14,000,000	9,030,000	16,589,000	69,250,000
1928	12,452,000	8,667,000	17,348,000	76,593,000
1929	12,241,000	8,313,000	18,048,000	74,945,000
1930	12,168,000	8,532,000	21,132,000	70,390,000
1931	12,156,000	8,792,000	23,038,000	71,157,000
1932	11,475,000	8,343,000	22,749,000	71,562,000
1933	12,755,000	8,925,000	21,954,000	73,674,000

We only quote the above figures to show how little the livestock producer is directly affected by the price of tallows and greases.

The 1932 production of tallows and greases were as follows:

	Pounds
Tallow	585,896,000
Grease	202,860,000
Total	788,756,000

The consumption of tallows and greases during 1932 were as follows:

	Pounds
Soap	692,910,000
Miscellaneous uses other than soaps	95,846,000
Total	788,756,000

You will see that even so far as tallows and greases are concerned, that the soap kettle is competitive in buying with other interests who purchase these inedible fats for technical purposes. There is no surplus of either tallow or grease in the United States today. Every pound is consumed that is produced. As a matter of fact, every large consumer of these products is always buying 30 days ahead of the actual production.

In order that you may undestand fully the soap makers' position as affecting his supply of fats and oils, the following table will indicate what the soap maker uses and how it is divided as between the domestic fats and the foreign oils:

	Pounds
United States or domestic production:	
Tallow	551,816,000
Grease	143,724,000
Fish oils	49,091,000
Foots (vegetable oils)	138,200,000
Vegetable oils	12,468,000
Total (58 percent)	895,299,000

Imported oils:	Pounds
Coconut oil	376, 056, 000
Palm oil	176, 419, 000
Sulphurated olive oil	32, 789, 000
Marine animal oils	49, 000, 000
Miscellaneous vegetable oils	15, 000, 000
Total (42 percent)	649, 264, 000
Grand total	1, 544, 563, 000

The consumption of soap in the United States has been growing faster than any possible production of materials in this country.

Soap produced:	Pounds
1909	1, 850, 000, 000
1933	3, 168, 985, 000
Fats and oils consumed in producing:	
1909	750, 000, 000
1933	1, 548, 200, 000

You will see that soap contained 40 percent fat in 1909 and 50 percent fat in 1932. The public is getting a better soap today at a reasonable price.

This increase in soap consumption has been due largely to the increased population and to the development of local water works, which has brought running water to the homes of a great number of people in this country, to a higher standard of living on the part of our people thorugh the efforts of health authorities in educating our people to the necessity of maintaining a high state of cleanliness in personal and living conditions.

Due to the lack of domestic fats, the soap manufacturer finds himself in the position of having to go out of the country in order to secure the necessary supplies of fats to take care of this increased consumption.

We are not killing any more cattle. As a matter of fact we killed less cattle last year than we did in 1910, as our statement shows and our supply of tallow comes from cattle either direct kill or through meat scraps.

Every effort is being made to reduce the cotton crop further, which will mean less cotton, less cottonseed and less cottonseed oil.

As you know there are no coconuts grown in the United States. There are no palm nuts grown in the United States. While there are some olives produced in California, they are used edibly and none are available for pressing, thereby furnishing no oil to the soap kettle.

I feel that the Ways and Means Committee did not weigh thoroughly the effect of their placing a 5 cent per pound tax on coconut oil as affecting the soap industry of the United States. We are dependent on coconut oil and have been dependent on coconut oil ever since white soap was made in this country. Coconut oil has been imported for the last 100 years.

The effect of this action if it should become a law would be to increase the price of soap to the consuming public of the United States approximately 50 percent over the prices that are prevailing today. Laundry soap is now being sold at the lowest price that we have ever seen. This is true of the largest selling brands which are selling at the lowest price they have ever sold at and the quality has never been so high.

The statement has been repeatedly made on the floor of Congress that soap has not been reduced in price. The largest selling brand of soap of the Procter & Gamble Co. is P and G the White Naphtha Soap and we give you the prices, going back to 1928, at which this soap sold in the United States in 100 box lots.

	Per box
Jan. 1, 1928	$3. 70
Feb. 14, 1929	3. 85
Feb. 1, 1930	3. 70
Jan. 17, 1931	3. 20
July 18, 1932	2. 55
May 8, 1933	2. 65
Jan. 11, 1934	2. 30
Feb. 16, 1934	2. 30

This tax will affect the prices of laundry soaps the heaviest as they contain the largest percent of coconut oil.

The effect of an advance of this kind coming at a time when the soap industry has been cooperating with the N.R.A. program to keep down the price of our products to the consumer is going to be a very disturbing one. It also affects a lot of allied soap users. This is particularly true of the hospitals who are heavy users of soap; to the steam laundries who have been affected very severely by the depression and an advance of this kind coming upon one of their principal items of cost is going to be disastrous to that industry.

We cannot emphasize too strongly what the effect of higher priced soaps under present depressed conditions in the United States is going to have on the effect of the health of the people of this country. The average family only has so much money to spend. The medical profession, the United States Board of Health, the boards of health of our various cities have repeatedly emphasized that the greatest factor in maintaining the health of this country is in the frequent washing of the hands and general cleanliness. With the curtailed earning capacity of our people it means that they must curtail their usage or purchases accordingly and this can become a serious menace to the health of the country.

It means that we are taking down the bars, as it would be possible for soaps other than castile to be shipped into this country in a large way from England and Canada as well as Europe, as the world markets on raw materials, are open to the soap manufacturers in all of these foreign countries, and with cheaper labor they have an advantage.

The soap industry should not be penalized because 30 percent of the coconut oil imported is used in edible channels. Why not put the tax, if any, where it belongs—on the edible product.

If we understand correctly, a great many of the members of the House Ways and Means Committee felt that this was not a proper piece of legislation and did not belong in the revenue bill, but was really a tariff matter. We are not prepared to voice an opinion in this respect, but we do know that it is penalizing the people of the United States without any compensating benefits. As we have stated before, if the interests who are agitating this matter before the Congress and Senate of the House are sincere, then a division of this matter as between edible and inedible would cover fully their objection for the simple reason that the price of recovered fats does not react to the farmer or producer; that the cotton-seed oil man wants protection against foreign fats going into edible consumption and in order that the Committee may have the feel of the trade in this matter the vegetable oil refining interests of the United States who refine all oils that are used for any purpose in their code before the Agricultural Adjustment Administration have covered this matter in article IV as follows:

FOREIGN OILS

"1. The members of the industry further severally agree, that, on and after the effective date of this agreement, whenever they use any fat or oil ingredients in the manufacture of shortening, cooking oil, or salad oil, except fats and oils produced from seeds and/or animals grown within the borders of the United States, including its organized territories, if the cost of said oils or fats is less than the cost of cottonseed oil, they will pay to the control committee an amount which will be equal to the price advantage which said member would obtain by the use of said oil or fats compared with the use of cottonseed oil.

"For the purpose of this agreement the term "animals grown within the borders of the United States" shall include fish but no other marine animals from which oil is extracted, grown, or produced within the borders of the United States or procured by United States vessels, whether or not such vessels obtain their catches on the high seas.

"2. It shall be the duty of the Control Committee to calculate on the basis of such factors as it may determine, the price advantage which at any time any member of the industry would obtain by the use as an ingredient in any of the products covered by this agreement, of any fat or oil not produced from seeds or animals grown within the borders of the United States including its organized territories.

"3. The payments so collected by the Control Committee shall be placed in a separate fund under the control of a board of trustees to be appointed by the Secretary. Expenditures may be made from this fund only when approved by the Secretary and only for the purpose of effectuating the declared policies of this Marketing Agreement,"

Furthermore, there were several individual cotton oil men who voiced their opinions before the Ways and Means Committee while this was going on. The board of directors of the National Cottonseed Products Association, which is an association composed of four hundred cottonseed crushing mills located from Carolina

to Texas, were meeting in Memphis, Tenn., and on January 13, 1934 passed the following resolution:

"RESOLUTION UNANIMOUSLY PASSED BY THE BOARD OF DIRECTORS OF THE NATIONAL COTTONSEED PRODUCTS ASSOCIATION AT A MEETING HELD IN MEMPHIS, TENN., JANUARY 13, 1934.

"Whereas the farmer fat producers of this country, on account of distressingly low prices of that products, are suffering serious financial loss, and

"Whereas there is being imported enormous quantities of foreign fats, oils and materials out of which oils and fats are produced, all duty free, or bearing an insufficient import duty, and

"Whereas the cotton farmer, livestock producer, and growers of grain in the continental United States, have been and are now being called to reduce production for the year 1934 to practically 60 percent of the average production for the years from 1923 to 1932, inclusive, in which program we heartily concur, believing that objective to be the quickest method of restoring the buying power of the producers with which there can be no return to prosperity in this country: Therefore, be it

"*Resolved by the directors of the National Cottonseed Products Association, in meeting held at Memphis, Tenn., January 13, 1934*, That the importation of all foreign fats and oils, and copra and coconut oil and all other seeds or other materials out of which edible fats and oils are produced, be immediately by Executive order, limited to an annual quota of 60 percent of the average importation for the years 1928 to 1932 inclusive; be it further

"*Resolved*, That all stock of imported edible fats and oil bearing material, including copra and coconut oil in the hands of processors on the date of such Executive order, be applied against the 1932 quota; and be it further.

"*Resolved*, That if such Executive order does not bring immediate relief to the fat producers of the continental United States, the President and/or Secretary of Agriculture be implored to use the authority vested in them to immediately establish an import tax of not less than 2 cents per pound on all imported oils, fats, and oil-bearing materials from which edible oils and fats are produced, excepting copra and coconut oil from the Philippines, which shall be placed on a quota basis as stated above; Be it further

"*Resolved*, That if such an Executive order is promulgated, then in that event, all imported copra and coconut oil and all other imported oils, fats and materials out of which edible oils and fats are produced, in the hands of processors, shall be taxed 2 cents per pound, effective on the date of such Executive order."

This is the only recognized crushing association covering the entire South and they recognize the fact that they wish the edible fats controlled and that they do not wish to penalize industries who are dependent upon foreign oils for technical or inedible purposes and furthermore, go further and say that they only wish a reduction of 40 percent used edibly.

The refiners of the United States have gone further and have voluntarily agreed to eliminate foreign oils entirely from edible consumption.

Furthermore, so far as the cottonseed oil production is concerned, with the exception of a surplus carried from the bumper crop of 3 years ago, we are consuming edibly every pound of cottonseed oil produced in this country from a normal crop and last year with the cotton production of 13,102,000 bales there was produced, the year ending August 1, 1933, 1,272,780,000 pounds refined cottonseed oil and consumed 1,222,348,000 pounds refined cottonseed oil (all of which was consumed edibly).

The Government and the trade records end each season with August 1.

You will see from the above that we consumed this past season practically the entire production of cottonseed oil, edibly, and this from a crop of 13,102,000 bales.

We had a surplus of cottonseed oil, but it was carried from the bumper crops of 1926-27 of 17,978,000 bales and 1931-32 of 17,095,000 bales, just as we had a surplus of cotton as a result of the overproduction in these years.

The Department of Agriculture is asking for a reduction in the cotton acreage of 40 percent from that planted in the 1928-32 period, when the acreage planted was over 40,000,000 acres. They asked for a reduction last year in the same manner and the acreage harvested was reduced to 30,000,000 acres or a 25 percent reduction. This would mean a further reduction of approximately 20 percent from last year's acreage.

The Bankhead bill goes further and limits the ginning to 9,500,000 bales from the crop that might be harvested this season.

Certainly the soap industry, even if it could use to advantage cottonseed oil, can expect no supplies from this source

The cottonseed-oil price competition comes from hog lard, and notwithstanding the fact that the lard exports for the calendar year of 1933 were a fraction less than 600,000,000 pounds, the pressure of the heavy hog supplies and the resultant lard production kept down the price of lard and naturally determined the price of cottonseed oil.

Foreign oils were no factor in establishing the prices of edible fats in this country, but the effect of the lard pressure was a very determining factor in pressing down on our entire fat situation and affecting the price of all fats.

Seventy-seven percent of all the cotton oil that is consumed edibly goes out as lard compound and shortening (cooking oils). The remainder is sold as salad oil.

It may be of general interest to you at this time to know what the fat consumption is in the United States and how it divides up between the varied interests: Food or edible consumption; soap; drying oils for the paint, varnish, linoleum, leather, rubber, etc. trades; and a lot of miscellaneous manufactured products, which are used inedibly and which contain various oils. In the case of the soap the imported drying oils are not interchangeable.

Distribution of oils among their major uses in the United States in 1932

Oil	Pounds	Percent of total	Percent of grand total
Food column:			
Palm kernel oil [1]	11,310,000	0.20	
Olive oil [1]	74,919,000	1.32	
Palm oil [1]	22,803,000	.40	
Coconut oil [1]	172,404,000	3.04	
Miscellaneous oils [1]	27,835,000	.49	
Tallow	46,282,000	.82	
Oleo oil and stearin	36,953,000	.65	
Corn and peanut oil	37,645,000	.66	
Cottonseed oil	1,135,203,000	20.05	
Lard	1,889,000,000	33.36	
Butter	2,209,000,000	39.01	
Total	5,663,354,000	100.00	73.6
Soap column:			
United States or domestic production (58 percent of total):			
Tallow, etc	551,816,000	35.65	
Grease	143,724,000	9.28	
Fish oils	49,091,000	3.17	
Foots (vegetable oil)	138,200,000	9.10	
Vegetable oils	12,468,000	.80	
Imported oils (42 percent of total):			
Coconut oil	376,056,000	24.35	
Palm oil	176,419,000	11.42	
Sulphurated olive oil	32,789,000	2.11	
Marine animal oils	49,000,000	3.16	
Miscellaneous vegetable oils	15,000,000	.96	
Total	1,548,200,000	100.00	20.1
Drying oils column:			
Chinawood oil	67,170,000	20.84	
Perilla oil	5,020,000	1.56	
Miscellaneous oils	3,529,000	1.10	
Fish oils	19,616,000	6.09	
Linseed oil	215,269,000	66.81	
Soybean oil	11,593,000	3.60	
Total	322,197,000	100.00	4.2
Miscellaneous manufactured products column:			
Coconut and palm kernel oils	1,010,000	.65	
Inedible olive oil and foots	5,066,000	3.17	
Rapeseed oil	6,318,000	3.95	
Castor oil	10,721,000	6.71	
Palm oil	9,324,000	5.83	
Miscellaneous oils	8,993,000	5.63	
Linseed oil	3,492,000	2.18	
Fish oils	12,723,000	7.96	
Soybean oils	1,875,000	1.17	
Corn oils	2,152,000	1.35	
Tallow, etc	39,295,000	24.59	
Grease	58,819,000	36.81	
Total	159,818,000	100.00	2.1
Grand total	7,693,569,000		

[1] Imported.

In round figures, the total annual consumption of oils and fats in the United States is approximately 8 billion pounds. Seventy-three and six tenths percent of this total consumption, or 5,663,000,000 pounds, is in edible channels. Twenty and one tenth percent of the consumption is in 15 different types of soap: 4.2 percent is in the manufacture of paint, varnish, linoleum, oilcloth, printing ink, foundry oils, and similar products made from drying oils; and 2.1 percent is in the manufacture of miscellaneous manufactured products, such as tin plate, imitation leather, lubricating oil and grease, rubber substitute, rubber, tanning oils, screw cutting oils, and other miscellaneous industrial products.

If you will examine the chart before you, which I ask be printed in the record you will see that only 5.5 percent of the oils and fats consumed in edible channels in the United States during the year 1932, the last year for which complete data are available, came from foreign countries. About 3 percent of this edible fat consumption came from the Philippines in the shape of coconut oil. Another 1.32 percent came in in the shape of olive oil which already bears a duty of 6½ cents per pound. It can be seen, therefore, that of the above mentioned 5.5 percent of all the fats which are consumed in the United States for edible purposes, the total of these two, which is 4.36 percent, represents that portion of our edible oil consumption which either comes from the Philippines or olive oil which is already so heavily taxed that it seems useless to tax it at any higher rate.

This leaves only 1.14 percent of the oils and fats which are consumed edibly in the United States on which the placing of an excise tax might conceivably help the farmers in this country. A part of this 1.14 percent, namely, palm kernel oil, which goes into the confectionery and baking business and representing about two tenths of 1 percent of the total edible oil consumption, already bears a tax of 1 cent per pound. The remaining approximately 1 percent of the edible oil and fat consumption in the United States which comes from abroad is so small that it is doubtful if the proposal you have here would be of the slightest value to the edible oil and fat producers in the United States.

The chart following will show the channels through which the various fats and oils flow.

Another chart following will show the distribution of coconut oil usage.

Another chart shows the chemical make up of the various vegetable oils and animal fats from which you can readily see that so far as the soap kettle is concerned they are not interchangeable, that certain of these oils have properties that others have not and that coconut oil and palm kernel oil are outstanding in this respect.

Comparative compositions of typical fats and oils

Glycerides of—	Edible group					Soap group	
	Lard	Cotton-seed oil	Corn oil	Peanut oil	Sesame	Coconut oil	Palm kernel oil
1. Saturated fatty acids:							
Caproic						2.0	None
Caprylic						9.0	3.0
Capric						10.0	6.0
Lauric						45.0	50.0
Myristic		0.4				20.0	16.0
Palmitic	24.6	20.0	7.3	7.3	7.3	7.0	6.5
Stearic	15.0	2.0	3.3	5.5	4.4	5.0	1.0
Arachidic		.6	.4	3.6	4.0		
Lignoceric			.2	2.9	.4		
2. Unsaturated fatty acids:							
Oleic	50.4	35.0	43.4	56.7	46.0	2.0	16.5
Linolic	10.0	42.0	39.1	23.1	35.2		1.0

Comparative compositions of typical fats and oils—Continued

Glycerides of—	Soap group				Drying group		
	Tallow	Palm oil	Whale oil	Inedible olive oil	Linseed oil	Wood oil	Soybean
1. Saturated fatty acids:							
Myristic	2.0	0.6	8.0	Trace			
Palmitic	29.0	44.0	12.0	9.2	2.7	3.7	6.5
Stearic	24.5	2.9		2.0	5.4	1.2	4.2
Arachidic				.2			0.7
Lignoceric		.1					.1
2. Unsaturated fatty acids:							
Oleic	44.5	43.2	25.0	83.1	5.0	13.6	32.0
Palmitoleic			17.0				
Linolic		9.5	20.0	3.9	48.5		49.3
Linolenic					34.1		2.2
Elaeostearic						72.8	
(Clupandonic)			18.0				

References: Chemical technology and analysis of oils, fats, and waxes, Lewkowitsch; edible oils and fats, G. D. Elsdon: Jour. Amer. Chem. Soc. no. 42-1707, G. S. Jamieson; pamphlets published by United States Bureau of Chemistry, Washington, D.C.

One of the greatest factors which our opponents seem to overlook is the fact that we exported from the United States during 1933, 826,925,503 pounds of oils and fats.

This represented very largely the exports of lard, which for the calendar year of 1933 was a fraction less than 600,000,000 pounds.

We attach hereto two charts, both showing the price differential between the price at which our export shipments of fats were sold and the price which this country paid for their importations of oils which went into the soap kettle very largely.

You will see from these charts that this country is receiving (and thereby the farmers and producers are benefiting) a higher price for these fats than if they were consumed in the home market and all importations shut off. The very effect of closing down on the importations of foreign oils is going to destroy the market in Europe for the edible fats which have been shipped from the United States.

Furthermore, the countries that are selling us fats and oils are also buying some of our agricultural products as well as our manufactured products. Palm Oil for instance, comes from the Belgian Congo and the Dutch East Indies. The old saying is that the Congo was civilized on English rum and Kentucky tobacco. They cannot buy our tobacco if we do not buy their oil.

We sometimes overlook the fact that the Philippines are taking quite a large quantity of our agricultural products and that the only thing they have to give back to us is products of their agriculture.

The official figures of the Bureau of the Census show that the oils and fats which are imported into the United States and employed for edible usage, constitute only about 5½ percent of the total 6 billion pounds of oils and fats which is employed edibly in the United States annually.

The oils and fats which are employed for edible usage consist mostly of coconut oil and olive oil. About 3 percent of the domestic consumption of edible oils and fats is made up of coconut oil, largely of Philippine origin, and about 1.32 percent is made up of olive oil, which pays a duty ranging from 6½ cents to 9½ cents per pound. The remaining 1.14 percent of the edible oil and fat consumption of the United States is not of domestic origin but is made up of small amounts of miscellaneous assortments of oils, of which sesame oil is the principal item.

Outside of the relatively small edible usage of coconut oil, olive oil, and sesame oil, the edible usage of imported oils and fats is almost nil, and it should be borne in mind that this statement is based on the official figures of the United States Bureau of the Census, which each year conducts a census of the distribution of oils and fats by industries, inclusive of the edible oil industry with the exception of lard and butter and in the case of these two edible fats official figures are obtainable from the United States Bureau of Agricultural Economics.

From the foregoing it is apparent that the proposal to place an excise tax upon imported oils and fats effects mainly the industrial users of oils and fats, numbering about forty different kinds of industries.

The industrial users of oils and fats utilize every pound of domestic material which they can procure and they only import foreign oils and fats either because there is a great deficiency in the United States of oils and fats required for certain industrial usages, or because the imported oils and fats fulfill necessary functions in various manufactured products which cannot be filled by any oil or fat which is produced in the United States.

Because I am speaking for a number of the industrial users of oils and fats, I will summarize the objections which all of them have in common to this proposal.

The effect of the proposal to place an excise tax on imported oils and fats, if enacted into law, would be as follows:

First: It would confer no benefit to the farmers of the United States because our domestic farmers produce practically no industrial oils and fats, with the exception of linseed oil which already bears the highest tariff in history and the producers of linseed oil fear that if the tariff is increased the law of diminishing return will apply.

Second: It would penalize every farmer along with every other consumer in the United States without conferring compensatory benefit upon any single group of farmers.

Third: It would allow the United States to be immediately inundated with a flood of foreign merchandise, such as soap, paint, varnish, linoleum, stearic acid, etc., made by foreign manufacturers able to buy their raw materials duty free, unless extremely high compensatory duties or excise taxes could be written into the bill covering the products of the forty different industries using industrial oils and fats, and it is extremely doubtful if this could be done without a general tariff revision.

Fourth: It would, regardless of whether or not compensatory duties or excise taxes could be established, immediately destroy all the export business in industrial products made from oils and fats in the United States, because it would be impossible for domestic manufacturers to compete with products made in foreign countries from oils and fats not artificially inflated in price, because the manufacturers in these countries would have free access to these materials.

Fifth: If it were possible to write compensatory duties or compensatory excise taxes, it would, by artifically inflating the prices of industrial products made from oils and fats in the United States, immediately lend greater incentive to the use in the United States of substitute products, which substitute products are not made from oils and fats, thus heavily reducing the output of domestic manufacturers.

Sixth: It would destroy that portion of the oil seed crushing industry in the United States which serves the industrial users of oils and fats, viz, flaxseed, castor bean, copra, palm-kernel crushing industries, because the tax is based on the oil content and not the oil yield of seeds, hence the duty on oils could not possibly compensate for the duty on the seeds, because the oilseed crusher cannot extract all of the oil from the oilseed by the crushing methods employed and he will be obliged to pay a duty on a considerable amount of the oil which he could not recover from the seeds.

Seventh: It would place a single group of commodities, viz, those made from oils and fats, upon an inflated price basis without inflating the dollar of the consumer who must purchase the manufactured products, such as soap, paint, varnish, linoleum, etc., made therefrom, which situation would tend to greatly reduce domestic consumption, first, because the consumer would not have the money to pay the increased price for the products produced from oils and fats; secondly, because the consumer would not be able to comprehend why industrial products made from oils and fats were relatively far out of line with everything else in price, thus encouraging the natural tendency of the consumer to turn to the use of substitutes, the price of which would not be inflated because this amendment would inflate the price of only those commodities made from oils and fats.

A general tariff revision bringing with it a general inflation of domestic prices unfailingly reaches substitutes, hence artificial inflating arising under these circumstances is compensated for, but to artifically inflate the prices of a single group of commodities, viz, those made from oils and fats by the levying of an excise tax, would be to force the industries affected out of plumb and in a position where they could not compete with their natural competitors, who already can produce their products at a lower price in consideration of the fact that many of these substitute products contain no oils or fats.

It unquestionably would have a great effect upon the ability of the industries engaged in the manufacture of products made from oils and fats to successfully

keep their labor employed, and this would tend to add to the unemployment situation now confronting the Nation.

The market value of the fats and oils that went into the soap kettle during the year 1932 was approximately $50,000,000, and while we have not the 1933 figures, they would approximately be the same.

Coconut oil represented approximately 12½ million dollars or one fourth the total value of all the fats that went into the soap kettle.

This tax, based on the current market value of coconut oil is a 200 percent tax and would increase by 50 percent the cost of all fats and oils going into the soap kettle.

Then, if we grant the argument of our opponents that this will raise the price of the United States products we believe we are conservative in saying that it will increase the cost of soap to the consumer 50 percent of the price he is paying today.

The soap industry produces none of its raw materials. It must purchase in the open market. Therefore, the price they pay is reflected in the price of their products.

Respectfully yours,

THE AMERICAN LAUNDRY SOAP MANUFACTURERS' ASSOCIATION,
By F. M. BARNES, *Vice President of the Procter & Gamble Co.*

STATEMENT OF F. H. MERRILL, LOS ANGELES, CALIF., REPRESENTING THE PACIFIC COAST SOAP MANUFACTURERS

Senator HASTINGS. Give him all the time he wants—he is from California.

Senator McADOO. Thank you, Delaware, for the compliment to my State.

Mr. MERRILL. I will just talk about the Pacific coast soap manufacturers, very largely small operators who will be hurt or even put out of business by the 5 cents per pound excise tax on coconut oil. The type of soap which they make, and which is most largely used on the Pacific coast, requires 40 pounds of coconut oil to make 100 pounds of soap. That soap costs 4 cents a pound at the present time.

Senator GORE. State that again.

Mr. MERRILL. Forty pounds of coconut oil to make 100 pounds of soap.

Senator GORE. Thanks.

Mr. MERRILL. That soap at the present time costs 4 cents a pound to produce. With a 5-cent excise tax, that will cost 6 cents a pound to produce, which is equivalent to an increase of 50 percent in the cost of the soap, and they do not think that they will be able to compete with soaps coming in from British Columbia, which may come in with a duty of only 15 percent.

Senator CONNALLY. Just there, let me ask you, are you going to double the wages of all your men, too?

Mr. MERRILL. We are paying them good wages.

Senator CONNALLY. I know, but you said if you had to put a 50 percent increase on coconut oil soap then your soap would cost 50 percent more, so that would involve adding 50 percent to your salaries?

Senator McADOO. No; just on the contents, on account of the increased oil.

Mr. MERRILL. Using the cost of the coconut oil that goes in there, that is all. Now, it has been suggested that to overcome that difficulty we substitute cottonseed oil for the coconut oil. That idea is wholly fanciful. Cottonseed oil is no substitute for coconut oil. Coconut oil contains, as an important ingredient, lauric acid. No lauric acid is contained in cottonseed oil. It is not contained in any fat or oil

which is produced in commercial quantitites anywhere in the Temperate Zone. Lauric acid is contained only in those nut oils which grow in the Tropics.

Now, this question of interchangeability has been very much misunderstood because of the things which are done in hydrogenation. That is a process in which hydrogen is added to a liquid vegetable oil. Cottonseed oil, for instance, may be raised, by hydrogenation, from a liquid, to the consistency of lard, and that is done in a very large way. By further carrying on the operation, it may be brought to the consistency of tallow or, by carrying that operation still further, it may be brought to the consistency of stearin. Hydrogenation is purely a hardening process. There is no way to reverse the process.

I would like to call your attention also to another difference in the vegetable oils. In fact, all of the oils and fats which are produced in the Temperate Zone have molecules; that is, the least, the smallest particle of which consists of a certain size. The size of the molecule of the fats and oils produced in the Temperate Zone is substantially the same. The size of the molecule of tallow, let us say, and of lard, and of cottonseed oil, is the same. The difference lies only in the amount of hydrogen combined in the molecule. With coconut oil, we have an entirely different size of molecule. The molecule of coconut oil is about one third less in size.

Now, the size of that molecule has a great deal to do with the chemical properties of the fat, and particularly of the soap made from it. The particular advantages of coconut oil in soap are, first, that it lathers freely in hard water. It does not make a scum in hard water, which is the case of soap made of tallow, cottonseed oil, or lard. It also lathers freely in cold water. It also has the advantage that it is quite efficient in cold water.

Now, every fat makes a different soap, and each of those soaps reaches its maximum efficiency at a certain temperature.

Senator BARKLEY. You are speaking now of laundry soap?

Mr. MERRILL. I am speaking of soap generally. Tallow soap, for instance, reaches its maximum efficiency, as a detergent, at about 180° F. The other fats and oils, produced in the Temperature Zone, reach their maximum efficiency at somewhat lower temperatures, but none of them reach the low temperature which coconut oil requires for its maximum efficiency, which is about blood heat. There is a tremendous advantage in that fact, for the simple reason that the clothing which is worn today, particularly by the women is composed very largely of silks and rayons and they may not be washed at high temperatures. The best results in washing silks and rayons is obtained by washing at a temperature of 100° F. As you go above that the luster is destroyed, and particularly the fiber is hurt. A silk stocking, for instance, which is washed at a temperature of 130 will soon snag, as they say, a little fiber comes off at the side, and it "runs." A stocking which is washed at 100° F. will last three times as long as a stocking which is washed at 125 or 130 degrees.

Senator BARKLEY. What is the matter with some that start running before they are ever washed?

Senator HASTINGS. He is not responsible for that—not in California.

Mr. MERRILL. I am afraid I won't be able to go into that.

Senator COUZENS. They do not do that, in California.

Senator McAdoo. That happens in Kentucky, and I am afraid there is some masculine quality involved.

Mr. Merrill. Well, that is out of my field, if you will excuse me.

Now, there is another valuable property of coconut oil in silk.

Senator Costigan. Mr. Merrill, before you proceed, what other oils, grown in the tropics, contain lauric acid?

Mr. Merrill. Well, there is the palm kernel. Those are the only two that have any importance.

Senator Connally. What was the other?

Mr. Merrill. Palm kernel. There are some other nuts, the coceeta nut, and then there is another little nut that grows in Brazil, but it has no commercial standing.

Another valuable property of coconut oil soap is its power to emulsify petroleum products. Contrasted with 25 years ago our automobiles are dripping lubricating oil on the street and the exhausts are blowing out soot, and so forth, and those products combine with our dust, and are caught in the clothing. Now, coconut oil soap, particularly, has the property of removing that sort of soil from clothing. If clothes which are soiled in that way are washed with tallow or lard or pure cottonseed-oil soap, they simply do not come out white and clean. They are gray and streaked.

Senator Barkley. Would it divert you to name just a few of the well-known brands of soap that have this quality, and not for advertisement purposes?

Mr. Merrill. I do not mind telling you our brand. I am not here to advertise anybody else's.

Senator Barkley. Oh, I understand, but the average man associates some brand of soap with this problem, because he has used it and known about it.

Mr. Merrill. I wonder if that is really so. My opinion is that the men do not know much about soap. The women are the ones who know about the soap. Our brand is "White King", and it is known all over the Pacific coast.

Senator Barkley. I have never used it.

Mr. Merrill. Because It does not come into your territory. Sorry, we cannot serve you. You would be well pleased.

Senator Barkley. My question was not facetious.

Mr. Merrill. No, but I am not prepared to speak for these other brands. Probably Mr. Barnes can tell you what the brand is that he makes.

Senator Barkley. Well, I know that they make Ivory soap.

Mr. Merrill. Well, Ivory soap is not in this particular category. Ivory soap, when it came on the market, was the thing. That was the first soap that came on the market that contained any appreciable amount of coconut oil, and for that reason it swept the market. It was a howling success. It made a very big business for the Procter & Gamble Co., but they have since had to come to soaps containing a still higher percentage of the coconut oil, and I think Mr. Barnes will tell you that the soaps in which the charge is half coconut oil, far outsell Ivory soap. The higher the percentage of coconut oil, the better the women like it, except that you may not go beyond 55 percent. There are certain limits.

Senator Walcott. Do you know about Lux, for instance? Is that high in coconut oil?

Mr. MERRILL. Well, pardon me; I would rather not comment on our competitors' soaps, any further than I have.

Senator WALCOTT. It contains coconut oil?

Mr. MERRILL. It contains coconut oil; yes, sir.

Senator CONNALLY. What did you say about the charge?

Mr. MERRILL. Fifty percent of the charge. That is, 55 pounds.

A VOICE. Lux contains 35 percent coconut oil.

The CHAIRMAN. You have utilized 11 minutes, Mr. Merrill.

Mr. MERRILL. I am through, is that the idea? There is one more thing, if I may——

Senator MCADOO. The witness has been interrupted so much I would ask that he be permitted to proceed.

The CHAIRMAN. That is all right, but there are some other witnesses here from other States.

Senator MCADOO. There is nothing else so important, Mr. Chairman.

Mr. MERRILL. I would like to call your attention to one important use for the type of soap of which I am talking, and that is the electric washing machine. There is no soap which will produce a good job of washing in an electric washing machine, except it contains a considerable percentage of coconut oil. We have tried it, and all the other soap manufacturers have tried it, and it cannot be done. An electric washing machine starts at a fairly high temperature, and as the washing proceeds the temperature drops, and you must have a soap in which the efficiency rises as the temperature drops—something which can be attained only by the use of coconut oil containing a high percentage of lauric acid, and we must have it. The women must have it.

Now, I will say this thing, too, gentlemen, you are deciding a question here which affects every housewife in the United States. She is not represented here. I am sorry she is not. I wish she could come here and tell you how she feels about this matter, and come here and confirm to you some of the things which I have told you about washings. I might say that we do not make up the composition of our soaps, according to our own ideas. Our formulas are written by the housewives of the districts which we serve. Every manufacturer of every consequence has tried soaps of various compositions and the women have selected the type of soaps which they want and the composition which is in our products is the composition which has been determined by the women in the district in which she lives.

I thank you.

Senator MCADOO. One question, Mr. Merrill. How much increase in the price of your bar soap, now, that is most popularly used in California and in the Western States that you serve—how much increase per bar of your soap will result from a 5-cent a pound tax on coconut oil?

Mr. MERRILL. If I may explain that to you, the bulk of the soap which is used on the Pacific coast is in the form of granulated soap, and is sold in packages, and the increase in the cost of that would be 2 cents a pound.

Senator MCADOO. How many pounds in a package?

Mr. MERRILL. Well, that varies with different manufacturers.

Senator MCADOO. Well, I mean, do you sell it in one pound packages, for instance?

Mr. MERRILL. No, sir; mostly in 2½-pound packages.
Senator CONNALLY. What does it sell for?
Mr. MERRILL. Around 20 cents a package.
Senator CONNALLY. What do you get for it?
Mr. MERRILL. What do we get for them?
Senator CONNALLY. Yes.
Mr. MERRILL. Very close to that. We do, for our brand, but our competitors sell that.
Senator CONNALLY. Eighteen cents?
Mr. MERRILL. Fifteen cents, our competitors sell.
Senator WALCOTT. That would be an increase of around 10 percent on the cost, wouldn't it?
Senator CONNALLY. Two cents?
Mr. MERRILL. There are 2½ pounds in there.
Senator HASTINGS. How much is the increase, on a 20-cent package?
Mr. MERRILL. Five cents.
Senator HASTINGS. From 20 cents to 25 cents?
Mr. MERRILL. Two cents a pound, 2½ pounds in a package.
Senator BARKLEY. Five cents a package?
Mr. MERRILL. Five cents a package.
Senator MCADOO. Well, that is 25 percent.
Mr. MERRILL. Twenty-five percent to the housewife, yes.
Senator MCADOO. Twenty-five percent increase to the housewife?
Mr. MERRILL. Yes.
The CHAIRMAN. Thank you, very much, Mr. Merrill.

STATEMENT OF R. H. THURMAN, REPRESENTING THE EDIBLE MANUFACTURERS AND FACTORY CONSUMERS OF COCONUT OIL, NEW YORK

Mr. THURMAN. I fear that I have quite a burden today, the most important thing about coconut oil, you have heard here, so I think my friends who presented their side think, but really I think the most important side of the coconut oil question is the edible side. You have heard the inedible side of it now, and we really haven't anything to kick about, because our coconut oil, the coconut oil used for edible purposes, has, up until this last year, always sold for considerably more money.

Now, as an example of that, we split coconut oil into two particles. We take a pound of coconut oil or 3 pounds of coconut oil, and we get from it 1 pound of coconut oil stearin. That stearin is the portion that goes in between the Nabisco cracker, which is what gives the pleasing effect to the Nabisco cracker. Now, that particular item of coconut oil is the consistent part; ever since I have known it, and I have known it and made it for over 50 years, almost exclusively, myself, for concerns like the National Biscuit Co. and Loose-Wiles; it has always sold for more money than cotton oil, or cotton-oil shortening, or lard, or any animal fat or any other vegetable oil produced in this country. The soft oil from coconut oil, after we take out the hard portion which we call the stearin, is being used mainly as the shortening, in a very narrow sense, as these charts will show you, only about or less than 7 percent is used in shortenings, about 1½ percent of the total shortenings used in the United States is coconut oil or coconut-oil products.

Now, one of the main uses of that soft oil is that it goes for frying peanuts. I do not know if there are any statistical records of how many salted peanuts are produced every month, but we sell a great many of the salters, and they tell us, and their association, that there is undoubtedly, from a safe estimate, at least 450 carloads of salted peanuts marketed every month.

Now, I know most of us around here remember back some 15 years ago, when you bought a package of salted peanuts, and they were all rancid. You will remember, if anyone eats peanuts, or has eaten them in the last 10 years, that they are usually very palatable and are not rancid. The reason for a fat or any cooked substance or article going rancid is on account of its fat content. You take hardtack, it has no fat in it at all, and it is the longest-keeping cooked article that man can prepare for himself. The next longest-keeping article is that which is made with coconut oil.

Now, I have here, and I am not going to take up your time with it, but it is the most important thing, owing to the fact that I am representing those consuming manufacturers, in one factory alone, in New York, a concern that is a large user of coconut oil, proportionately to coconut oil used, buys 48 million pounds of lard a year, but he only buys about 6 million pounds of coconut oil. That goes into these particular kinds of crackers that are, in a way, the lunchery kind of crackers. They are making enormous quantities of the soda crackers, where they use nothing but pure lard, but their Oreole biscuits, which are chocolate flavored, and a sweetened vanila flavor, are cooked entirely with coconut oil. They have to be.

Now, the salter of nuts is up against the same thing, only he is up against a worst condition, because the coconut oil that surrounds the nut is exposed to a very enormous surface air, and the oxidation of the air, so that if he fries in peanut oil or cotton oil, or any oil that the gentlemen from California just attempted to tell you a while ago, the difference, our native oils, because they are more or less like the frying oils, and become rancid, upon absorbing air. Peanuts will spoil. Our general manager, sitting over there, he was telling me a very interesting thing this morning. I had known it, in my own experience, all these years, in the preparation of foods for the baker and the frier, that a large frier of peanuts got scared or frightened about this 5-cent tax and he started, without asking anybody, frying them in cottonseed oil. Well, he sold one jobber that he had been selling to, 2 or 3 carloads of peanuts, in small packages, a month, so that they all went bad, and the jobber asked him to take them back. He says, "Now, don't quit me, I am going to go back to the use of coconut oil," so this jobber was a little afraid that he was being kidded by this man, that he could not rely on him, or he was afraid he couldn't, so he asked our company, our manager, to testify to the fact that this salter of nuts had returned to the use of coconut oil. Now, I cannot help but tell you that it is a short-sighted policy, if we are looking forward to revenue, certainly, with a very small quantity of the coconut oil that goes into edible products. It is not of very much importance to the country today, to tax it 5 cents a pound.

Senator WALCOTT. About how much, do you know?

Senator MCADOO. What percentage?

Mr. THURMAN. About 30 percent. In other words, the soap is the big user, about 70 percent of that goes for soap, and about 1½

for shortenings, and about 7 percent goes into the confectionery and cracker game, see, so we use a very small percentage, about, I would say, 20 percent of it, and 70 percent for soap and the other 10 percent goes into the channels that I have just mentioned.

Senator WALCOTT. But it is converted into edible oil, after it reaches here, isn't it?

Mr. THURMAN. Yes, coconut oil is imported crude, or crushed from the coconut, in this country.

Senator McADOO. Is that true of all of it?

Senator WALCOTT. All of it?

Mr. THRUMAN. You see, coconut oil already has 2 cents a pound.

Senator WALCOTT. All of it comes in as crude oil?

Senator McADOO. It has 2 cents a pound?

Mr. THURMAN. Yes.

Senator CONALLY. Not from the Philippines?

Mr. THURMAN. No. I understand that is a United States possession.

Senator WALCOTT. Now, give me again, please, what that figure is. You say that it is broken down from the crude oil into edible oil, coconut oil?

Mr. THURMAN. Yes.

Senator WALCOTT. What percentage is broken down in that way? In other words, what percentage of the crude oil?

Mr. THURMAN. The byproduct is around 5 to 6 percent almost. You will have to lose around 7 or 8 percent, that will go to the soap.

Senator WALCOTT. So about 7 percent of the crude oil that comes to this country is broken down to edible oil; is that correct?

Mr. THURMAN. Yes. I did not get that. No, that is wrong. You said only 7 percent?

Senator WALCOTT. No, I am asking you what percentage of the crude oil that comes to this country is used to break down into edible oil?

Senator McADOO. Ten percent, he said.

Mr. THURMAN. No; 30 percent, Mr. McAdoo.

Senator WALCOTT. That is what I thought.

Senator McADOO. Yes; but I mean 10 percent of the——

Mr. THURMAN. Yes.

Senator McADOO. Twenty percent of the crude?

Mr. THURMAN. Yes.

Senator McADOO. About 10 percent?

The CHAIRMAN. Well, thank you, very much.

Mr. THURMAN. That is an awfully short time, Mr. Chairman.

The CHAIRMAN. The opposition now has 12 minutes.

Mr. THURMAN. Would you let me just introduce this, Mr. Chairman?

The CHAIRMAN. Yes, indeed.

Mr. THURMAN. I really am sorry for the fact that the time is so short, because I have the responsibility of these people who are dependent entirely upon coconut oil, and there are a number of letters here to go in this thing, that are sent in by small and large manufacturers, saying that they cannot do without it, and they want you to know that they have always paid a sufficient price for their oils, the coconut oil they use, compared to other people, but if you split the coconut oil, if you take 3 pounds of coconut oil, and are going to get

one use of it for this purpose, that means it is going to cost them 15 cents a pound, and they cannot compete with this foreign cocoa butter. That is what they are up against. They cannot do it.

BRIEF, LETTERS, AND OTHER DATA SUBMITTED BY MR. THURMAN

THE INTERRELATION OF FATS AND OILS PRODUCED AND CONSUMED IN THE UNITED STATES

For reference is attached a schedule, called table 1, which is the Department of Commerce, Bureau of the Census, Factory Consumption of Animal and Vegetable Fats and Oils by Products for 1931. This compilation shows the amount of animal and vegetable fats and oils that went into consumption in the factory, and are classified by products and uses. For convenience, below are the totals of these various fats and oils:

Factory consumption of primary animal and vegetable fats and oils, by classes of products, calendar year 1931

	Pounds
Compounds and vegetable shortenings	1, 208, 142, 000
Oleomargarine	190, 467, 000
Other edible products	190, 835, 000
Soap	1, 390, 231, 000
Paint and varnish	328, 390, 000
Linoleum and oilcloth	73, 473, 000
Printing inks	13, 284, 000
Miscellaneous products	204, 358, 000
Loss in refining, including foots	172, 289, 000
Total	3, 771, 469, 000
Total United States cottonseed-oil production, 1931	1, 416, 799, 761
Total United States hog-lard production, 1933	1, 679, 272, 000
Total United States hog-lard production, 1928	1, 580, 000, 000
Total United States dairy-butter production, 1929:	
Farm	580, 000, 000
Factory	1, 513, 580, 000
	2, 093, 580, 000

It must be remembered that the above total of three billion seven hundred-odd million pounds of fat and oils for 1931 does not represent the total production and consumption. For example, on table 1, the total cottonseed oil shown going into consumption was 1,140,000,000 pounds, while the production is somewhere around 1½ billion pounds.

A greater contrast is in the case of lard. There was only twenty-two million two-hundred thousand-odd pounds of lard in factory consumption, while we know that there was produced in 1933, 1,678,000,000 pounds.

Referring again to table 1, the largest factory consumption of any one item was that of cottonseed oil, being 1,140,000,000 pounds in 1931.

The next largest in importance was that of tallow, edible and inedible, amounting to 638,000,000 pounds.

The next in importance was coconut oil, being five hundred ninety-two million six hundred thousand-odd pounds, the total made and imported in the United States.

FOR SHORTENINGS AND COMPOUNDS, VEGETABLE AND ANIMAL

Of the total cotton oil consumed in the factory, that which went into compounds and vegetable shortenings amounted to nine hundred and twenty-eight million-odd pounds. The next largest item that went into shortenings and compounds is edible tallow, amounting to sixty-nine million five hundred-odd thousand pounds. The next items taken together as one are edible animal stearine and oleo oil, totaling thirty-seven million-odd pounds. The two next largest items were palm oil and coconut oil, both being about thirty-four million-odd pounds.

With the greater preponderance of cottonseed oil and animal fats to the other fats mentioned, being 15 to 20 times greater in the case of cottonseed than the others mentioned, it is assumed that cottonseed oil and animal fats are the favored

oil and fats for compound lard substitutes and vegetable shortenings for general use.

The enormous quantity of cottonseed oil that is used as salad oils in undoubtedly not shown on this factory consumption report (table 1) and therefore out of the difference between nine hundred and twenty eight million-odd pounds of cottonseed oil used for compounds and vegetable shortenings and the total of 1½ billion pounds of cottonseed oil produced, it is safe to assume that very large quantity of this went into cooking and salad oils.

FOR SOAP

The total oils and fats, vegetable and animal, used for compounds (lard substitutes) and vegetable shortenings amounted to one billion two hundred and eight million-odd pounds, yet this enormous quantity is not equal to that which as used in the soap industry, this total being one billion three hundred and ninety million pounds.

It is convincing to note (table 1) that animal fats are used to the greatest extent for soap. For instance:

	Pounds
Inedible tallow	523, 714, 000
Grease (undoubtedly house, garbage)	129, 403, 000
Total	653, 117, 000

The next in importance for soap is coconut oil amounting to three-hundred-and-forty-million-odd-pounds. The one of third importance is palm oil, amounting to one-hundred-and-seventy-two-million-odd-pounds.

SOAP TECHNIC

It is reasonable to believe that the ratio of tallow used for soap-making purposes to that of coconut oil would remain fairly constant unless disturbed by a shortage or a tax regulating the importation or the production of one or the other. The reason for this is based on authentic facts proved by practical use and experience. Tallow is rather of a high melting point compared to other animal and vegetable oils which are liquid at ordinary temperature, making tallow of great importance to the manufacturer and the user of soap because it gives stiffness and solidity to the bar or cake of soap. There is, however, a serious drawback to a pure tallow soap because of its poor solubility in cold water due to its high melting point and the nature of the glycerides contained in it, which restricts it to a rather narrow use. Because it dissolves slowly and lathers poorly its detergent or lathering properties are interfered with.

HOW A SOAP CLEANS

The cleansing properties of a soap are directly proportional to the ionization property of the combination between the fatty acids contained in the original fat and the caustic soda which is combined with the fatty acids to make the soap.

What is meant by ionization is very simple. When a soap containing a fatty acid and caustic soda is placed in water, upon dissolving, will ionize into fatty acids and free caustic. This ionizing or forming of free caustic gives to the soapy water the power to first neutralize dirt. Foster D. Snell, in some of his recent classic writings on the detergent or cleansing properties of various agents, brought out that the cleanser must be capable of ionizing and neutralizing the dirt particles. The dirt particle is usually acid, and soap that will not ionize properly would fail to neutralize the acidity of the dirt particles. When the dirt particle is neutralized, it then itself becomes similar to a soap and the surface tension of this dirt is so reduced that it will become easily emulsified in the soap solution and the froth or the lather of the soap. The froth and the lather suspend the dirt particles removing them from the surface to which they were attached.

Then for proper cleansing there are two things necessary, the neutralizing of the dirt and the frothing or foaming of the soap so that the dirt can be engulfed or entangled in the froth, and the froth be stable enough to float the dirt away from the surface.

SOAP USES

Tallow probably resists ionizing most and lathers and foams the least of any soap fat. The wonderful success of the automatic washing machine may be directly attributed to the inclusion or use of coconut oil in the soap or mixed with the tallow soap because it increases solubility and foaming and lathering.

Most every one is familiar with such articles as Rinso, Supersuds, Selox, and Oxydol. These soaps are dumped into the reservoir of the washing machine and they dissolve quickly, even in cold water. Because they dissolve quickly, they penetrate the dirt quickly, and immediately neutralize it; and because they foam, they float the dirt away from the surface. Coconut oil is responsible for the success of these particular soaps doing their work without the old-fashioned hand rubbing or scrubbing that was necessary before coconut oil was used in soap.

SOAP MANUFACTURING

The manufacture of soap is confined generally to very large establishments which are equipped with expensive equipment for boiling and treating fats and converting them into soap. The reasons for this are that the large soap maker is dependent upon tallow, house grease, and at times such fats as whale oil, which require very strong treatment in order to convert them into soap; and the large soap maker is in position to use house grease which is saponified and the fatty acids distilled from this are easily converted into a rather white soap.

The small soap maker, however, is not so generously or efficiently equipped and and many of them are dependent upon the reaction which takes place in the cold between caustic soda and coconut oil to make what is commonly known as a cold-process soap.

HARD-WATER, MARINE, COLD-PROCESS SOAP

Cold-process soap is very necessary to sections of the country where the water is hard or alkaline, which makes it very difficult to cleanse using soaps consisting mainly of tallow or oils other than coconut. An extreme case of this nature is on ocean ships where only salt water is used for washing and bathing, and it is impossible to use any other soap except a pure coconut-oil soap. Coconut oils are the only class of fats or oils which can be made into soap without heating or boiling.

Coconut oil therefore has a very unique place in the soap industry in that it cannot be substituted for making cold-process soap; and if it were substituted in certain places where the consumer was unable to get a soap made of sufficient coconut oil, it would increase the cost of laundering because considerably more soap not containing coconut oil would be used and wasted.

Coconut oil cannot be substituted for any other oil in the manufacture of cold process kosher soaps. The Jewish religion requires soap free from animal fats and a white soap. No animal or vegetable fat can be substituted for coconut oil in this soap. The soap must be white so that letters "KOSHER" in dyed colors, which are placed in each cake of soap, will show in contrast to the main body of the white cake. Soap with blue letterings are used for certain dishes, for instance, meat. Other letterings are in paler colors, like pink or yellow, and this soap is used for other dishes, for instance, milk. One piece of soap cannot be used for washing both sets of dishes. Therefore, if it is attempted to use palm kernel or cottonseed oil for this purpose, they will discolor or yellow on aging, making it difficult to distinguish between the soap to be used for different dishes.

WHY COCONUT OIL IS AN INDISPENSABLE SOAP INGREDIENT

Why has coconut oil such a unique place in the soap industry? By referring to table 2, attached, the question is answered. This tabulation shows the component fatty acids of the various fats and oils used for soap making and other purposes in the United States. One notes that coconut oil is composed of mainly two glycerides or fatty acids, namely, laurin and myristin; and that tallow and the other fats that are usually made into soap (with the exception of palm-kernel oil) do not contain these fatty acids at all, while others may have have traces of them.

Because the glycerides of these two fatty acids are present in a very high percentage, the characteristic difference and favorable qualities of coconut oil are due entirely to the character of these two fatty acids. They have the property of being solid at ordinary room temperatures, but melting very low compared to tallow. Soaps made from oil containing these two fatty acids or glycerides are very brittle and hard, and for this reason there is comparatively little pure coconut-oil or palm-kernel-oil soap sold or used. It is usually compounded with soaps of other fats and oils except in the case of marine soaps and for sections where there is hard water.

Coconut oil requires a larger proportion of caustic soda to be combined with it to make a soap than tallow or cotton oil thereby furnishing more caustic soda for the purpose of neutralizing dirt than a soap made from the other two fats

mentioned; and this may account for a great many people claiming that coconut oil is too harsh for the skin.

There are glycerides of other fatty acids in coconut oil, it will be noted, which are not contained in tallow and cottonseed oil or palm oil and these fatty acids—caproic, caprillic, and capric—are known to be soluble, volatile acids because they are soluble in water which is not true of the fatty acids that compose fats like tallow and cottonseed oil; these are not soluble in water. This accounts for the solubility of coconut oil in two volumes of absolute alcohol at 32° F., and one volume of coconut oil will dissolve in two volumes of 90 percent alcohol at 60° F. All other oils, except palm kernel, are insoluble in alcohol. This proves why coconut oil soap is so readily soluble in cold water and why soaps made from the other fats are not.

These facts prove unquestionably that coconut oil is a necessary, economical item for the toilet and laundry of the average citizen, and if the proposed 5 percent per pound tax on coconut oil goes into effect, whether the oil is imported or crushed here, it is estimated that the cost of soap will increase 100 percent. And the wasting of soap will increase greatly, especially in hard-water sections. Also, the work of the housewife in her laundering will be greatly increased because soap that does not contain coconut oil will require considerably more scrubbing instead of just soaking and rinsing as is done today where soaps are used made partly or all of coconut.

COCONUT OIL IN MARGARINE

Referring again to table 1, there is a column headed "oleomargarine." Out of a total of 190,000,000 pounds of all oils consumed, the amount of coconut oil used was one-hundred and thirty-three-and-odd-million pounds. There is a very good reason for this, being mainly, that coconut oil has the property, as mentioned, of being solid at ordinary temperatures, yet having a reasonably low melting point and a very sharp one which will release to th tasting cells of the mouth the milk flavor contained in the fat which makes it an oleomargarine.

Because cotton and similar vegetable and animal oils have the property of melting over a long range of several degrees when hardened, they do not release the flavors as quickly when taken into the mouth as coconut oil. The manufacture of a cotton-oil margarine or one from some other fat than coconut oil has been tried many times but the product has proved to be not so palatable. There is no question but what the small percentage of the people who consume margarine prefer a coconut oil product. It is a wholesome product, having been determined by experiments on human beings to be slightly more digestible than other fats and oils; and also, it has long keeping qualities—that is, strong resistance to becoming rancid, from oxidation. Biological experiments have shown that rancid fats have a very strong deleterious effect in robbing the body of the nutritious vitamins, like vitamins A and D. Coconut oil, then, would be the logical choice not only from the standpoint of palatability but for safeguarding the proper nutritional vitamins derived from other food products eaten.

It is interesting to note, however, that although 133 million pounds of coconut oil were used in oleomargarine, almost three times that quantity was used for the manufacture of soap and there were only 34 million pounds of coconut oil that went into the manufacture of compounds and vegetable shortenings.

Because the few users of margarine prefer a coconut oil margarine, it is very important to consider the effect on the oleomargarine business if coconut oil was entirely abolished. Could the elimination of 200,000,000 pounds of coconut oil margarine increase the consumption of dairy butter or its price, when there was produced in 1929 better than 2,000,000,000 pounds of dairy butter?

It is not beyond sound reasoning to believe that if the elimination of the 200,000,000 pounds of coconut oil margarine (compared to 2,000,000,000 pounds of dairy butter) would raise the price of dairy butter appreciably, those who cannot now afford to buy dairy butter at even current prices but buy margarine, would still not use dairy butter. The coconut oil margarine industry would be killed and the country as a whole hurt by throwing out of work those who are engaged in this business and force those who can only afford to buy coconut oil margarine to do without one of the necessities of life altogether, or, accept an inferior and unpalatable product.

WHY COCONUT OIL IS USED AS SHORTENING IN BAKING

Referring again to table 1, the other main use for coconut oil, which consumes the least out of the total, is for compounds and vegetable shortenings. A quantity of thirty-four and odd million pounds went into the total of all fats and oils

of 1,200,000,000 pounds. This small percentage of coconut oil is used for a very particular and specific use in the baking industry.

Coconut oil is one of the longest keeping fats known. The life of any baked piece of goods is directly proportional to the lasting qualities of the fat used as a shortening in it. For instance, the longest keeping baked bread is unleavened bread which contains no fat, or the well known hard tack. These two types of bread keep indefinitely because they contain no fat which can go rancid to oxidation or any other means of becoming rancid.

There are certain types of biscuits and crackers in which coconut oil is absolutely essential. There are on the market, certain well-known brands which are commonly known as hard sweets and the trade names of two well-known brands are Oreo and Hydrox. The reason for calling these two crackers hard sweets is because coconut oil has the tendency to produce a hard baked product. Why it produces hard baked products is because it lacks lubricating or shortening value.

A shortening is nothing but a digestible lubricant, in a practical sense. The power of lubrication or shortening value has been determined by measure just as the breaking strength of concrete has been determined. A cracker, for instance, is placed between 2 stops, and a plunger is placed on the center of the cracker between the 2 stops. Water is allowed to drop into a container that is supported by the plunger. When the cracker breaks, the amount of water that has dropped into the container is weighed. Hog lard has been found to be the most perfect shortening in the sense of lubrication, for the granule of starch contained in bread or crackers.

The fats are rated as follows in lubricating or shortening value:

	Percent
Lard	100
Compound containing oleo stearine and liquid cotton-oil	96
Hydrogenated cottonseed	93
Peanut oil	85
Butter	75
Coconut oil	72
Olive oil	80
Rapeseed oil	78
Soybean oil	74
Corn oil	74
Cottonseed oil	73

It is desirable in certain crackers to have this flinty hard condition. The pleasantness of the crunch of a cracker between the teeth is liked by all and if coconut oil is eliminated, it will mean that certain manufacturers and consumers who prefer to make and eat this type of biscuit or cracker will not be able to do so. It would cause considerable loss to the cracker manufacturer who makes this type. By trying to use a substitute for coconut oil, he would have to resort to what is known as high oxygen absorption power oils or fats (measured by the well-known iodine number) which become rancid comparatively quickly and cause the crackers to not keep as long, and the returns of spoiled crackers would be too great.

A short bread is another type of cracker of which a well-known brand is Lorna Doone, whose principal shortening is coconut oil.

Sugar wafers, of which Nabisco is a well-known brand, have only coconut oil as the shortening. Here it is very necessary to have a fat of long keeping properties because of the porosity of the wafer which exposes a large surface of the cracker containing the fat to the air which would bring about very rapid rancidity if any other oil but coconut were used.

In the manufacture of macaroons, coconut oil is the most desirable shortening for the reason that it prevents the macaroons from becoming so hard and brittle that they would be unfit for edible use and even for shipment. The oil with a short range of melting point will soften the macaroon very quickly when exposed to the heat of the house and especially when taken into the mouth. This prevents the macaroon from becoming hard and inedible.

The filling that goes between the Nabisco crackers is almost entirely only coconut oil. Most every one knows the very pleasing, cooling sensation that is experienced in eating sugar wafers like a Nabisco. This is due to the filling between the two wafers of the Nabisco cracker which is composed mainly of coconut oil stearine. As stated above, because coconut oil melts within such a narrow range, it so quickly absorbs the heat from the mouth that it brings about a cooling and pleasing effect.

Coconut oil is usually made into what is called a soft oil, or olein, and a hard oil, or stearine. This is a highly labor consuming operation, requiring the wrapping by hand into cotton cloth bags about 7 pounds of fat at a time. The bags are then put into hydraulic presses and pressed. About one quarter of the amount of fat placed in the bag remains as stearine. This stearine after refinement is used for making fillings and icings for crackers.

Up until about 10 years ago, it was almost impossible for a biscuit and cracker manufacturer to make a coated cracker in the summer time because when cocoa butter was used to make the coating, this fat has such a low melting point that it would not stand shipment or exposure in the retail store during the summer; but by using coconut stearine it is practicable to manufacture sugar coatings for crackers that will stand shipment and exposure on the retail shelf.

There are very few sweet biscuits or crackers made today that are not filled with or have a coating made of coconut oil or its stearine. Here exposure to the air a long time before consumption is a great factor of importance, as well as the high temperatures to which they are exposed, and manufacturers are forced, in making this line of crackers, to use a coconut oil or its stearine.

The placing of a 5-cent per pound tax on straight coconut oil would mean at least 15 to 20 cents a pound on [illegible] manufactured from it because only one quarter pound of coco[illegible]d from 1 pound of coconut oil. Cracker concerns are [illegible]ed tax claiming that there is no fat other than [illegible] this type of goods.

[illegible] FOR DE[illegible]

The liquid [illegible] coconut [illegible] the ole[illegible] [illegible] unique use in the frying of pea[illegible] [illegible]nuts, or [illegible] article [illegible] exposed to the air, and which is [illegible] to remain o[illegible] [illegible] period of [illegible] must be fried with a fat that is [illegible]ing. Coc[illegible] found [illegible] best. All of us who have [illegible] years hav[illegible] marked change from the r[illegible] quality [illegible]s we are able to get tod[illegible] [illegible]ion of co[illegible] or its olein for frying pea[illegible]

Do we r[illegible] importance [illegible] great consumption in our [illegible] produc[illegible] It is safe to say that consid[illegible] peanu[illegible] for [illegible] outlying districts where the s[illegible] [illegible]uts hav[illegible] [illegible] and stored before consumption, and also less cra[illegible] [illegible]e and [illegible] wheat raised [illegible] United States if coconut oil is [illegible]

OTHER [illegible]

There is anoth[illegible] coconut oil on [illegible]ng-keeping qualities, namely, for greasin[illegible] for this purpose by the manufacturers of Hol[illegible] [illegible]ked in pans greased with coconut oil keep infinitely [illegible] oil does not impart rancid or bad flavors to the baked produ[illegible]

For white coatings on crackers, coconut oil is indispensable. Cocoa butter or any other fat would impart a color that would be off shade and not so pleasing in taste.

The creaming properties of coconut oil which allow it to be creamed up with sugar and eggs or gelatin to make an icing, is a distinctive quality for biscuit and cracker making.

One of the most outstanding reasons for using coconut oil in these crackers and their fillings and icings is because it has an absolutely neutral flavor in addition to its long keeping qualities. There are no other oils available, with the possible exception of sesame, that have this extremely neutral flavor. Just why sesame has the unique quality of long-keeping and rancidity-resisting is not known, unless it is because it contains a very high percentage of the glycerides of oleic acid.

Coconut oil does not compete in any way with any other fat or oil produced in the United States. The only fat with which coconut oil competes is cocoa butter, which is a product pressed from the imported cocoa bean. In recent years, however, coconut oil stearine has sold for several cents per pound, as high as 5 or 6 cents per pound, more than cocoa butter because the manufacturer who makes the products mentioned knows that he cannot depend on the use of cocoa butter to have his products in summer arrive in a satisfactory condition to the ultimate consumer. He therefore has paid more money for coconut oil stearine than for cocoa butter. This does not mean, however, that he would be

willing to pay 5 cents per pound additional for the oil or 15 cents more for its stearine than cocoa butter, because his profit would be destroyed. But it does prove that the manufacturer of certain types of commodities has to use coconut oil and that there is no substitute for it. In fact, you may say that if he is forced to use cocoa butter he will use it as a substitute for coconut oil, and we know that there is no cocoa butter produced from an original source in the United States, but it is made from an imported bean, and the amount of labor employed in the crushing of cocoa beans for the sole production of cocoa butter would be small compared to that which is employed in the crushing and manufacturing of coconut oil and its stearine.

SESAME OIL AS A SUBSTITUTE

The introduction in the home and wide distribution of a prepared biscuit flour has been recently accomplished, requiring the housewife to add only water, to form the biscuits and to place in the oven. The problem was to get a fat that had sufficiently long keeping qualities, as well as shortening value, to be incorporated with the dry prepared flour, and for over 20 years, to my personal knowledge, this was not accomplished, although great effort and expense were applied in trying to develop a suitable fat.

The very fact that the flour had to be shipped with the shortening mixed in it meant the ruination of the product, up until the time sesame oil became available in the United States. The enormous exposure of the shortening coated around the particles of flour brought about very rapid rancidity and the prepared flour was spoiled by the time the housewife received it. However, sesame oil has made possible the very wide distribution of prepared flour on the market.

The largest flour concern in the United States, together with my company's research department, spent considerable money and time extending over more than 2 years, developing a shortening that was suitable for prepared flour, and of all the fats that were tested and tried sesame shortening was the only one that stood the test. Coconut oil probably would do the same but it does not have the lubricating or shortening value that oils like cotton seed, and sesame, and lard, have when made into a shortening. Sesame oil is indispensable as a shortening for prepared flour. Having prepared flour available to the housewife will bring about a greater consumption of wheat flour.

Certain uses for sesame oil are really part of a religious belief. The Jewish holidays require that no grain material be included in the food list other than unleavened bread. No oils except sesame and sunflower are to be used; the others are of grain origin and are yellow in color. The Jews' dietary laws require them to eat a very white oil. Sesame is the only oil that can be produced white in color with the exception of coconut and sunflower, but coconut oil is a solid fat at ordinary room temperatures and cannot be used as a table or salad oil. Sesame is a natural salad oil not even requiring winter pressing to remove the solid constituents as is the case of cottonseed oil when it is made into a salad oil.

The small consumption of shortening made from sesame oil in comparison to the enormous volume of shortening made from other oils and pure lard should convince anyone that it cannot handicap the consumption of these other shortenings nor either is it used for salad oil in quantities sufficient to depress the price of the domestic oil.

The consumption of sesame oil, shown on table 1, during 1931, was possibly the highest ever known in the United States, and it is now only used in prepared flour and as a table oil for the Jews and those foreigners who are accustomed to eating extremely white oils that they consider is a symbol of purity and will pass the religious regulations of their diet.

In conclusion, to increase the production of lard and cottonseed oil by the amount of coconut oil and sesame oil excluded by the proposed tax would mean enormous increase in the amount of hogs and cattle, there being only 20 pounds of lard produced per hog, on the average, and approximately 20 pounds of oleo oil and stearine per cow. To produce 160 pounds of cottonseed oil, a bale of 500 pounds of fiber cotton would have to be made. Therefore, it would increase enormously the production of hogs, cattle, and cotton, if coconut oil were excluded and cottonseed oil and animal products could be substituted. And further, the elimination of coconut and sesame oils would curtail the consumption of the products mentioned in which coconut oil and sesame oil find such admirable use, mainly, peanuts and wheat flour.

LUBRICANTS

The prohibitory tax on these two oils is not consistent with the Government's activity in trying to decrease the production of hogs and cotton. If this tax is proposed for the purpose of curtailing the importation of oils like coconut, it would be more reasonable to place this tax on that amount of mineral and lubricating oils which have almost replaced entirely inedible animal tallow and greases formerly used as lubricants. No doubt many remember when most all moving machinery was lubricated with tallow and/or other fats from animals only; the stiff greases that are used for heavy bearings still contain 20 percent of soap made from animal oil, the other 80 percent being mineral lubricating oil. This is also true of screw cutting oils in which either animal or vegetable oils (not coconut or sesame) are compounded with a mineral oil to make an emulsion suitable for screw cutting purposes. But one of the best authorities states that animal fats have been largely replaced, if not entirely, for lubricating, by petroleum oil.

A great many can recall that just before the beginning of the new century the words "tallow candle" meant just that, because then all candles were made from animal fats, tallow being the main constituent. Today we find that candles are made largely from paraffin derived from petroleum and this product is stiffened with a small percentage of stearic acid which was formerly produced from the pressing of animal tallow and stearines, but now is largely produced by the hydrogenation of fish oils.

For the convenience of those who are not familiar with the duties on imported oils and fats, table 3 is attached giving these rates on various vegetable and animal oils. Please note that palm oil is tax free, yet from table 1 you will see that 172,000,000 pounds were used in soap making. Palm oil is very similar in character to tallow. It has the characteristic component glycerides, as can be seen from table 2. It also has the same property when made into soap that tallow has, that is, stiffness and poor solubility in cold water. Its (palm oil) use is limited, however, because of its high oleo. It does not make a pure white soap even though it may be highly refined. Therefore, palm oil is not a substitute for coconut oil but is a direct substitute for tallow, having almost identically the same properties, also similar in composition.

THE HUMAN SIDE

(Relating to the proposed 5-cent tax on coconut oil)

If it was consistent with doing the thing for the better interests of the United State to place a tax of 5 cents a pound on coconut and sesame oils, it would not be compensated for by the harm that will come to 4,000,000 natives whom the United States owes a responsibility. Many times the magnanimous attitude of the United States has been mentioned, in fighting to free Cuba and the Philippines from the tyrannical rule of the Spanish.

Would it be fair to kill an industry which affects 4,000,000 natives in the Philippines whose only means of barter is copra from which coconut oil is derived and which is produced solely by their hands?

The United States buys copra and coconut oil $23,300,000 worth annually and the Philippines purchase from the United States $48,800,000 worth of merchandise, including farm products, in return. As long as this trade balance is favorable to the United States, and as long as the native, on account of his primitive economic system, is able to be employed in the manufacture of copra, which he uses to purchase goods, why isn't it more sensible to not upset the economic condition of a country that cost millions of dollars and the lives of American citizens to free?

Isn't there more to be gained by the proper nurture and development of the Philippines than to destroy their main source of revenue by which they are able to exist? In a few months from now if this 5-cent tax is placed on coconut oil, will this revenue be used as a contribution of charity to help these natives who undoubtedly will suffer on account of choking off their only means of livelihood?

DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS,
Washington, D.C., June 21, 1932.

Factory Consumption of Animal and Vegetable Fats and Oils, By Products for 1931

The distribution of primary animal and vegetable fats and oils consumed in factory operations in the United States during the calendar year 1931, by classes of products in which used, is presented in the tabular statement below. Data for oleo stock were not collected, hence the secondary products, edible animal stearin and oleo oil, are shown. The statistics were compiled from the quarterly reports of the several concerns to the Bureau of the Census, supplemented by special statements covering the entire year for those manufacturing more than one class of products.

The total consumption in all industries for each item is the same as given in the bulletin for 1931, except for those vegetable oils for which the crude and refined products are indicated in the questionnaire, namely, cottonseed, coconut, corn, peanut, palm-kernel and soybean oils. For each of these a net consumption was arrived at by deducting from the total of both crude and refined consumed the quantity of refined produced.

Oils subjected to the process of hydrogenation or other treatment for special uses were reported as consumed in the products for which intended. For example: Oils treated for soap manufacture were entered in the column headed "Soap" and oils intended for edible purposes were entered in one or more of the columns covering edible products. The ultimate uses of the primary oils are designated in this way.

TABLE 1.—*Factory consumption of primary animal and vegetable fats and oils, by classes of products, calendar year 1931*

[Quantities in thousands of pounds]

Kind	Total	Compounds and vegetable shortenings	Oleomargarine	Other edible products	Soap
Total	3,771,469	1,208,14[illegible]	190,467	190,835	1,390,231
Cottonseed oil	1,140,799	928,489	16,027	84,435	1,970
Peanut oil	13,543	5,960	4,598	1,434	244
Coconut oil	592,684	34,132	133,117	52,984	340,503
Corn oil	42,819	6,616	52	20,307	4,104
Soybean oil	27,885	10,869	623	...	3,816
Olive oil, edible	2,003	...	...	1,697	14
Olive oil, inedible	7,482	...	...	...	2,106
Sulphur oil or olive foots	39,676	...	...	...	38,970
Palm-kernel oil	54,059	158	...	22,579	28,035
Rapeseed oil	8,782	...	...	...	...
Linseed oil	298,773	...	...	...	1,488
China-wood oil	82,314	...	...	...	...
Vegetable tallow	3,256	...	...	...	3,256
Castor oil	17,024	...	...	...	2,829
Palm oil	235,585	34,536	2,430	914	172,228
Sesame oil	44,778	33,817	251	141	8,197
Perilla oil	4,722	...	...	...	...
Other vegetable oils	21,094	18,549	36	266	233
Lard	22,277	8,860	9,665	3,317	...
Edible animal stearin	33,144	27,220	4,883	312	73
Oleo oil	31,371	10,004	18,785	2,018	446
Tallow, edible	71,885	69,548	...	431	1,494
Tallow, inedible	566,328	...	...	...	523,714
Grease	210,754	...	...	...	129,403
Neat's-foot oil	5,093	...	...	...	33
Marine animal oils	72,606	2,708	...	...	68,669
Fish oils	120,733	16,676	...	...	58,426

TABLE 1.—*Factory consumption of primary animal and vegetable fats and oils, by classes of products, calendar year 1931*—Continued

[Quantities in thousands of pounds]

Kind	Paint and varnish	Linoleum and oil cloth	Printing inks	Miscellaneous products	Loss in refining, including foots
Total	328,390	73,473	13,284	204,358	172,289
Cottonseed oil	62		7	2,119	107,690
Peanut oil	20		1	117	1,169
Coconut oil	4		2	749	31,193
Corn oil	245			2,404	9,091
Soybean oil	6,256	2,612	33	2,051	1,625
Olive oil, edible				292	
Olive oil, inedible				5,376	
Sulphur oil or olive foots				706	
Palm-kernel oil				143	3,144
Rapeseed oil	48			8,734	
Linseed oil	231,608	47,886	11,782	6,009	
China-wood oil	72,853	7,303	965	1,193	
Castor oil	1,805	110	21	12,259	
Palm oil			3	12,349	[1] 13,125
Sesame oil				41	2,331
Perilla oil	2,904	725	34	1,059	
Other vegetable oils	322			437	1,251
Lard				435	
Edible animal stearin				676	
Oleo oil	44		8	66	
Tallow, edible			3	409	
Tallow, inedible	47		6	42,561	
Grease	65		372	80,914	
Neat's-foot oil				5,060	
Marine animal oils			2	1,109	118
Fish oils	12,107	14,837	45	17,090	1,552

[1] Includes 10,828,000 reported by the tin- and terne-plate industry.

	Pounds
Total United States cottonseed-oil production in 1931	1,416,799,761
Total United States hog-lard production in 1933	1,679,272,000
Total United States hog-lard production in 1928	1,580,000,000
Total United States dairy-butter production in 1929:	
Farm	580,000,000
Factory	1,513,580,000
	2,093,580,.00

TABLE 2.—*Glycerides of saturated and unsaturated fatty acids*

	L.V.	M.W.	Neut. val.	Peanut, Spanish [1]	Peanut, Virginia [1]	Soybean [1]	Corn [1]
Myristic		228	246				
Palmitic		256	219	8.20	6.30	6.80	7.70
Stearic		284	197	6.20	4.90	4.40	3.60
Arachidic		312	180	4.00	3.30	0.70	0.40
Lignoceric		368	152	3.10	2.60	0.10	0.20
Caproic		116	483				
Caprylic		144	390				
Capric		172	326				
Lauric		200	280				
Behenic		340	165				
Oleic	89.93	282	199	52.90	60.6	33.40	45.40
Linolic (linoleic)	181.16	280	200	24.70	21.6	51.50	40.90
Linolenic	273.70	278	201			2.30	
Erucic	75.10	338	166				
Specific gravity 25° C.				0.9148	0.9136	0.9203	0.9185
Iodine number (Hanus)				90.1	94.8	128.0	117.3
Saponification value				188.2	187.8	189.5	187.3
Acid value				0.12	0.3	1.7-5.7	1.3-3.0
Acetyl value				8.7	9.5		10.0
R.M.V				0.27	0.21	0.70	4-5
Pol. No				0.12	0.29	0.90	
Saturated acids				20.6	16.4	11.5	11.2
Unsaturated acids				74.6	78.7	83.4	83.3
Unsaponifiable				0.22	0.27	0.6	1.7
Titre				[3] 28-30	[3] 28-30	[3] 16.0	[3] 18-19

See footnotes on p. 305.

TABLE 2.—*Glycerides of saturated and unsaturated fatty acids*—Continued

	Sunflower [1]	Sesame [1]	Hubbard squash [1]	Okra [3]	Cantaloup [1]	Cotton, Upland [3]	Cotton, Sea Island [3]
Myristic	....	....	....	....	0.30	0.50	0.30
Palmitic	3.50	7.70	12.73	25.82	10.20	20.90	19.10
Stearic	2.90	4.60	6.12	2.62	4.50	1.80	1.90
Arachidic	0.60	0.40	0.04	0.05	....	0.10	0.60
Lignoceric	0.40	0.04	....	....	....	....	....
Oleic	33.40	48.10	36.56	41.86	27.20	29.20	33.15
Linolic (linoleic)	57.50	36.80	43.34	25.47	56.60	42.80	39.35
Specific gravity 25° C	0.9193	0.9187	0.9179	0.9170	0.9210	0.9174	0.915-.921
Iodine number (Hanus)	130.8	110.8	121.0	96.5	125.9	108.2	105-114
Saponification value	188.0	189.3	191.5	195.3	192.3	195.0	190-198
Acid value	2.3	1.4	0.50	0.88	0.43	....	....
Acetyl value	14.5	9.8	....	....	15.8	7.6-18.0	7.6-18.0
R.M.V	0.27	1.0-2.0	....	....	0.5	0.7-0.95	0.7-0.95
Pol. No	0.25	....	....	....	0.8	....	....
Saturated acids	7.1	12.2	18.37	29.22	14.3	23.3	23.0
Unsaturated acids	86.5	81.2	76.45	67.33	80.2	72.0	72.5
Unsaponifiable	1.2	1.7	1.06	....	1.1	0.9	0.73-1.64
Titre	[3] 17-20	[3] 13-16	[3] 29.8	....	[3] 35.5	33.0-37.0	33.0-37.0

	Chufa, tuber [1]	Olive, Spanish [3]	Olive, California [3]	Olive, Italian [3]	Whale oil [3]	Olive, Tunis [3]	Cocoanut oil [3]
Myristic	0.01	0.20	(4)	(4)	4.5	0.10	20.00
Palmitic	11.80	9.40	6.90	9.20	11.5	14.40	7.00
Stearic	5.20	1.40	2.30	2.00	2.5	2.40	5.00
Arachidic	0.50	0.20	0.10	0.20	....	0.30	....
Lignoceric	0.30	....	....	....	....	....	....
Caproic	....	....	....	....	....	....	2.0
Caprylic	....	....	....	....	....	....	9.0
Capric	....	....	....	....	....	....	10.0
Lauric	....	....	....	....	....	....	45.0
Oleic	73.30	80.5	84.40	83.10	36.5	69.10	2.0
Linolic (linoleic)	5.90	6.9	4.60	3.90	....	12.00	....
Specific gravity 25° C	0.9120	0.9116	0.9119	0.9120	....	0.9131	0.9188
Iodine number (Hanus)	76.5	83.7	85.1	84.4	....	86.0	8.0-9.6
Saponification value	191.5	192.4	190.6	190.6	....	193.6	251-263
Acid value	....	1.8	1.5	1.8	....	1.9	5-50
Acetyl value	10.5	4-12	4-12	4-12	....	4-12	....
R.M.V	0.2	0.3-0.6	0.3-0.6	0.3-0.6	....	0.3-0.6	6-8
Pol. no	0.3	....	....	....	....	....	15-18
Saturated acids	17.1	10.7	8.9	10.9	....	16.5	87
Unsaturated acids	75.8	83.6	85.2	83.3	....	77.6	13
Unsaponifiable	0.6	0.8	1.0	1.1	....	0.8	0.0
Titre	....	18-24	18-24	18-24	....	18-24	22.0-23.5

See footnotes on p. 305.

TABLE 2.—*Glycerides of saturated and unsaturated fatty acids*—Continued

	Linseed [2]	Palm kennel [2]	Lard [2]	Palm Sumatra [1]	Rape seed oil [2]
Myristic	3.0	16.0		0.6	1.5
Palmitic	5.0	6.5	24.60	44.0	
Stearic		1.0	15.00	2.9	1.6
Lignoceric				0.1	2.4
Caprylic		3.0			
Capric		6.0			
Lauric		50.0			
Behenic					0.5
Oleic	5.0	16.5	50.4	43.2	20.2
Linolic (linoleic)	48.5	1.0	10.0	9.5	14.5
Linolenic	34.1				2.1
Erucic					57.2
Specific gravity 25° C	0.931	0.912	0.8985	0.8998	0.915
Iodine number (Hanus)	175-200	16-23	60-70	52.7	98-106
Saponification value	191.5	244-255	195-196	190	170-180
Acid value	1.3-6.0		0.5-1.3	27.0	1.4-4.0
Acetyl value				23.3	
R.M.V		4.8-7	0.5-0.7	0.17	0.0-0.79
Pol. no		9.4-11		0.50	
Saturated acids	9.0	79.5	34.60	45.4	
Unsaturated acids	91.0	20.5	60.4	49.4	
Unsaponifiable	1.0		0.23	0.44	0.5-1.5
Titre		20.0-25.0			

[1] Glyceride basis. [2] Fatty-acid basis. [3] Degree centigrade. [4] Trace.

TABLE 3. *Import duties March 6, 1934*

Corn oil, not listed, 20 percent ad valorem.
Cottonseed oil, 3 cents per pound.
Peanut oil, 4 cents per pound.
Coconut oil, 2 cents per pound.
Palm kernel, 1 cent per pound, denatured free.
Palm oil, free.
Sunflower seed oil, 20 percent ad valorem, denatured free.
Sesame oil, 3 cents per pound, denatured free.
Whale oil, 20 percent ad valorem.
Fish oil, 20 percent ad valorem.
Edible tallow, ½ cent per pound.
Vegetable tallow, free.
Dairy butter, 14 cents per pound.
Oleomargarine or all other butter substitutes, 14 cents per pound.
Lard, 5 cents per pound.
Lard substitutes, 5 cents per pound.
Soap, Castile 15 percent, ad valorem, toilet, 30 percent ad valorem. All others 15 percent ad valorem.
Oleo oil and oleostearine, 1 cent per pound.
Soybean oil, 3½ cents per pound.

I. ROKEACH & SONS, INC.,
MANUFACTURERS OF KOSHER PRODUCTS,
Brooklyn, N.Y., October 30, 1933.

THE BEST FOODS, INC.,
88 Lexington Avenue, New York, N.Y.

GENTLEMEN: There has come to our attention recent activities in Washington aimed at compelling only the use of domestic oils in the manufacture of foods and food products. As a specific example of this, we note that a marketing agreement has been submitted for the shortening industry containing a paragraph reading as follows:

"Members of the industry hereby agree that on and after January 1, 1934, they will use no fat or oil ingredient in the manufacture of shortening, cooking oil, and salad oil, except fats or oils produced from seeds and/or animals grown within the borders of the continental United States."

As you know, we manufacture and sell several million pounds of Nyafat, a product made from vegetables and vegetable oils, each year, as well as other cooking and salad oils. We are, therefore, vitally interested in this marketing agreement as well as the attempts, along the same lines, to stop the use of so-called imported oils in foods and food products.

We are large users of cottonseed oil. This company was founded upon the use of cottonseed oil, and we are still using very large amounts of it in certain of our food products; and, furthermore, we are continuing the use of cottonseed oil in all of our food products where it has ever been used during our existence. We have never substituted for cottonseed oil any foreign oils.

We realize the predicament of American agriculture today and we would eagerly do anything to help the farmer as long as it is rational. However, this proposed marketing agreement for the shortening industry would really have one effect as far as we are concerned, and that would be to put us out of the Nyafat business. As you know, our product, known as "Nyafat," is made principally from coconut oil with as much cottonseed oil as the product will permit. As you know further, Nyafat is a relatively recent product, and is new in the sense that there was nothing quite similar to it before we began its manufacture.

This product is consumed mostly by Jewish people and therefore caters to a particular class of trade. Nyafat has a distinctive flavor and prior to its introduction upon the market its consumers did not use any other substance in place of it. Nyafat fills a distinctive need of a certain class of consumer, namely, the Jewish trade.

For the reasons stated in the foregoing, we have for a long time been experimenting in an endeavor to ascertain whether coconut oil in our Nyafat can be replaced satisfactorily by any domestic oil, principally cottonseed oil, but our experiments have shown clearly that it is impossible to use any other oil in place of coconut oil in our Nyafat. To use cottonseed oil or some other domestic vegetable oil would result in the production of a much inferior product to our present product. This, of course, would mean the loss of our entire trade for Nyafat; and since, as stated above, we use a considerable quantity of cottonseed oil in the manufacture of our Nyafat the result would be that we would use less cottonseed oil than we use now.

Furthermore, the use of domestic animal oils is absolutely out of the question, as we cater exclusively to the kosher trade.

We are using today for our other products just as much, if not more, cottonseed oil as we used prior to our manufacture of Nyafat, so that this product of ours has not resulted in lessening our consumption of cottonseed oil. As a matter of fact, this consumption has been increased, since we used cottonseed oil in it.

Therefore, it should be brought to the attention of the authorities in Washington that it is impossible simply, by fiat, to decree the substitution of domestic oils for imported oils. In our case it would result in the destruction of our Nyafat business and the consequent increase of unemployment in the country. We also know that it would have a similar result with manufacturers of other food products.

While it is a worth-while attempt to use as much of the product of the American farmer as possible, consideration must first be had as to wherever substitution is possible. In our case, clearly substitution of domestic oils is absolutely impossible.

We would very much appreciate your bringing this to the attention of the Agriculture Adjusting Administration for their consideration and study.

Yours very truly,

I. ROKEACH & SONS, INC.
ARTHUR L. SHUR.

LOOSE-WILES BISCUIT CO.,
Long Island City, N.Y., November 2, 1933.

MR. L. C. FAUNCE,
The Best Foods, Inc., New York, N.Y.

DEAR MR. FAUNCE: Your letter addressed to Mr. A. N. Simpson has been brought to our attention for reply. This will also confirm my telephone conversation with you this afternoon.

Our company would probably not be considered a big user of coconut oil but we are interested in it as the basis of hydrogenated coconut butters which enter into confectionery and some types of fancy pastry. The tonnage of these products, however, is not large as compared with our use of lard as a shortening.

If coconut oil products were not available, it would not increase our use of cottonseed oil or of lard. The fancy products would probably have to be discontinued because the proper flavor could not be developed with cottonseed oil or lard, and we would lose the production of this type of goods.

Very truly yours,

LOOSE-WILES BISCUIT CO.,
E. D. LOOSE, *Vice President.*

HOLLAND-AMERICAN WAFER CO.,
Grand Rapids, Mich., November 8, 1933.

THE BEST FOODS, INC.,
New York, N.Y.
(Attention of Mr. Faunce.)

DEAR MR. FAUNCE: In reply to your favor of the 26th, contents of same have been carefully noted.

In reply, I might say that we have experimented with cottonseed oil and other domestic oils including mineral oils, for a number of seasons past to take the place of coconut oil in the manufacturing of sugar wafers. We have found it impossible to accomplish anything with the other oils and have some time past totally abandoned the idea of their further use. Consequently, we have today only one oil which is suitable for the manufacturing of sugar wafers, namely, coconut oil.

We especially noted with interest the section referred to in the code of the shortening industry. If this code is adopted and its provisions enforced, it seems positively without any recourse on our part, the closing up of our plant 100 percent. Of course, throwing out of employment some 75 or 150 people and making our entire investment of nearly a quarter million dollars absolutely worthless.

I believe if this proposition was presented in the right manner to the authorities in Washington that they will not sanction any rule or regulation that will deprive the use of this industry and the necessary labor connected with it. I trust that I have explained our position clearly to you and if any further details are necessary, I should be very glad to comply if you will advise.

Thanking you for calling our attention to same and with very best wishes, we are,

Very truly yours,

HOLLAND AMERICAN WAFER CO.,
G. A. HEYBOER, *President.*

MARS, INC.
Chicago, Ill., November 2, 1933.

THE BEST FOODS, INC.,
New York, N.Y.
(Attention of Mr. L. C. Faunce.)

GENTLEMEN: We understand that efforts are now being made to compel manufacturers of foods and confectionery who now use coconut butter to substitute domestic animal or vegetable fats.

We are strenuously opposed to any such contemplated action. In the manufacture of Milky Way and other Mars confections, coconut butter is used only in that part of the confection where it is necessary to use it to prevent the candy from sticking to one's teeth. For that purpose, the use of ordinary butter or animal fat, such as beef or similar fats is impossible because these fats turn rancid.

Please understand that Milky Way and other Mars' confections do carry a very high percentage of butterfat from cow's milk, where it is possible to use it. For instance, we use a large quantity of malted milk in the manufacture of Mars confections. This malted milk is made from cow's whole milk and the butterfat content of the malted milk we use is twice that of the malted milk ordinarily used at soda fountains.

The caramel in Mars' confections is also extremely rich in real butterfat from cow's whole milk.

What we wish to impress upon you is the fact that the use of coconut butter in Mars' confections instead of fats, etc., which would turn rancid, increases the use of domestic butterfat in our candy and if we did not use this coconut butter, we would not be, as we are, such large users of dairy products such as butter, milk, and eggs.

Yours very truly,

MARS, INCORPORATED.
H. H. HOBEN.

BEECH-NUT PACKING CO.,
Canajoharie, N.Y., October 30, 1933.

THE BEST FOODS, INC.,
New York, N.Y.

GENTLEMEN: We have made many experiments with cottonseed oil as a shortening for our biscuits and have not been able to produce a biscuit with the outstanding quality of our biscuits made with coconut oil. We use a considerable quantity of vegetable- and animal-fat shortenings and find our present blend, which includes coconut oil, gives us the ideal quality product.

We would not change our formula until we have had an opportunity to conduct further exhaustive tests to prove that we could eliminate coconut-oil shortening without sacrificing the quality of Beech-Nut Biscuits.

Yours very truly,

BEECH-NUT PACKING CO.,
E. J. ROCHE, *Purchasing Department.*

BORDEN'S,
New York City, N.Y., October 31, 1933.

THE BEST FOODS, INC.,
New York City.

GENTLEMEN: In reply to your letter of October 26, regarding our experience in the substitution of oils such as cottonseed oil for coconut oil.

We only use a vegetable fat in the manufacture of caramels. We have found that other fats than coconut oil produces a greasy flavor when cooked at high temperatures. Fat in the caramels we manufacture is added simply as a lubricant, to keep the caramel from sticking to the cutters and also to keep them from sticking to the teeth while they are being eaten. The fat must be flavorless and must be the proper melting point to produce the lubricating effect.

It might be possible to develop a cottonseed product that would fill our needs, but up to the present time no product of this kind has ever been offered to us. It would work a severe hardship on us to be forced to change the type of oil we are using.

Very truly yours,

BORDEN'S.
A. F. STEVENSON,
General Superintendent Manufacturing Department,
Specialties Division.

THE EMPIRE BISCUIT CO.,
Brooklyn, New York City, October 27, 1933.

BEST FOODS CO.,
New York, N.Y.

GENTLEMEN: In reponse to your communication October 26 relative to use of cottonseed or other domestic oil to substitute for coconut oil, wish to advise that for practical purposes, we deem it necessary by experience and practice to desire coconut oil; in fact the payment of premiums for this product is evidence of its necessity.

Very truly yours,

EMPIRE BISCUIT CO.
F. C. VOLLMERS.

EX-LAX, INC.,
Brooklyn, N.Y., October 27, 1933.

MR. L. FAUNCE,
The Best Foods, Inc.,
New York City.

DEAR MR. FAUNCE: We thank you for your letter of October 26. Judging by our past experience, we know that if cottonseed oil was substituted for coconut oil, we could not use the product and we would have to eliminate this item completely.

Very truly yours,

EX-LAX, INC.
M. KISS.

VITA BRAN CORPORATION,
New York, October 28, 1933.

THE BEST FOODS, INC.,
New York, N.Y.
(Attention of Mr. Faunce.)

DEAR SIR: We are very much perturbed over the hearings that are being held in regards to the forcing of the use of cottonseed oil as a substitute for the coconut oil which we use in our process.

It is true that we want to get behind the Recovery Act to help the country as a whole, by using products grown and manufactured in this country, yet we must not forget the fact that certain products have to be imported as well as exported from this country because the life of business is the exchange of commodities.

In our case, the substitution of cottonseed oil for coconut oil will place us in a position whereby we could not use the product for the simple reason there were different occasions at which times we experimented with same, and we found that in our process of manufacturing, cottonseed oil has a fatty and heavy taste as this oil is eaten in a cold process, while the coconut oil is lighter, and easier to dissolve in the mouth, and also more adaptable to incorporate sugar in it.

It is unquestionable that if any law were to be put into effect to stop the use of coconut oil in our manufacturing, we would have to close up, and discharge 125 of our employees.

We feel it is the duty of your company to fight these new regulations as it is not the object of the administrators to put more people out of work just because they wish to favor a few lagging industries.

Very truly yours,

VITA BRAN CORPORATION.
LEON SADACCA, *President.*

THE OHIO CONFECTION CO.,
Cleveland, Ohio, October 28, 1933.

THE BEST FOODS, INC.,
New York, N.Y.

GENTLEMEN: We do not know of a single instance where we are now using refined coconut oil and hard butter in the manufacture of our particular types of candy that we could satisfactorily substitute any domestic oil derived from cottonseed, corn, peanut, or soy. The latter oils are more subject to rancidity and melt at such lower temperatures that their use would lower the quality of the products we manufacture.

It would therefore be a gross injustice to our industry if any authority would attempt to restrict our supply of coconut oil and butter.

Very truly yours,

THE OHIO CONFECTION CO.,
CHAS. W. VAUGHAN,
Vice President and General Manager.

CURTISS CANDY CO.,
Chicago, Ill., November 7, 1933.

THE BEST FOODS, INC.,
New York, N.Y.
(Attention of Mr. B. F. Nelson.)

DEAR SIR: We are quoting below comment made to purchasing department by Mr. Huss, our chief chemist.

"In writer's experience hydrogenated cottonseed oil, peanut oil, and soybean oil, as well as hardened animal fats, have not proved satisfactory as a substitute for coconut butters. Coconut butter candies have a much longer shelf life. They do not develop objectionable tastes to the same extent as cottonseed, peanut, soybean, and animal fats. Thus far, the writer has not seen peanut, cottonseed, soybean or animal fats which remain completely solid at room temperature of 70 to 80 degrees F. There are low melting fractions present which ooze thru the candies containing these oils, which are absorbed by the chocolate coating of chocolate coated centers. This causes the coating to soften at a much lower temperature than is normal for a pure chocolate coating. Also a greater tendency to rancidity is produced when these oils are absorbed by the cocobutter of the coating. If the cottonseed oil, peanut oil, etc., are hydrogenated to eliminate

these lower melting fractions, a fat is produced which will not melt at body temperature and certain types of candies could not be properly worked with this higher melting fat."

If there is any further information you should desire about our experience with animal fats and other domestic oil, please do not hesitate to call upon us.

Sincerely yours,

CURTISS CANDY CO.
W. F. OLSEN, *Purchasing Department.*

LETTER OF J. E. ROWE, PRESIDENT, ROSS & ROWE, INC., IN RE REVENUE BILL H.R. 7835, SECTION 602, EXCISE TAX ON CERTAIN OILS

MR. CHAIRMAN AND MEMBERS OF THE SENATE FINANCE COMMITTEE:

I am appearing in protest of the proposed tax of 5 cents per pound on coconut oil. I am neither a manufacturer or user of this product. My interest in this particular matter is due solely to my interest in fostering more wholesome and better quality bakery goods and candies.

The company with which I am associated manufactures and sells specialty products to the food industries. In connection with our business we maintain a large experimental laboratory for testing bakery products and confections. It has been our policy in this development work to always strive for more wholesome foods.

When the proposed tax was first called to our attention, our only interest was to find another oil or fat preferably of domestic origin, which would produce candies and bakery goods of equal quality to that obtained by coconut oil. As the result of considerable experimental work, we have found that there is no satisfactory general substitute for coconut oil in bakery goods and candy produced in this country regardless of price. The domestic oils and fats included in our test comparisons were cottonseed oil, corn oil, dairy butter, peanut oil, fish oils, beef stearine, and lard.

Oils and fats are used in candy for only one general purpose, that is for lubrication. This lubrication is necessary to facilitate handling during manufacture and chewing by the consumer. No one likes a candy which sticks to his teeth. The principal requirements for a satisfactory fat for candy is that it give maximum lubrication and not impair the desired flavors of the candy. Cottonseed oil, corn oil, fish oil, and peanut oil are all soft liquid oils at ordinary temperatures and will not lubricate satisfactorily. When these oils are hydrogenated, they still have a greasy character and still do not lubricate. Further, all of these oils turn rancid in candy during the normal shelf life of the great majority of our confections. Dairy butter is an excellent lubricant, but it turns rancid so quickly in candy that wholesale manufacturers do not dare to use it except in very small amounts as a flavor. Beef stearine and lard are not readily soluble at mouth temperature and objectionable to the palate when used in candy.

In bakery goods, coconut oil is used only in the production of special products. Coconut oil is very inferior to hydrogenated cottonseed oil or corn oil as a general shortening. On the other hand, coconut oil, because of its peculiar characteristics, is superior for puff pastry and is preferable from a taste and quality standpoint. In sugar wafers, which must stay on retailers' shelves for a much longer time than cakes, we again find that coconut oil will keep sweet and fresh and not turn rancid during average shelf life, whereas every domestic oil and fat will develop an objectionable flavor and harmful characteristics, during this period.

It is in this feature that the principal danger lies. We know from experience that there are always some manufacturers who pay more attention to price than quality. We know from the experiments in our laboratory that it is possible to produce sugar wafers, short breads, and chewing candy, which look as good when they are made with domestic oils as if coconut oil had been used. The taste, when the merchandise is fresh, may also be comparable due to heavy flavoring. However, after the merchandise has stood on the jobbers' or dealers' shelves for a couple of weeks, it is usually rancid when made with domestic oils. When made with coconut oil, it is not unusual for the merchandise to keep sweet and fresh for periods of a year or more. Yet, there is nothing to warn the purchaser in advance of sale as to whether the merchandise is rancid or not. When we take into consideration that children, as a class, are the largest purchasers and consumers of these products, I believe there is a definite duty on the part of all of us to protect this class from the unfortunate effects of rancid oils. Recent re-

search work at Johns Hopkins Hospital has shown the serious effects of a very small percentage of rancid oils in a diet.

Of course, eventually the unfavorable effects of candy and bakery products made with domestic oils will become known and the demand for them will cease. Manufacturers will not be able to sell such products when made with coconut oil in competition with other products in their line due to this excessive tax.

It is rather interesting to learn that the National Dairy Union are in favor of this tax. If they appreciated the full picture, I feel sure they would quickly realize they are working against their best interests, at least insofar as the candy industry is concerned. Let us consider caramels and fudge, the two candy items in which over 80 percent of the coconut oil consumed by candy manufacturers is used. These same two items are responsible for 75 percent of the milk used by candy manufacturers. I do not know of a single candy made with milk which does not also require an oil or fat for lubrication purposes.

I have heard it stated that it is not intended to obtain revenue from this proposed tax, but rather to exclude coconut oil as a competitor of domestic oils and fats. The excessiveness of the tax averaging 100 percent of the retail value of the oil would seem to indicate this. I am entirely in sympathy with any measure which will give domestic oils and fats the fullest measure of protection, but I submit that, in my opinion, this excise tax will not increase the demand for domestic oils and fats. If the baker and candy manufacturer desire to uphold the present quality and wholesomeness of their products, they must still continue to use coconut oil in its present applications and pay the tax, which of course, will be passed along to the consumer.

The natural reaction of the children of our country will be to stop buying the article which is small for the penny and switch to the larger product in which little or no fat or milk is used. This will materially reduce the candy production as well as revenue to the United States now obtained from the candy excise tax and processing taxes on corn sirup and other raw materials.

I urge your committee to delete this proposed tax from the revenue bill at least insofar as coconut oil used in the manufacture of bakery products and candy is concerned.

Respectfully submitted.

Ross & Rowe, Inc.,
J. E. Rowe, *President.*

BRIEF SUBMITTED BY CLIFFORD T. WEIHMAN, OF SMITH WEIHMAN CO., INC., OF NEW YORK

TAX ON COCONUT OIL

We are a small concern who have been in business for over a decade in the importation of coconut oils in New York. We buy this oil in bulk, store in New York Harbor, and sell to the small consumer mostly, when they need oil. We carry spot stocks for those manufacturers who are not large enough to import for themselves. Since the proposal of the tax on coconut oil, we have not been able to sell one pound, except at a great loss. We buy this oil on bank credits, the banks carrying the financial burden for us from the time of shipment until sold. Now since we have not been able to sell in the usual time allotted, the banks are not pleased with the tie-up of these funds, Now if a tax of 5 cents per pound were put on this coconut oil that we now have in store, we would be compelled to put up a great deal of money, more than $100 for each ton of oil in store.

We brought this oil into the country in good faith, during the normal course of business during last year, 1933. And we do not think it fair to tax us 5 cents per pound on this oil, practically ruining us for the sake of giving benefits to others that are doubtful. Why such a penalty should be thrust upon a small business man I am asking you to consider.

I am not arguing the proposed tax here. I am asking only that you do not put a tax on the oil now in store, which was brought in before any thought of a tax and upon which I cannot sell without incurring a great loss.

I know that you want to protect the small business man. This proposed tax on floor stocks would put him out of business for he has not the funds. It would not harm the big fellow because he has the money in the first place and could then pass the increased cost along to the consumer of his finished products.

I beg your earnest consideration in the matter of not putting a tax on floor stocks.

Respectfully submitted.

Clifford T. Weihman.

March 13, 1934.

BRIEF OF T. S. KENAN, PRESIDENT ATLANTA COTTON OIL CO., ATLANTA, GA.

We are importing into continental United States vegetable oils, and materials from which they are produced, in excess of one billion (1,000,000,000) pounds, approximately 75 percent of our annual production of cottonseed oil.

The major portion of these imports, from which the Government gets no revenue, comes from the Philippine Islands. Oil bearing materials from other countries come in free and the Government gets no revenue. These imported fats are technically interchangeable with our domestically produced vegetable and animal fats, consequently our fats price level seeks the level of foreign countries.

While speaking only for my company, I may state, however, that the independent cotton oil mills generally, as well as the National Grange, American Farm Bureau Federation, National Dairy Union, National Cooperative Milk Producers Federation, Association of American producers of Domestic Inedible Fats, American Association of Creamery Butter Manufacturers, are all interested in raising the price level of fats in continental United States, believing that it is one of the most important equations entering into the economic life of the farmer, whose prosperity is vital to general industrial prosperity. The only way this can be done, and produce a revenue for the Government, is to sufficiently tax all imported animal and vegetable oils and fats (whether denatured or not) and the materials from which they are produced. We feel that a 5-cent per pound tax imposed upon the first domestic processing would raise our fats price to a reasonable level.

Practically all industries in the United States, except agriculture, are sufficiently protected, and in a manner as to furnish a source of revenue for the Government.

Our present vegetable oil tariff schedule is a joke and worthless, as a protective measure or as a means to raise our fats price level, and it produces comparatively little revenue.

The duty of 2 cents per pound on coconut oil, other than from the Philippine Islands where the potential production is beyond even world requirements, is invalidated by copra (dried coconut from which coconut oil is produced) being left on the free list.

Palm oil is free; palm-kernel oil is dutiable, 1 cent per pound, unless denatured; sesame seed, palm nuts and palm-nut kernels are free, also other seeds and nuts not especially provided for when the oils derived therefrom are free of duty.

We have a duty on various oils, but our imports in 1932 amounted to 806,613,000 pounds. In addition we imported 226,723 tons of copra, equivalent in coconut oil to (estimating 1,300 pounds of oil per ton copra) 294,739,000 pounds, making a total of 1,101,353,000 pounds of foreign oils, or the equivalent in raw materials. In addition we imported other oil seeds to the extent of 587,000,000 pounds, from which different kinds of oils could be made. It is not difficult, therefore, to see that the whole vegetable oil schedule is invalidated and/or insufficient.

During the same cottonseed oil season, August 31, 1931 to July 31, 1932, our production of cottonseed oil was 1,694,122,000 pounds. With imports of foreign oils of over 1,000,000,000 pounds, approximating 75 percent of our cottonseed oil production, we had a carry-over of 650,000,000 pounds of cottonseed oil, with the price so low that it was impossible to buy cottonseed other than at starvation prices to the farmer.

Our domestically produced oils and fats, other than lard and butter, are: cottonseed oil, corn oil, peanut oil, oleo oil, neutral lard, tallow, greases, and fish and whale oil. Sunflower and soybeans can be grown in the United States. (Oleo oil is a byproduct of beef production; tallow is a byproduct chiefly of beef production, but also of mutton production; and the greases are a byproduct of beef, mutton and pork production.)

The principal oils imported are coconut, palm-kernel, sunflower seed, palm oil, soybean, whale and fish oils, sesame seed oil, and perilla oil.

With the modern methods of refining, hydrogenating, and deodorizing, practically all of these oils and fats could be substituted for oils and fats produced in continental United States without changing the characteristics of the resulting products.

The principal oil-consuming industries are: soap, lard compound, margarine, salad oil and dressing, miscellaneous foods, and paint and varnish.

Oils technically interchangeable in the manufacture of:

Lard compound: Cottonseed oil, oleo stearine, tallow and other, beef, hog, sheep fats, peanut oil, sesame oil, corn oil, soybean oil, sunflower oil, palm oil, whale and fish oil, coconut oil, palm-kernel oil.

Margarine: Cottonseed oil, oleo oil, neutral lard and other animal oils, peanut oil, sesame oil, corn oil, soybean oil, palm oil, whale and fish oil, coconut oil, palm-kernel oil.

Salad oil and dressing: Cottonseed oil, olive oil, peanut oil, sesame oil, corn oil, soybean oil, whale oil.

Paint and varnish: Cottonseed oil, corn oil, sesame oil, soybean oil, whale oil, marine oils, numerous drying and semidrying.

(Reference U.S. Tariff Commission Report No. 41, 2d series.)

Soap: Soap can be made from any animal or vegetable oil, but in practice the soap maker is restricted to those possessing, to a fair degree at least, solubility, lathering, and detergent (cleansing) qualities, and to those available regularly in large quantities and at moderate prices. Oils technically available for soap making are: coconut oil, palm-kernel oil, tallow and greases, palm oil, hydrogenated whale oil, fish oil, vegetable oils, cottonseed, corn, and peanut oils, sesame, linseed, and soybean oil.

It would seem, therefore, that the price, cost of treatment, and availability are the determining factors in the oils or fats used. Our domestic fats price consequently seeks the level of these imported oils, which are cheaper.

The strongest opposition to placing a tax on foreign oils and raising our fats price level comes from the soap people, and I want to go a little into detail in regard to that industry.

The soap industry has prospered under favorable treatment in the way of a 30-percent ad-valorem tax on toilet soaps and 15-percent ad-valorem duty on all other soaps, which practically gives it the exclusive benefit of the American soap market. On the other hand, the producers of vegetable and animal fats in this country are forced to compete with the cheap foreign labor of the tropics, where money is scarcely an equation in their economic lives.

The disappearance of oils and fats used principally in soap making during the year ending September 30, 1932, was 1,750,000,000 pounds, in round numbers, and in 1933 it was 1,814,000,000 pounds.

	1932	1933	Increase
Fats and oils, other than coconut	1,138,048,000	1,189,334,000	51,286,000
Coconut oil	612,644,000	625,212,000	12,568,000
Total	1,750,692,000	1,814,546,000	63,854,000
Domestically produced fats in this disappearance accounted to:			
Animal tallow	471,920,000	473,220,000	1,300,000
Greases	280,098,000	261,684,000	18,414,000
Whale and fish oils	131,042,000	142,654,000	11,612,000
Total	883,060,000	877,558,000	5,502,000

The products consist of hard soaps, soap powders, scouring powders, laundry soaps, soft, shaving, etc., to a total quantity, in round numbers: 1931, 3,168,000,000; 1929, 3,306,000,000; and 1927, 3,096,000,000.

United States of America production of soap, census 1931, shows quantity of soaps produced as follows:

	1931	1929	1927
Hard soaps	2,572,896,000	2,587,954,000	2,435,148,000
Soap powders and scouring powders	426,778,000	505,530,000	484,464,000
Liquid, soft, shaving, etc	169,312,000	213,090,000	176,594,000
Total	3,168,986,000	3,306,574,000	3,096,206,000

These figures give an idea of the enormous quantity of fats used for soapmaking purposes in continental United States, and show that we can consume, at a fair price, the different fats produced in the United States, were it not for the importation of foreign oils and oil-bearing materials.

Talc, china clay, chalk, and starch form a substantial part of the weight of laundry soaps and form a major portion of scouring soaps which accounts in part for the difference between the volume of oils and fats consumed, and the volume

of the manufactured soap. Water also forms a substantial part of the weight of soaps.

Quantitative comparison of oils used in soap:

Domestic oils: 1912, 601,613,000 pounds; 1930: 681,489,000 pounds.

Imported oils, and made in the United States from imported materials: 139,738,000 pounds; 678,212,000 pounds.

Animal oils and fats, except marine: 15,510,000 pounds; 20,000,000 pounds.

Whale and fish oils: 9,927,000 pounds; 72,669,000 pounds.

The soap people contend that coconut oil is the ideal oil for making soaps on account of its lathering qaulities.

Report no. 41, second series, of the Tariff Commission to Congress on certain vegetable oils, whale oil, and copra, puts oils in three (3) classes, as follows:

"Hard oil which yields quick-lathering soap. (Coconut oil and palm-kernel.)

"Hard oil which yields slow-lathering soap. (Tallow, animal greases, palm oil, hydrated whale and fish.)

"Soft vegetable oils which make soap of a softer texture than the hard oils of either type, intermediate between the two types in lathering qualities. (Cottonseed oil, corn oil, soya-bean oil, peanut, and inedible olive oil, and cottonseed-oil foots and olive-oil foots.)"

This report goes on to say: "One of the principal causes of the reduction in the use of cottonseed oil in soap is that it goes into food products at prices above the price level of soap."

"The tendency is for manufacturers to increase or decrease the amount of coconut oil used, in accordance to the price position of coconut oil in relation with other oils." "Tallow is more extensively used in soap making than is coconut oil and may be said to form the base of most toilet, general household, and white laundry soaps produced in the United States. When used alone, it makes a hard, firm white soap, of good detergent qualities and slow solubility—except in very hot water—and with a very slow but thick and lasting lather. Soaps made from grease, in general, resemble those made from tallow, except that they are somewhat softer, more soluble, usually darker in color, and more apt to become rancid." "Practically all oils are more or less interchangeable with tallow or coconut oil or with both." "Cottonseed oil makes a somewhat softer soap, has better lathering qualities than any oil except coconut and palm-kernel. Its lather is quick, abundant, thick, and fairly lasting—much more lasting than that of coconut-oil soap. The economic position of cottonseed oil rather than any lack of suitability for soap making is the principal reason why more of it is not used. Corn and sesame oil have about the same soap-making qualities as cottonseed oil. That these oils are little used in soap making has been due to economic rather than technical causes."

"The preponderance of compound made exclusively of vegetable oils is largely due to the fact that cottonseed oil has usually been lower in price than the competing animal oils."

This reference is given, not with the desire, or thought, that our edible vegetable oils and fats should be put into the soap kettle to a greater extent, but to refute the argument of the soap people that would create the impression that foreign oils and fats are indispensable to the soap industry, and to show that if our fats price level drops below the cost of production of these foreign fats plus the 5 cents tax, our surplus would naturally be quickly consumed and put our price level back to the importing point of foreign oils.

We are not advocating the elimination of foreign oils and oil-bearing materials by placing an embargo in the way of a prohibitive duty. We believe it economically unsound to have no limit to the prices of our domestically produced articles of agriculture and manufacture. A 5-cent per pound tax would only only advance our cotton-oil market to approximately the 5-year pre-war average price; would give our domestic producers a fairer price level, protect consumers against unwarranted prices, and permit a source of revenue for the Government. There would doubtless still be large quantities of certain oils imported, but our fats price level would be maintained on somewhat of a parity with other industries.

The House Ways and Means Committee invalidated to a great extent its recommendation of 5 cents per pound tax on coconut and sesame oil by permitting tax free a mixture of either or both of these oils when not of the chief value. It defeats our efforts to raise the fats price level in continental United States, and largely destroys a source of revenue for the Government.

In the hearing before the House Ways and Means Committee, a representative of the soap people made the statement that if a certain cotton oil representative secured what he asked for in the way of a tax he (the oil mill representative),

would not be benefitted to the extent of his railroad fare to Washington. This statement in a measure is true. We will not recieve any direct benefit. The higher prices we would receive for our oil would be reflected in the price of our domestically produced raw materials, benefiting the farmers of this country. We would, however, get an indirect benefit from the increased prosperity of the producers of our raw materials.

About 65 percent of the cotton oil mills' products is sold to the farmers for feed and/or fertilizer, and while we hold no brief for the farmer we realize that the prosperity of the cotton oil mills, as well as industry in general, is largely dependent upon the prosperity of the farmer, and we are interested in his getting a fair price for his products. It is obvious the prices of all fats will seek the level of the lowest, and so long as oils from the tropics are permitted to enter continental United States in ever increasing volume free of tax, the producers of animal and vegetable fats in this country will have to compete with the cheap peon labor of the tropics. They are entitled to any legislation that tends to put them on a higher economic level and on more of a parity with other industries.

BRIEF OF L. F. HOYT, LARKIN CO., BUFFALO, N.Y.

USE OF COCONUT OIL IN SOAPS

Coconut oil possesses unique properties as a raw material for the making of soaps. No other fat or oil of low melting point and pale color will produce such a firm and light-colored soap as coconut oil and no other soap even approaches the ease of solubility and profuse lathering qualities of coconut oil soap.

The idea that satisfactory soap can be made from any fat or oil is erroneous. Fats and oils are interchangeable in the soap kettle only within very definite limits and coconut oil is one of those oils for which there is no satisfactory substitute.

Pure coconut oil soap is characterized by the ease and rapidity with which it dissolves in water—even in cold or lukewarm water—by the voluminous lather which it gives, and by the ease with which the suds can be rinsed. When blended with other fats and oils and made into soaps, coconut oil imparts these desirable properties of ready solubility, ease of lathering, and quick rinsing to the mixture.

While it is true that some types of soaps contain no coconut oil (such soaps for example as vegetable oil soap pastes commonly made from corn, soya bean, or linseed oils, and special textile soaps made from olive oil) it is equally true that there are other classes of soap which are made either exclusively or predominantly from coconut oil. Among these soaps are the marine soaps and the true hard water soaps, as well as the liquid soaps so widely used in soap dispensers. In my experience of nearly 20 years in the soap business, I have never seen liquid soaps of this type made from other than coconut oil. Occasionally special liquid soaps for shampoo purposes are found which contain other oils in addition to coconut oil but such soaps are unusual and of limited sale or distribution.

Coconut oil is an important and indispensable ingredient in all white floating toilet soaps. Federal Specification No. P-S-616 for white floating toilet soap states: "White floating soap shall be a cake soap, at least as good in every respect as one made from soda and a mixture of high-grade tallow with 25 to 30 percent of coconut oil, of good light color, without objectionable odor, thoroughly saponified, and so prepared as to float on water." This specifiction further requires that "The acid number of the mixed fatty acids prepared from the soap shall be not less than 212." It is impossible to meet this Federal specification (or to make a satisfactory white floating toilet soap) without using at least 20 to 25 percent of coconut oil. Ever since white floating toilet soaps have been on the market they have contained a substantial proportion of coconut oil. Larkin Co., Inc., began the manufacture of a white floating toilet soap in December 1900. During the thirty-three and odd years we have been manufacturing this type of soap the amount of coconut oil used has averaged about 25 percent.

A soap made from tallow and grease only may give good results in a steam laundry where clothes are washed at 180° F. or higher, the usual temperature at which power laundry washing is done, in water which has been rendered soft and to which has been added alkaline salts or "soap builders." For home laundry purposes at moderate temperature, and especially in the hard water which is all too common in many sections of the country, a soap made from tallow or grease only will be found distinctly inferior to a soap in which a substantial amount of coconut oil has been incorporated. To produce a white bar soap or a soap chip containing the soap builders like silicate of soda or soda ash the use of coconut oil is indispensible. No other fat or oil can satisfactorily replace the coconut oil

needed to produce a satisfactory household white laundry soap or soap chip. And the soap flakes so widely advertised for laundering delicate fabrics (silk and rayon) all must contain coconut oil in very substantial quantities to insure quick and ready solubility.

I have repeatedly examined nationally distributed brands of white floating soaps, white laundry soaps, soap flakes and soap chips during the past 19 years. My analyses have shown that it was rare indeed to find a sample of soap, from among the above enumerated types of soap, which contained less than 15 percent of coconut oil. It is the usual thing to find the proportion of coconut oil ranging from 20 percent up to 35 percent or higher in such soaps.

Those in favor of an excise tax of 5 cents per pound on coconut oil have attempted to bolster their case by citing the substantial increase in the amounts of coconut oil imported in recent years. They overlook the fact that the per capita consumption of soap has also increased greatly and the still more important fact that there have been revolutionary changes in textiles and, as a result, in laundry methods during the past decade or two. Modern textiles (among which rayons and silks are so prominent) and modern laundry methods, especially in the home, demand a very different type of soap from that which was formerly used on the washboard or in the clothes boiler. White soaps which would dissolve quickly, form suds freely, and rinse easily, have been demanded—and to produce a soap with those properties coconut oil in substantial amounts is necessary.

BRIEF OF W. J. PETERSEN ON BEHALF OF THE PACIFIC AMERICAN STEAMSHIP ASSOCIATION, SHIP OWNERS' ASSOCIATION, SHIP OWNERS' ASSOCIATION OF THE PACIFIC COAST, AND WATERFRONT EMPLOYERS' UNION

In relation to section 602 of the revenue bill, H.R. 7835, imposing a tax of 5 cents per pound on all coconut oil and sesame seed oil imported from the Philippine Islands, including floor stock, on behalf of the Pacific American Steamship Association, the Shipowners' Association of the Pacific Coast and the Waterfront Employers' Union, of San Francisco, Calif., we desire to respectfully protest against the imposition of such tax, because such imposition would, in fact, destroy a very important earning capacity of American ships in the trade between the Pacific coast and the Philippine Islands. The imposition of such tax on these oils would amount approximately to $100 per ton, against a value of the commodities of approximately $30 to $35 per ton.

From a consideration of the debate in the House of Representatives, it would appear that there are two contending industrial units in the United States for and against this bill. The industries embracing dairy products, hogs, and cattle approve the imposition of this tax on the ground that the importation of coconut and sesame seed oils would be to the advantage of these industries; while, on the other hand, soap manufacturers of the United States using the larger proportion of these oils are strongly in opposition to it. Between these two elements the American Merchant Marine that carried the larger proportion of these commodities between the mainland and the Philippine Islands would be crushed, thereby curtailing employing capacity on board American ships, reducing thereby the volume of money paid to American seamen and, also, impairing to a large degree the earning capacity of longshoremen on the Pacific Coast who are employed in discharging these commodities.

The President appears to be of the opinion that our foreign trade should be strengthened, that nothing should be done to impair these friendly relations with foreign countries, and the enactment of this provision would appear to be in opposition to the President's plans for augmenting and increasing our foreign trade.

The imposition of a 5-cent per pound tax on these oils would decrease revenues collected by customs authorities in the United States. An embargo on these oils would send this trade to other nations, who would take advantage of these commodities in the manufacture of articles that might be imported into the United States to the serious disadvantage of domestic manufacturers.

Copra imports for 1933, on a quantity basis, are 129 percent above the 1921–25 average and 28 percent above the 1926–30 average.

Imports of coconut oil in 1933 were 78 percent above the 1921–25 average and 21 percent above the 1926–30 average.

Forty-four percent of our 1932 imports of copra came from the Philippine Islands, and 100 percent of our imports of coconut oil came from the Islands, and the major sources of supply of copra are in the Pacific, principally from the Philippine Islands.

Imports of sesame seed were 137 percent over the 1926–30 average, and present imports of sesame oil are quite negligible in comparison with the 1926–30 average.

In the 1930 tariff act sesame oil was made dutiable at 3 cents per pound, as contrasted with its previous free list status. This, as shown by the statistics, resulted in an abrupt drop in sesame oil imports and a sharp rise in imports of sesame seed representing a shifting of the sesame oil pressing industry to the United States.

According to the reports of the Bureau of the Census under date of March 31, 1933, the soap industry is by far the greatest user of coconut oil, taking 64 percent of the total consumption, while oleomargarine used 22 percent, the balance being distributed over the manufacture of compounds and vegetable shortenings, other edible products, paint, varnish, printing ink, and miscellaneous.

As to sesame oil, the great bulk, 74 percent, goes into the manufacture of compounds and vegetable shortenings (edible products) and the only other important use is in soap manufactures, which absorbs 18 percent, oleomargarine using none, although a very small percentage goes into other edible products.

From these statistics it would appear that, insofar as the use of these oils in edible products is concerned, they are not of great importance, while the imports of these commodities used for nonedible purposes provides the great bulk of these imports. It is, therefore, to the advantage of the United States to produce a low-priced commodity such as soap that, by the use of these oils, has reduced the cost to the consumer of soap in the United States by about 40 percent.

It is to be remembered, in this connection, that American vessels in the trade between the mainland and the Philippine Islands cannot operate successfully without return cargoes. In this connection we quote from the address of the Honorable Virginia E. Jenckes of Indiana, as follows:

"In 1929 our exports of cotton goods to the Philippines were valued at $15,-348,000; of wheat flour, $4,348,000; of dairy products $3,035,000; of tobacco products $3,151,000; and of various other products of agricultural origin, amounts of no inconsiderable value. For cotton cloth, and for condensed and evaporated milk the Philippines are our leading export markets."

She states further:

"The Secretary of Agriculture stated that to meet the situation confronting the dairymen it would not be necessary to impose an embargo upon coconut oil. In this connection, we must all agree that while a 5-cent per pound excise tax on coconut oil could be absorbed by the oleomargarine manufacturer, there is no doubt whatever that a tax of this size would be practically an embargo in the case of the soap manufacturers, the rubber tire manufacturers, and the tanners of leather, who are the chief industrial users of coconut oil."

Therefore, in this connection, we have to consider the fact that practically all of our export commodities to the Philippine Islands are carried in American bottoms, and unless there are return cargoes from the Philippine Islands to the United States, the trade would be unprofitable for American ships. Copra, coconut oil, and sesame oil provide the bulk of such return cargoes. The authorities in the Philippine Islands strongly protest against the imposition of this tax, as it would be ruinous to the export trade and would cause a great deal of hardship on the men employed in these islands, and it is to be remembered in this connection that the Philippine Islands are still wards of the United States.

The imposition of a 5-cent per pound tax on these commodities would simply destroy this trade and throw it into the hands of foreign competing nations who could take advantage of a low-priced commodity without a large tax and successfully compete with commodities produced in the United States; and, also, the imposition of such tax would materially reduce the volume of customs collections in the United States.

STATEMENT OF CHESTER H. GRAY, WASHINGTON REPRESENTATIVE OF THE AMERICAN FARM BUREAU FEDERATION, FAVORING EXCISE TAXES ON FATS AND OILS IN SECTION 602

The CHAIRMAN. Mr. Gray, do you want to open for the proponents? How much time, Mr. Gray?

Mr. CHESTER H. GRAY. For myself, individually?

The CHAIRMAN. Yes. Do you want to open now?

Mr. GRAY. Yes; I should like, in conformity with the agreement of those who are in favor of this excise tax, to open the proposition on the positive side.

The CHAIRMAN. You have an hour and a half. The other side has an hour and a half.

Mr. GRAY. It may take me, if you would permit it, a little longer than you have assigned to other witnesses, but we will make it up, in cutting down the subsequent witnesses, if you will permit it to be arranged that way.

The CHAIRMAN. Yes. Well, how much time do you want to consume before we stop you?

Mr. GRAY. I would suggest that I can get through, in a prepared statement I have, in 20 minutes.

The CHAIRMAN. All right, 20 minutes.

Mr. GRAY. In appearing before the finance committee in behalf of farmers and others in the United States who produce animal, vegetable, and marine fats and oils, it may be stated that there are two direct objectives. First, the 5 cents per pound excise tax on certain oils and fats will secure additional revenue, and, second, these taxes will elevate the domestic prices of fats and oils. There is a secondary or indirect objective connected with this effort, which is to supplant with domestic oils and fats products a portion of the uses now absorbed by foreign fats-and-oils products.

This is not an effort totally to exclude from the domestic market foreign fats and oils. There will be some tendencies to reduce importations of these products from abroad. The various groups which are now and for sometime have been associated in this effort are not advocating the 5-cent per pound excise tax as an embargo against such products. Primarily it is a price elevation movement within the domestic markets and in behalf particularly of domestic products but operative also upon the imported products.

Senator MCADOO. Mr. Gray, may I interrupt you and ask you if you are speaking now only for the American Farm Bureau Federation?

Mr. GRAY. In one way, Senator McAdoo, I am, but in a more general way I have been asked by all of the groups which are in favor of these excise taxes to speak generally for them, but they will have some witnesses to speak specifically on certain phases.

Senator MCADOO. Exactly. Well, now, could you give us an idea of who compose this group?

Mr. GRAY. I would be glad to do that.

Senator WALCOTT. That would include the fish-oil people, wouldn't it?

Mr. GRAY. That includes the American Fish Oils Association, the name that I will mention first, since you have named it, the National Cooperative Milk Producers Federation, the National Grange, the American Cotton Cooperative Association, the National Cottonseed Crushers Association, the Independent Cottonseed Crushers Association, and the American National Livestock Association. If I have missed any, it is a matter of memory.

Senator MCADOO. That gives us a general idea. I just want to know who are interested, that is all.

Mr. GRAY. To make this program fully complete the tax must be made to apply on both edible and inedible fat and oil products. There are those who advocate the retirement of American producers of fats and oils from the market supplied by the inedible uses of these products. He is an unwise adviser and economist who urges the American farmer to be content with the market supplied by the edible uses of

fats and oils. No one has the courage to advocate such a proposal in regard to any other product grown by American farmers which can be applied both to edible and inedible uses. If farm groups should adopt the argument of those who oppose this tax because of their their assertions that the farmer or others who produce inedible fats and oils have no interest beyond the edible field of use, then such farm organizations would likewise, in order to be consistent, need to surrender the field of inedible uses to which corn may be applied. The first thought about corn is that it is an edible farm product for human and animal consumption; but it has a wide range of inedible uses, one of which is that of industrial alcohol. Does anyone urge the American farmer who produces corn to recede from his present efforts to supply the domestic market with industrial alcohol? The fight is raging right now between the corn farmer and those who have control of the Cuban black-strap-molasses situation, and practically all observers, except the few who are interested in the black-strap industry, agree that the corn farmer has the right of way in this inedible field of use.

The same thing can be said of the farmer who produces potatoes, which is a crop capable of being used largely in the inedible field of use of industrial alcohol. In fact, in Germany a great portion of this type of alcohol is produced from potatoes. Those who advocate that our citizens who produce oils and fats have no interest in the edible field of use evidently do not think it wise to broaden their position into other American farm products or else they would be clamoring in behalf of the black strap molasses interests of Cuba instead of seemingly tolerating and supporting the corn and potato interests of our country.

Pursuing this question of edibility and inedibility relative to the domestic market makes it wise to observe that starches may be extracted from several farm crops grown by United States citizens for both the edible and inedible field of use. Any of our grains and potatoes are large carriers of starch. Starch, when prepared in certain ways, is edible. When processed in certain other ways it becomes glue and a dozen other commodities of inedible nature. Are the farmers who produce our starch-carrying crops to be content merely with feeding the animal or human stomach or are they also to be privileged to supply the vast inedible uses to which starch may be applied? It would be as logical to ask the farmers to retire from the inedible field of use for starches as it is to ask them to be content with merely the edible field of use for oils and fats.

I could pursue the question of the edible and inedible, throughout the wider range of farm crops, and there is no one of any consequence, except the few who might be interested in certain enterprises, who would try to crowd the American farmer or the other citizen who produces the fats and oils, out of the edible or out of the inedible field of use. We insist, all of us in these organizations that I name, that the farmer who produces fat or an oil product, whether it be an animal-fat or a marine product, for the inedible field of use in the domestic market, be protected there as in the edible field of use.

Looking at this question from still another point of view, we see it as having some direct contact with the dairy industry of our Nation. Even the uninformed know that dairy products are edible, and the

informed know that these products have a constantly growing chance, under chemical and other developments, to find markets in products which are inedible. Casein may be taken as an instance of the dairy interest in the inedible forms in which dairy products may go to market. It is made from skimmed milk and is a filler for certain kinds of paper. The only controversy now about it is not whether or not the farmer shall voluntarily retire from having casein made from his product (skimmed milk) but whether it is to be made from the products of our American dairies or from those abroad. No one is bold enough to say that the farmer has no interest in the inedible field of use of dairy products, as exemplified by casein.

Such instances as those just given reduce to the point of absurdity the fundamental position which is taken by those who allege that the edible market for oils and fats is the only one of concern to the American producer of these products. We who speak for the domestic producers of these products, neither now nor in the future, will expect any solution to give us the home market on this group of products unless we have both the edible and inedible markets.

Closely akin to the question of edibility and inedibility of oils and fats is the question of interchangeability. It is not asserted that any and all oils can be shifted instantaneously within either the edible or inedible fields of use or between those fields of use but it is asserted that the price of oils both edible and inedible is the determining factor which, to a great extent, determines whether or not a certain oil is to be continued in the same uses to which it formerly has been applied. It is well know that coconut oil in the making of oleomargarine has largely displaced cottonseed oil. Following this development, cottonseed oil then found an outlet in cooking compounds. Finally, this trend of events tended to crowd lard out, or at least to decrease its domestic market, thus showing a sort of vicious circle of interchangeability which in these instances gradually developed. In other instances the shift from one oil or fat to another is of more immediate character than the progress of events just described in which coconut oil, through the medium of cottonseed oil as an intermediary, has come to be a competitor of lard.

A sample of this can be given by citing oleomargarine statistics, and oleomargarine has not entered into this particular argument, for the purpose of attacking or defending oleomargarine, but we have had an oleomargarine which for many a year has been on the Federal statute books. We have the amount of oleomargarine manufacture, and the products from which it is now manufactured, and the percentages of the different oils that go into it, all as a result of the report which the oleo manufacturers have to give to the Bureau of Internal Revenue, so oleomargarine gives a very good sample, to show how these oils do shift around, from one use to another, and I am citing that as a demonstration.

Senator GORE. Just to take the tax on oleomargarine is a hardship on the cotton producer?

Mr. GRAY. Not to the extent of crowding oleomargarine off the market, not at all, Senator Gore. If oleomargarine is sold as a shortening compound, not in the semblance of butter, the 10 cents per pound tax applies only when oleomargarine is colored and is made to assume the semblance or form of butter.

Senator Gore. There would be more sold if it were not for the 10 cents a pound tax, wouldn't there?

Mr. Gray. There would be more sold if it were not for that 10 cents tax. At the present time, oleomargarine that is sold not to imitate butter carries a one fourth cent per pound Federal tax.

Table I.—*Materials used in the manufacture of oleomargarine, 1917-33 (year beginning July)—ingredients of foreign origin*

[Figures in 1,000 pounds]

Year	Coconut oil	Soybean oil	Mustard-seed oil	Palm oil	Palm-kernel oil	Sesame oil
1917-18	61,778					
1918-19	69,640					
1919-20	80,784					
1920-21	103,112	461	110			
1921-22	57,394					
1922-23	65,656					
1923-24	83,059		38			
1924-25	79,449		27			
1925-26	98,307	1	34			
1926-27	107,654	33	53	585	54	180
1927-28	141,000		56	955	129	40
1928-29	171,412		12	1,349	15	
1929-30	185,066	619	48	1,102	3	(1)
1930-31	155,954	2,262	48	2,773		99
1931-32	127,967	18	1	314		203
1932-33 [2]	134,430	7		383		
1933-34 [3]	78,683			278		

Source: Annual Reports of the Commissioner of Internal Revenue.

Year	Soda	Sun-flower oil	Derivative of glycerine	Coloring	Miscellaneous	Total
1917-18					14	61,787
1918-19					11	60,651
1919-20					14	80,798
1920-21				26	9,776	113,485
1921-22				11	3,417	60,822
1922-23				11	2,918	68,585
1923-24				26	432	83,555
1924-25				38	688	80,202
1925-26				41	1,374	99,757
1926-27	82	67		18		108,676
1927-28	96			19		142,295
1928-29	111			47		172,946
1929-30	122		50	21		187,031
1930-31	92		180	11	10	161,429
1931-32	76		245	5	8	128,834
1932-33 [2]	79		363	3	35	135,301
1933-34 [3]	54		332	2	53	79,402

[1] Not over 500 pounds.
[2] Total of monthly figures released by the Bureau of Internal Revenue.
[3] First 6 months, July-December, inclusive, 1933.

Source: Annual Reports of the Commissioner of Internal Revenue.

Coconut oil has had an almost continuously increased outlet in oleomargarine since 1917. It is so dominant in the making of oleomargarine that it has provoked a great agitation which is reflecting itself in our State legislatures to prevent oleomargarine of any kind being manufactured. Others, more modest in their protests against this foreign product, coconut oil, dominating a domestic industry like oleomargarine, are more conservative in their position, which is that all margarines should be made only of domestic oil and fat products. It may be stated that the ingredients of foreign origin

which go into oleomargarine are, to a large extent, dominated by the price range on coconut oil which, on account of its low cost of production, is ordinarily a very cheap oil and fat product.

Turning now a similar question, that of ingredients of domestic origin in oleomargarine, we see a very different picture.

TABLE II.—*Materials used in the manufacture of oleomargarine, 1917–33 (year beginning July)—ingredients of domestic origin*

[Figures in 1,000 pounds]

Year	Oleo oil	Cottonseed oil	Peanut oil	Oleo stearine	Neutral oil	Oleo stock
1917-18	96,378	36,454	21,593	3,427	45,702	7,526
1918-19	97,404	37,846	38,764	2,456	45,764	6,342
1919-20	80,842	39,450	48,346	2,132	38,456	5,804
1920-21	49,676	18,533	16,332	4,858	20,208	2,065
1921-22	40,980	15,420	11,625	4,574	27,057	2,143
1922-23	46,645	18,757	6,922	4,815	29,568	2,322
1923-24	52,265	20,640	5,056	5,317	32,210	2,756
1924-25	44,102	20,968	4,392	5,250	25,674	3,183
1925-26	47,418	25,608	5,257	5,314	25,172	3,082
1926-27	48,741	23,372	4,872	5,145	24,872	2,552
1927-28	46,477	24,801	5,459	5,532	25,036	1,738
1928-29	47,185	28,173	6,617	5,834	24,189	1,204
1929-30	45,322	30,214	5,714	6,269	19,632	1,180
1930-31	28,040	22,037	5,291	5,485	10,180	1,025
1931-32	15,315	14,874	3,780	4,337	10,557	641
1932-33 [2]	12,457	16,030	2,338	3,283	9,130	573
1933-34 [3]	8,876	9,596	1,440	1,577	4,576	545

Year	Butter	Corn oil	Edible tallow	Milk	Salt	Total
1917-18	4,548	60	....	61,128	18,279	295,095
1918-19	5,680	40	....	68,000	21,432	323,788
1919-20	6,846	35	....	76,000	24,804	331,774
1920-21	1,499	926	233	79,716	25,365	228,471
1921-22	1,107	....	....	53,939	16,202	173,107
1922-23	1,576	....	....	59,835	17,998	188,438
1923-24	1,900	457	24	69,090	20,593	210,908
1924-25	1,509	196	111	61,924	18,725	186,032
1925-26	2,330	174	93	72,662	20,593	207,703
1926-27	2,070	183	219	73,700	21,683	207,400
1927-28	2,484	38	70	83,115	25,024	218,774
1928-29	2,611	....	26	94,752	27,311	237,992
1929-30	2,616	(1)	16	97,752	28,890	237,614
1930-31	1,013	159	(1)	77,251	22,981	173,462
1931-32	39	74	....	54,257	14,059	118,531
1932-33 [2]	16	102	....	52,007	12,598	108,535
1933-34 [3]	5	271	....	50,904	7,557	65,346

[1] Not over 500 pounds.
[2] Total of monthly figures released by the Bureau of Internal Revenue.
[3] First 6 months, July-December, inclusive, 1933.

Source: Annual reports of the Commissioner of Internal Revenue.

In every instance where domestic oils are used in the making of oleomargarine, except in the case of corn oil, which is used very slightly, the home-grown products have shown an alarming decrease in use since 1917 to 1934. Oleo oil, from which the product oleomargarine originally derived its name, has diminished in this field of use to one twelfth the place it held in 1917. Cottonseed oil is only one fourth as prominent now in quantity as in 1917. Oleostearine is less than one half; peanut oil about one fifteenth; neutral lard about one eleventh; oleo stock about one fifteenth; butter has only a trace left; but corn oil, still very slightly used, shows a slight increase.

There are three predominating causes of shifts in use among these oils and fats, all of which shifts demonstrate interchangeability. The

main cause is the price factor, which induces either immediate or gradual changes in manufacturing formulas so that a cheaper oil might be used. A second proof of interchangeability is found in the chemical constituents of the oils and fats. There is a great similarity of chemical make-up in these products. The third demonstration of the interchangeability is found in the actual uses to which oils and fats are put.

TABLE III.—*Percentage composition of fatty acids in common oils and fats*

Fat or oil	Lauric	Myristic	Palmitic	Stearic	Oleic	Linolic
Coconut oil	45.0	20.0	5.0	3.0	6.0	....
Palm kernel oil	55.0	12.0	6.0	4.0	10.0	....
Lard	....	....	24.6	15.0	50.4	10.0
Peanut oil	....	....	8.5	6.0	51.6	26.0
Cottonseed oil	....	....	23.4	....	31.6	45.0
Corn oil	....	....	6.0	2.0	44.0	48.0
Butter fat (cow)	6.0	22.6	19.2	11.4	27.4	....
Soya bean oil	....	....	11.0	2.0	20.0	64.0
Rapeseed oil	57.2	1.5	....	1.6	20.2	14.5

A student of this oil and fat proposition knows that, although percentages of different chemical contents differ with different oils and fats, there is a remarkable similarity of chemical content among them. In other words, although some may have greater or lesser percentages of a certain content than do others, they differ mostly in degree of chemical content, not in chemical make-up. This is demonstrated by a further study of the oils and fats which now and in former times have been used in oleomargerine production.

TABLE IV.—*Various ingredients used in oleomargarine production*

INGREDIENTS OF DOMESTIC ORIGIN

[In percent]

Year	Oleo oil	Cotton-seed oil	Peanut oil	Oleo stearine	Neutral lard	Oleo stock	Butter	Corn oil	Edible tallow	Milk	Salt	Total
1917-18	27.00	10.21	6.05	0.96	12.81	2.11	1.27	0.02	----------	17.12	5.12	82.67
1918-19	24.76	9.62	9.85	.62	11.63	1.61	1.44	.01	----------	17.28	5.45	82.27
1919-20	21.78	9.56	11.72	.52	9.32	1.41	1.06	.008	----------	18.42	6.03	80.43
1920-21	14.53	5.42	4.78	1.42	8.56	.66	.44	.27	----------	23.31	7.42	66.81
1921-22	17.52	6.59	4.97	1.96	11.57	.92	.47	----------	----------	23.09	6.95	74.04
1922-23	18.15	7.30	2.69	1.87	11.50	.90	.61	----------	----------	23.28	7.00	73.30
1923-24	17.75	7.01	1.92	1.80	11.28	.94	.65	.16	0.008	23.46	6.99	71.97
1924-25	16.57	7.87	1.65	1.97	9.64	1.19	.57	.07	.04	23.26	7.03	69.86
1925-26	15.42	8.33	1.71	1.73	8.19	1.00	.76	.05	.03	23.63	6.70	67.56
1926-27	15.42	7.39	1.54	1.63	7.87	.81	.65	.06	.07	23.32	6.86	65.62
1927-28	12.59	6.87	1.51	1.53	6.93	.48	.69	.01	1.94	23.01	6.93	62.49
1928-29	11.48	6.86	1.61	1.42	5.89	.31	.64	----------	.007	23.06	6.65	57.93
1929-30	10.67	7.11	1.35	1.48	4.62	.23	.62	----------	.003	23.02	6.80	55.95
1930-31	8.37	6.58	1.58	1.64	3.04	.31	.30	.05	----------	23.07	6.86	51.80
1931-32	6.19	6.01	1.53	1.75	4.27	.26	.02	.03	----------	21.93	5.93	47.92
1932-33	5.11	6.57	.96	1.35	3.74	.23	.01	.04	----------	21.33	5.17	44.51
1933-34 [1]	6.13	6.63	1.00	1.09	3.16	.38	.004	.19	----------	21.35	5.22	45.15

INGREDIENTS OF FOREIGN ORIGIN

Year	Coconut oil	Soybean oil	Mustard seed oil	Palm oil	Palm kernel oil	Sesame oil	Soda	Sunflower oil	Derivative of glycerine	Coloring	Miscellaneous	Total
1917-18	17.30										0.003	17.33
1918-19	17.70										.003	17.73
1919-20	19.58										.003	19.57
1920-21	30.15	0.13	0.03								2.86	33.19
1921-22	24.53										1.46	25.96
1922-23	25.54										1.43	26.70
1923-24	28.21	.008	.01							0.01	.14	28.03
1924-25	29.84		.01							.01	.25	30.14
1925-26	31.97		.01							.01	.45	32.44
1926-27	34.06	.01	.02	0.18	0.01	0.04	0.03	0.02		.01		34.38
1927-28	38.05		.02	.26	.01	.01	.03	.01		.01		37.51
1928-29	41.71		.01	.33	.003		.02			.01		42.07
1929-30	43.58	.15	.01	.26			.03		0.01	.004		44.05
1930-31	46.57	.68	.01	.82		.03	.03		.05		.01	48.20
1931-32	51.73	.005	.001	.13		.08	.03		.10	.002	.003	52.08
1932-33	55.13	.003		.16			.03		.15	.001	.014	55.49
1933-34 [1]	54.36			.19			.03		.23	.001	.04	54.85

[1] First 6 months, July-December, inclusive, 1933.

Source: Calculation based on reports of the Commissioner of Internal Revenue.

In percentages of use in oleomargarine production, the oils and fats have shifted over a wide range of products, but an oil and fat which has certain chemical characteristics can be applied to the making of margarines. This application has resulted in the ingredients of domestic origin shrinking in many cases to mere traces of what was used in 1917 in the oleomargarine industry. But, the ingredients of foreign origin have shown an ability to hold their own in the margarine trade or to expand widely, as in the case of coconut oil. Peanut oil and coconut oil do not have exactly the same chemical constituents but it is known that peanut oil has receded from use in the making of oleomargarine, whereas coconut oil has expanded. Cottonseed oil has five times the strength in a certain chemical constituent as does coconut oil, but they both have that constituent and the price of one compared to the other and the adaptation of formulas in manufacturing has resulted in cottonseed oil being forced almost out of the margarine trade, with coconut oil constantly growing. Butter fat and coconut oil have at least five chemical constituents of identic nature but in varying percentages. However, butter fat has diminished to a mere trace in the making of margarines, but coconut oil, as is well known, dominates the field.

Interchangeability is further demonstrated by the similar uses to which domestic and imported fats and oils are put.

TABLE V.—*Apparent consumption of oils, by principal industries, 1929*

[In thousands of pounds]

Oil	Total apparent consumption [1]	Reported consumption in principal industries					Consumption in miscellaneous industries, households, etc.
		Lard compound or substitute industry	Margarine industry	Other food industries	Soap industry	Paint varnish industry	
Grand total	8,941,573	1,225,750	278,950	4,572,004	1,618,218	450,841	795,770
Primarily domestic materials:							
Butter	2,177,297			2,177,297			
Lard (except neutral)	1,725,164			1,725,164			
Lard (neutral)	47,312	23,123	24,189				
Oleo oil and animal fats	124,432	77,247	47,185				
Tallow, inedible	864,018 (Tallow and greases)				434,755		183,747 (Tallow and greases)
Greases					245,516		
Cottonseed oil	1,474,006	1,083,202	28,173	350,631	12,000		
Cottonseed-oil foots	108,904				108,904		
Corn oil	138,434			133,070	5,000	304	
Peanut oil	[2] 17,307		6,617	8,990	1,700		
Total	6,676,874	1,183,572	106,164	4,395,152	807,875	364	183,747
Primarily improved materials:							
Sesame oil	30,076	5,215		20,026	4,835		
Coconut oil	662,007	20,000	171,411	53,598	344,205		72,793
Palm-kernel oil	84,327		15	11,392	72,920		
Palm oil	230,980	1,101	1,349		192,331		36,109
Olive oil, inedible, and foots	54,808				53,629		1,179
Perilla oil	5,574					5,508	66
Soybean oil	[3] 19,359	82	11		6,400	5,815	7,051
Olive oil, edible	[4] 91,836			91,836			
Tung oil	115,721					88,386	27,335
Rapeseed oil	16,848						16,848
Total	1,311,536	36,498	172,786	176,852	674,320	99,709	161,381

See footnotes at end of table.

TABLE V.—*Apparent consumption of oils, by principal industries, 1929*—Contd.

Oil	Total apparent consumption [1]	Reported consumption in principal industries					Consumption in miscellaneous industries, households, etc.
		Lard compound or substitute industry	Margarine industry	Other food industries	Soap industry	Paint varnish industry	
Both domestic and imported materials:							
Fish oils	94,010	14,921	....	....	63,443	10,602	5,044
Whale oil	71,473	809	....	....	70,664	....	....
Linseed oil	787,080	....	....	....	1,916	[5] 340,160	[6] 445,598
Total	953,163	15,730	....	....	136,023	350,768	450,042

[1] Total apparent consumption represents in most cases the reported production plus imports (for consumption), less exports, plus or minus the differences in stocks on hand at beginning and end of year. Where the figure thus computed was less than the consumption reported by the above industries, the total reported by these industries has been substituted as the "apparent consumption." The basic data come from the Bureau of the Census and estimates by the trade.
[2] Includes some imported oil.
[3] Includes some domestic oil, but does not account for difference in stocks at beginning and end of year.
[4] Including domestic oil.
[5] Factory consumption only.
[6] The bulk of this probably used by painters for mixing and not included in factory consumption.

Source: U.S. Tariff Commission's Report to the Congress on "Certain Vegetable Oils, Whale Oil, and Copra", table 20, p. 31.

In the soap industry no less than six major domestic oils are used. An equal number of major imported oils and fats find a market in the soap trade. Three additional major oils and fats products, whether domestic or imported, find a market in the soap kettle. The margarine industry draws on at least four major domestic products and an equal number of major imported products. Lard compounds or substitutes give an avenue of use to three prominent domestic products, to 4 prominent imported products and to 2 major products which are both domestically grown and imported. Other food industries which supply markets for oils and fats draw upon 5 of our larger domestic products and upon 4 important imported products. The paint and varnish industry hardly recognizes the primary domestic materials but gives a good market for at least three imported products and two products which are both domestically produced or imported.

Another way of approaching this same question of interchangeability is to set down certain uses to which oils and fats may be put, such as soap, lard compounds, oleomargarine, salad oils and dressings, paint, linoleum, and printing inks, and list under each of these industrial or food groups the oils and fats which, in greater or lesser amounts, are used in manufacturing each of the groups.

TABLE VI.—*Interchangeability*

Soap	Lard compounds	Oleomargarine	Salad oils and dressings	Paint, linoleum, printing inks
Tallow, inedible				Tallow, inedible.
Coconut oil	Coconut oil	Coconut oil	Coconut oil	
Palm oil	Palm oil	Palm oil	Palm oil	Palm oil.
Grease				
Whale oil	Whale oil			Whale oil.
Fish oils	Fish oils			Fish oils.
Olive oil			Olive oil	
Inedible and sulphurous palm kernel oil.	Palm kernel oil	Palm kernel oil	Palm kernel oil	
Sesame oil	Sesame oil	Sesame oil	Sesame oil	
Corn oil	Corn oil	Corn oil	Corn oil	Corn oil.
Soybean oil	Soybean oil	Soybean oil		Soybean oil.
Vegetable tallow				
Castor oil				Castor oil.
Edible tallow	Edible tallow	Edible tallow	Edible tallow	
Cottonseed oil	Cottonseed oil	Cottonseed oil	Cottonseed oil	
Linseed oil				Linseed oil.
Oleo oil	Oleo oil	Oleo oil	Oleo oil	Oleo oil.
Peanut oil	Peanut oil	Peanut oil	Peanut oil	Peanut oil.
Neat's-foot oil				
Animal stearine	Animal stearine lard.	Animal stearine lard.	Animal stearine lard.	China wood, Perilla oil (tung), rapeseed oil.

In a more inclusive way than just described, when accent was given to the major oils and fats products used in various industries, it may be seen that when one includes major and minor products the list of oils and fats which go into the manufacturing of the different industrial and food groups named is materially enlarged. For instance, soap draws upon 15 oils; oleomargarine upon 12; salad oils and dressings require 12 oils in their manufacturing; paints and linoleum give a market for 13 oil and fat products.

Before leaving the question of interchangeability in connection with the actual uses to which oils and fats are put, it is well to remember that in 1914 the margarines contained about 75 percent animal fats and 25 percent vegetable fats. In 1931 the margarines contained about 25 percent animal fat and 75 percent vegetable fat. Also, let us not forget that in 1914 margarines contained less than 1 percent of coconut oil while in 1931 they contained almost 77 percent of coconut oil. There is no particular reason for citing margarine in connection with interchangeability of oils and fats except that owing to the Federal oleomargarine legislation which has been on the statute books for some time there are available annual reports and data upon amounts manufactured, materials purchased, trends and shifts in the business. This gives us an excellent demonstration supported by governmental data which is not subject to the criticism of being partial.

It was said earlier in this statement that it is not the exclusive purpose of those who advocate the 5 cent per pound excise tax on certain fats and oils to exclude from our markets the foreign products. However, it has been stated that an effect of the tax would be somewhat to reduce the amount of importations although the primary effect would be that of price increase all along the line in the domestic market for fats and oils. In connection with whatever reduction in importations the excise tax would cause, it is well to consider stocks of oils and fats on hand and related propositions. There has perhaps not been a time in recent years when the American farmers have greater threats in regard to their fats and oil prices

than are contained in the available materials both for edible and inedible uses in the fats and oils field.

TABLE VII.—*Stocks on hand, Sept. 30, with comparisons*

	3-year average, 1928-31	Sept. 30, 1932	Sept. 30, 1933
	Pounds	*Pounds*	*Pounds*
Cottonseed oil, crude and refined [1]	316,827,000	606,000,000	742,000,000
Lard, edible [1]	34,918,000	59,000,000	136,000,000
Corn oil, crude and refined [1]	21,540,000	16,000,000	27,000,000
Tallow, edible and inedible	127,018,000	179,000,000	237,000,000
Butter [2]	132,000,000	107,000,000	175,000,000
	632,303,000	967,000,000	1,317,000,000

[1] Census Bureau.
[2] Bureau of Agricultural Economics.

The 3-year period of 1928 to 1931 showed stocks on hand September 30 of 5 principal oils, averaging 632,303,000 pounds. In 1932 this had grown to 967,000,000 pounds and on the same date of 1933 it had leaped to 1,317,000,000 pounds. Surely there is some need to give the domestic market to the domestic producers of animal, vegetable, and marine fats and oils and the excise taxes will be of some help in that regard.

Taking a broader view and including more than five oils and fats on hand, the situation is found to be still more aggravated.

TABLE VIII.—*Stocks of animal and vegetable oils and fats, stocks on Dec. 31*

	1933	1932	1928-32	1922
Domestic:	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Cottonseed oil	938,085	874,398	620,108	256,573
Edible lard	98,026	42,706	56,320	42,923
Creamery butter	111,210	22,043	47,501	20,819
Inedible tallow	255,929	185,742	131,243	63,317
Greases	97,314	72,000	69,323	42,087
Corn oil	35,430	21,934	22,715	17,959
Soybean oil	13,370	16,817	14,221	5,308
Peanut oil	3,215	3,410	6,021	2,617
Edible tallow	4,200	4,370	4,063	3,292
Neutral lard	2,704	1,546	2,788	4,995
Oleo oil	9,059	5,923	10,296	11,949
Foreign:				
Coconut oil	108,384	135,278	165,532	109,563
Palm kernel oil	11,991	7,205	12,903	1,401
Palm oil	105,682	80,335	67,509	15,706
Sesame oil	4,058	3,052	5,490	(1)
Foreign and domestic:				
Linseed oil	157,724	121,770	137,713	81,564
Cod and cod-liver oil	9,440	8,390	8,613	3,956
Whale and sperm oil	38,768	79,080	69,506	15,818
Other fish oils	100,215	100,213	90,414	29,519
Oilseeds, etc.:				
Cottonseed	2,600,884	2,672,782	2,471,858	1,579,598
Copra	110,662	56,169	56,003	20,944
Flaxseed	151,950	174,768	201,287	129,312
Soybeans	113,856	83,456	62,284	1,954
Sesame seed	8,118	13,308	6,968	(1)

[1] Not separately reported.

Source: U.S. Department of Commerce, Bureau of Census, "Statisticals on Fats and Oils" (National Cooperative Milk Producers Federation).

The principal oils of domestic origin which we have large stocks of are cottonseed, creamery butter, and inedible tallow. The foreign oils which are lying around in too great quantities are principally coconut and palm oil. We also have too much linseed and fish oils, some of which are domestic and a portion of foreign origin. A most alarming situation exists in the amount of cottonseed on hand. If the intent of the Agricultural Adjustment Act, which is to give the American farmer price parity with the goods he must buy, then this situation of stocks on hand relative to oils and fats must be corrected. It can be corrected by giving as much as the 5-cent-per-pound excise tax may give it—the domestic market to the domestic producers. A great assistance in correcting this rather threatening condition relative to stocks on hand would be for the processors who prepare many of these products for edible and inedible uses to confine themselves more religiously to the home products.

But, taking a longer point of view and getting away from the price-depressing influence of the stocks on hand for the moment, it appears that we have adequate potential consumption in the United States for all the fat and oil materials which we reasonably can expect to produce.

Table IX.—*Fats and oils, competitive oils and fats situation in the United States*

[Source: Compiled from Official Reports issued by the U.S. Department of Commerce, Foreign Commerce and Navigation of the United States and Statistics on Animal and Vegetable Fats and Oils]

[All data in millions of pounds]

	1914	1919	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932
Production from domestic and imported raw material:														
Vegetable oils	2,455	2,315	2,018	1,747	2,025	2,222	2,651	2,924	3,048	2,736	2,941	2,698	2,539	2,381
Animal and fish oils, fats, and greases	1,712	1,979	2,508	2,743	3,176	3,151	2,667	2,808	2,775	2,952	3,029	2,751	2,827	2,762
Butter	1,706	1,559	1,650	1,779	1,862	1,956	1,962	1,925	2,096	2,077	2,177	2,093	2,197	2,250
Total	5,873	5,853	6,176	6,269	7,063	7,329	7,270	7,657	7,919	7,765	8,147	7,542	7,563	7,393
Production from domestic raw materials:														
Production from domestic and imported materials	5,873	5,853	6,176	6,269	7,063	7,329	7,270	7,657	7,919	7,765	8,147	7,542	7,563	7,393
Less oils content of imported raw materials [1]	146	496	421	507	774	589	647	809	789	711	884	683	682	478
Total production from domestic materials	5,727	5,357	5,755	5,762	6,289	6,740	6,623	6,848	7,130	7,054	7,263	6,859	6,881	6,915
Imports, oils as such:														
Vegetable oils	289	871	400	651	659	600	740	773	771	806	1,101	1,064	891	732
Animal and fish oils, fats, and greases	[2] 52	68	48	78	76	84	98	120	159	155	177	145	161	108
Butter		4	18	7	21	19	7	11	8	4	3	2	2	1
Total	341	943	466	736	756	703	845	904	938	965	1,281	1,211	1,054	841
Oil contained in raw materials: Vegetable oils	146	496	421	507	774	589	647	809	789	711	884	683	682	478
Total imports, oil and oil equivalent	487	1,439	887	1,243	1,530	1,292	1,492	1,713	1,727	1,676	2,165	1,894	1,736	1,319
Exports: [2]														
Vegetable oils	235	361	272	100	75	70	87	62	97	86	66	61	47	84
Animal and fish fats, oils, and greases	622	1,052	1,116	1,027	1,279	1,218	938	932	907	941	1,005	806	729	677
Butter	4	35	8	11	6	8	5	5	4	4	4	3	2	2
Total exports	861	1,448	1,396	1,138	1,360	1,296	1,030	999	1,008	1,031	1,075	870	778	763
Potential consumption:														
Supply (total imports plus domestic production)	6,214	6,796	6,642	7,005	7,819	8,032	8,115	8,561	8,857	8,730	9,428	8,753	8,617	8,234
Less exports	861	1,448	1,396	1,138	1,360	1,296	1,030	999	1,008	1,031	1,075	870	778	763
Total potential consumption	5,353	5,348	5,246	5,867	6,459	6,736	7,085	7,562	7,849	7,699	8,353	7,883	7,839	7,471

[1] Does not include oil from castor beans.

[2] Includes butter.

Note.—No account is taken in this table of stocks either at the beginning or at the end of the year. Potential consumption as given here therefore indicates the trend over a period of years rather than the net use in any one year. The data on "Imports" include all coconut oil and copra coming into the United States from the Philippine Islands.

In 1932 we had a total production of domestic materials of 6,915,000,000 pounds of fats and oils. We imported that year 1,319,000,000 pounds of oils and fats equivalents. We exported 763,000,000 pounds. By adding our total production to our total imports and subtracting our exports, we have, as a result, 7,471,000,000 pounds as the total potential consumption for our Nation. This amount compared to 7,393,000,000 pounds, which are the total production from domestic and imported raw materials, would indicate that there is almost a balance of production plus imports on the one hand and consumption on the other hand. This balance could be definitely guaranteed, it is felt, if the American citizens who produce oils and fats were privileged to feel more secure in the domestic market, by lessening the amount of imports.

This does not mean to imply that fats and oils which specialized industries might need can be produced domestically; but there is little logic in upsetting the entire domestic industry which is so closely related together, one oil with the other, because there are a few minor uses to which oils, like tung and rapeseed, specifically are applied. There has been seemingly too much accent placed on a few specialized uses of a very limited number of oils in order to overcome the need and demand of the American producers to enjoy in the largest way the privilege of selling in the American market.

Reference has been made to the Agricultural Adjustment Act and its stated intent in its declaration of policy to secure price parity for agriculture. A mere reduction of the oils and fats which the American farmers now produce will not get them parity until and unless this excise tax is put into operation on the products named in the amendment pending, so that when the farmer reduces to the extent required in his fat production, a home market will be waiting for him with an enhanced price rather than as would otherwise be the case, letting that market be absorbed by the foreign product. In other words, reduction in production of itself is not a panacea for a situation which confronts us relative to fats and oils. In fact, these products, many of which are of nonagricultural origin, cannot be reached under the terms of the act except by the method of compensatory taxes. The slowness with which compensatory taxes are being put into effect and the hesitancy with which the so-called tariff provisions of the Adjustment Act are being approached by the Secretary of Agriculture indicates that if help is to be brought to our fats and oils producers such help will need to come from new legislation. Nothing better has been presented than this proposed 5 cents per pound excise tax on the fats and oils listed in the amendment.

If this tax should raise the price of coconut oil 200 percent, as is alleged will be the case by some of our opponents, which allegation we do not grant, the result in price per pound would elevate all domestic oils and fats, owing to the relationship which exists among them, to the approximate level of 1926, which is generally accepted as being a "parity period" satisfactory to all. The intent of the Agricultural Adjustment Act as well as the National Industrial Recovery Act is to raise prices on various commodities, agricultural and industrial and labor. If the result of this 5 cents per pound excise tax should be to raise prices on animal, vegetable, and marine fats and oils, that result instead of being in conflict with, will be directly in accord with, the policies which new legislation, enacted a year

ago, is seeking to put into effect. Many people allege, and recent legislation states, that the country cannot get back to prosperity until farmers shall have restored to them a reasonable purchasing power. They cannot secure such a purchasing power unless they obtain reasonable prices on their products. The proposed 5 cents per pound excise tax on fats and oils is expected to raise the prices on fats and oils products, animal, vegetable, and marine; it may raise the prices on the industrial products made from oils and fats, but not to the extent which has been asserted. In fact, it need not increase prices of finished products made from oils and fats materially if data from the Bureau of Labor Statistics is to be relied upon.

TABLE X.—*Wholesale prices of oils and fats and of selected manufactured products*

	1933	1932	1931	1930	1929	1928	1927
Raw materials:							
Coconut oil, crude, Manilla spot, New York...per pound..	$0.042	$0.045	$0.053	$0.073	$0.085	$0.095	$0.097
Palm oil, Niger, in casks, New York per pound..	.032	.029	.039	.067	.074	.073	.071
Palm-kernel oil, denatured, in barrels, New York...per pound..	.043	.048	.055	.068	.084	.091	.091
Copra, in bags, New York...do....	.016	.019	.023	.037	.044	.051	.052
Olive oil, edible, in barrels, New York per gallon..	1.473	1.389	1.661	1.863	2.154	2.268	2.125
Cottonseed oil, prime summer yellow, New York...per pound..	.045	.038	.060	.081	.097	.099	.097
Peanut oil, crude, tanks, mill...do....	.041	.036	.062	.072	.090	.096	.113
Soybean oil, crude, barrels, New York per pound..	.065	.042	.066	.101	.120	.122	.120
Oleo oil, extra, Chicago...do....	.059	.057	.064	.105	.109	.141	.134
Tallow, edible, Chicago...do....	.037	.035	.047	.068	.089	.094	.1089
Tallow, packer's prime, Chicago...do....	.034	.039	.039	.062	.085	.088	.081
Manufactured products:							
Soaps:							
Chips, New York...per pound..	.054	.054	.067	.083	.082	.093	.105
Powder, laundry, New York...do....	.054	.054	.067	.083	.096	.105	.105
Toilet, New York...per 100 cakes..	3.575	4.456	4.750	4.750	4.750	4.750	4.750
Laundry, Cincinnati...do....	2.744	2.727	3.491	4.589	4.703	4.334	4.176
Laundry, Philadelphia...do....	4.449	4.528	4.851	4.851	4.851	4.851	4.851
Oleomargarine: Standard uncolored, Chicago per pound..	.087	.097	.133	.218	.235	.225	.223
Butter: Creamery extras, Chicago...do....	.208	.201	.271	.353	.437	.461	.458
Lard: Prime contract, New York...do....	.057	.050	.080	.109	.120	.123	.129

	1926	1925	1924	1923	1922	1921
Raw materials:						
Coconut oil, crude, Manilla spot, New York per pound..	$0.106	$0.115	$0.101	$0.095	$0.086	$0.101
Palm oil, Niger, in casks, New York...do....	.080	.086	.075	.073	.063	.061
Palm-kernel oil, denatured, in barrels, New York per pound..	.100	.103	.093	.087	.085	.094
Copra, in bags, New York...do....	.058	.061	.056	.052	.046	.048
Olive oil, edible, in barrels, New York...do....	1.911	2.014	2.020	1.751	1.787	2.146
Cottonseed oil, prime summer yellow, New York per pound..	.118	.108	.108	.113	.101	.079
Peanut oil, crude, tanks, mill...do....	.113	.106	.118	.131	.096	.069
Soybean oil, crude, barrels, New York...do....	.126	.132	.124	.117	.109	.079
Oleo oil, extra, Chicago...do....	.120	.138	.151	.128	.107	.113
Tallow, edible, Chicago...do....	.095	.103	.094	.091	.078	.070
Tallow, packer's prime, Chicago...do....	.087	.097	.085	.062	.071	.064
Manufactured products:						
Soaps:						
Chips, New York...do....	.105	....	....	....	....	....
Powder, laundry, New York...do....	.105	....	....	....	....	....
Toilet, New York...per 100 cakes..	4.750	....	....	....	....	....
Laundry, Cincinnati...do....	4.465	4.125	4.124	4.105	3.960	5.310
Laundry, Philadelphia...do....	4.851	4.921	4.735	4.945	4.900	5.588
Oleomargarine: Standard uncolored, Chicago per pound..	.238	.243	.222	.209	.183	.208
Butter: Creamery extras, Chicago...do....	.429	.442	.410	.460	.390	.416
Lard: Prime contract, New York...do....	.150	.168	.133	.123	.115	.111

Source: U. S. Department of Labor, Bureau of Labor Statistics, Wholesale Prices.

From 1921 to 1933 crude coconut oil in New York per pound decreased from approximately 10 cents to 4 cents, a shrinkage of approximately 60 percent. Laundry soap in Cincinnati per 100 cakes decreased from $5.31 in 1921 to $2.74 in 1933, a decrease of approximately 50 percent. Laundry soap in Philadelphia per 100 cakes in 1921 sold at $5.59 and in 1933 at $4.45, a decrease of approximately 20 percent.

The most interesting item in the wholesale prices of oils and fats in 1921 as compared with 1933 is found in the case of copra. That product per pound in New York in the earlier year was priced at approximately 5 cents. In 1933, it was priced at one and two thirds cents per pound, which was the equivalent of reducing the price to one third in 1933 compared to the price of 1921. It must not be forgotten that copra goes to the soap kettle, and much of our coconut oil comes in not as coconut oil but as copra so reasonably it could be expected that the price of manufactured soap could absorb at least a large portion of the proposed 5 cents per pound excise tax providing such soap had been made from this imported copra.

Palm oil in 1933 was approximately 50 percent less than the price which prevailed in 1921. Palm kernel oil in 1933 was a trifle under 50 percent of the prevailing price in 1921. Toilet soaps, on the other hand, about which so much uneasiness is expressed in relation to its retail price should this excise tax go into operation, decreased only about 25 percent.

There is a wide field of opportunity in some of the manufactured soaps and a reasonable field of opportunity in most of them to have their retail prices reduced comparably to the reduction in the raw materials, domestic and foreign, which go into their manufacture. Stated another way, this can be said—that when the 5 cents per pound excise tax becomes operative there will be no need of passing it on to the consumer, at least in its entirety, if the price on the manufactured product should be kept in line with the prices of raw material.

A shorter period gives substantially the same results relative to wholesale prices of the manufactured articles and on the raw materials.

TABLE XI.—*Wholesale prices* [1]

	1926	1927	1928	1929	1930	1931	1932	1933	Percent 1933 price was of 1926
Manufactured articles:									
Soap:									
Chips, New York per pound..	0.105	0.105	0.093	0.082	0.083	0.067	0.054	0.054	51.4
Powder, laundry, New York..........per pound..	.105	.105	.105	.095	.083	.067	.054	.054	51.4
Toilet, New York, per 100 cakes..	4.750	4.750	4.750	4.750	4.750	4.750	4.456	3.575	75.3
Laundry, Cincinnati..do....	4.465	4.176	4.334	4.703	4.589	3.491	2.727	2.744	61.5
Laundry, Philadelphia do....	4.851	4.851	4.851	4.851	4.851	4.851	4.528	4.449	91.7
Oleomargarine: Standard, uncolored, Chicago...............per pound..	.228	.223	.225	.235	.218	.133	.097	.087	38.1
Butter: Creamery, extras, Chicago per pound..	.429	.458	.461	.437	.353	.271	.201	.208	48.5
Lard: Prime contract, New York per pound..	.150	.129	.123	.120	.109	.080	.050	.057	38.0

[1] Yearly averages, compiled from Bureau of Labor Statistics data.

TABLE XI.—*Wholesale prices*—Continued

	1926	1927	1928	1929	1930	1931	1932	1933	Percent 1933 price was of 1926
Raw materials:									
Coconut oil, crude, Manilla spot barrels, New York.per pound..	0.106	0.097	0.095	0.085	0.073	0.053	0.045	0.042	39.8
Olive oil, edible in barrels, New York..............per gallon..	1.911	2.125	2.268	2.154	1.863	1.661	1.389	1.473	7.73
Palmoil, Niger, casks, New York..............per pound..	.180	.071	.073	.074	.057	.039	.029	.032	40.0
Palm kernel, oil denatured barrels, New York....per pound..	.100	.091	.091	.084	.068	.055	.048	.043	43.0
Cottonseed oil, prime summer yellow, New York.per pound..	.118	.097	.099	.097	.081	.060	.038	.045	38.0
Soybean oil, crude, barrels, New York..............per pound..	.126	.120	.122	.120	.101	.066	.042	.065	51.6
Oleo oil, extra, Chicago....do....	.120	.134	.141	.109	.105	.064	.057	.059	49.0
Tallow, edible, Chicago...do....	.095	.089	.094	.089	.068	.047	.035	.037	38.7
Copra, in bags, New York.do....	.058	.052	.051	.044	.037	.023	.019	.016	28.0
Tallow, packers prime, Chicago per pound..	.087	.081	.088	.085	.062	.032	.032	.034	39.1

The prices of most raw materials which go into the making of soaps showed that in 1933 the prices varied from 28 percent to 77.3 percent of the 1926 price. The price of soap, however, in 1933 varied from 51.4 percent to 91.7 percent of the 1926 price. It is evident that raw materials, both imported and domestic, have suffered a greater decline in price since 1926 than has been suffered by the soap products. Such manufactured products as oleomargarine, butter and lard are substantially in the same range of price reduction in 1933, compared with 1926, as are the raw materials.

It seems reasonable to conclude that the consumers of our Nation do not need to fear the results of the proposed 5 cents per pound excise tax on fats and oils. However, even if some price increase should result, no more objection could be raised than logically could be presented against various other great national efforts which all of us now are putting forth to cure the depression. If there is any foundation for the common thought that agriculture and those dependent upon it must be brought back in their purchasing power before the Nation can thoroughly recover from the depression, then the proposed excise tax on fats and oils is justified.

It is hoped and recommended that the Senate Committee on Finance will retain the rate on commodities named in this section in the House measure and add the ones which are recommended by the various producing groups.

Senator BAILEY. Tell me, Mr. Gray, how you explain the use of a great deal of coconut oil, in all these things. What is the basis of it?

Mr. GRAY. It is not wholly, but it is largely a matter of price, and it is partly attributable to the fact, as I am just demonstrating here, these oils, with certain limitations, are interchangeable, one for the other, and being interchangeable, the manufacturer might logically take the oils and use the ones which are capable of the most profit in the manufacture.

Senator BAILEY. So, you say it is the cheapness, rather than the superiority of the coconut oil?

Mr. Gray. The price factor, as I would state it, is the determining factor, not meaning by that statement, Senator, that there is absolute interchangeability, because there is not, in certain instances, which are of limited character.

Senator King. Well, you concede that coconut oil has qualities, do you not, that the other oils do not possess?

Mr. Gray. It has certain qualities that are characteristic to it, like other oils and fats have characteristics that are peculiar to themselves.

Senator Gore. What was the total production of oleomargarine in this country last year?

Mr. A. M. Davis (from the audience). Two hundred and forty-five million pounds, Senator.

Senator Gore. What percentage of that was coconut oil?

Mr. Gray. Less than half of it, if I am not mistaken.

Senator Gore. Less than half?

Mr. Gray. Fifty-five percent, if I am correct.

Senator Gore. What would that be—120,000,000 pounds? Did you say pounds or tons?

Mr. Davis. Pounds.

Senator Gore. What would that be?

Senator Walcott. One hundred and twenty-two million.

Senator Gore. One hundred and twenty-two million pounds, that goes into oleomargarine?

Mr. Gray. No. Has anyone asserted that half of the coconut oil goes into oleomargarine?

Senator McAdoo. Twenty percent is testified to, as the amount that goes in.

Senator Gore. No. Nobody has asserted that, but I was inquiring how much coconut oil went into the oleomargarine that was produced last year.

Mr. Davis. About 134,000,000 pounds.

Senator Gore. That is one third of all the import, isn't it?

Senator McAdoo. Twenty percent.

Mr. Gray. Twenty percent is about the amount.

Senator Gore. I was trying to reconcile the statements with the percent that went into soap.

Mr. Gray. Answering Senator Gore a little bit more thoroughly, it may be said that coconut oil is used in the lard compounds industry, but not to as large a quantity. About 20,000,000 pounds, in a recent year, as in the margarine industry, in 1929, it was 171,000,000 pounds, which in subsequent years has increased, as the gentleman has given the figures.

Senator Gore. Coconut oil?

Mr. Gray. Not other food industries. Coconut oil was used to the extent of approximately 54,000,000 pounds but in the soap industry coconut oil was used to the extent of 344,000,000 pounds, so that coconut oil, in a major way, saying nothing about smaller uses, goes into the soap industry, first of all, in quantity. It goes into the margerine industry, it goes into the lard compound industry, and it goes into other food industries in different amounts that I have just named.

Senator McAdoo. Mr. Gray, a moment ago you said, as I understood you, that the chief reason for the use of coconut oil was because it was cheaper, the price was lower, for instance, than some other oils

that would be available otherwise, for some use. Did I understand you correctly?

Mr. Gray. Yes. Ordinarily the price range of coconut oil determines the price range on many another oil, in fact.

Senator McAdoo. Do you mean to say that the price, being low, is largely responsible for its more general use, the price factor being the chief one which—would you say?

Mr. Gray. The low average price of coconut oil is a very [illegible] agent in two things, Senator McAdoo. First, it induces its use in products, to the displacement of the home grown fat and oil products, and, second, it keeps the home-grown product of the American farmer or fisherman or whoever it may be, at an unprofitable basis.

Senator McAdoo. I may be wrong about this. Maybe you can tell me the facts. My recollection is that in 1931 and 1932, the price of cottonseed oil was lower than the price of coconut oil, but nevertheless there was an increase in the use of coconut oil, even at the higher prices.

Mr. Gray. What year was that?

Senator McAdoo I think in 1931 and 1932. Am I correct about that?

Mr. Gray. There are some fluctuations, seasonal and otherwise, but in the long run, taking it over a decade, the thing that I have generally stated is true, and especially is it true, Senator, when you take the matter of copra, which still more reduces the price of the coconut-oil product, because it comes in here in a raw state, at a very low price.

Senator McAdoo. Do you think, for instance, that cottonseed oil could be substituted in soap making for coconut oil?

Mr. Gray. In part.

Senator McAdoo. No; but I am speaking in the large sense, now.

Mr. Gray. In toto?

Senator McAdoo. Yes.

Mr. Gray. No. We do not make any such allegation.

Senator McAdoo. Well, I am just trying to find out the facts. I do not know them. I am just inquiring for information. In other words, if cottonseed oil does not contain some of the chemical constituents that coconut oil possesses, and which are required in soap-making, like lauric acid, as these gentlemen have testified, then it would be impossible to substitute it in the kind of soap in which coconut oil is used, and which has such extensive use in the country. Is that a correct statement on their part?

Mr. Gray. On their part, not——

Senator McAdoo. No; but I say, is it a correct statement?

Mr. Gray. No. Not literally applied, it is not correct.

Senator McAdoo. You do not attach any importance, then to their claim that it is essential to have lauric acid in this soap, to accomplish the various things they have described?

Mr. Gray. Not to the extent that they have described. We will have a witness to touch upon that again later, an expert.

Senator McAdoo. I just wanted to get an idea as to the extent to which that is applied.

Senator King. Mr. Gray, your time has expired.

Senator Hastings. He has got 20 minutes.

Mr. Gray. I believe it will be graciously received by those associated with me, Senator King, if I may continue a little while, even

if some of those who follow me might have to shorten their time, because we want this presentation made.

Senator KING. You and your associates may determine that. If they want to give you part of their time, that is all right, I suppose.

Mr. GRAY. It was said, earlier in this statement, that it is not the exclusive purpose of those who advocate 5 cents per pound excise tax on the certain fats and oils, to exclude from our markets the foreign products. However, it has been stated that an effect of this tax would be somewhat to reduce the amount of importations, although the primary effects would be the price increase all along the line, in the domestic market for those oils. In connection with whatever reduction in importations the excise tax would cause, it is well to consider stocks of oils and fats on hand, and related propositions. There has perhaps not been a time in recent years when the American farmers have greater threats in regard to their fat and oil prices, and the same is true of the domestic producers of other fats and oils, than are contained in the available materials, both for edible and inedible uses in the fats and oils field, now classified as stocks on hand. The 3-year period of 1928 to 1931 showed stocks on hand, September 30, of 5 principal oils, averaging 632,000,000 pounds. In 1932, those have grown to 967,000,000 pounds, and in September 1933, it had reached to 1,310,000,000 pounds.

Senator MCADOO. What accounted for the difference?

Mr. GRAY. Part of it, increased importations; part of it the depression; and the lessening of consumption.

Senator MCADOO. Part of it was represented by lard?

Mr. GRAY. Partly.

Senator MCADOO. What part of the increase was represented by lard, let us say?

Mr. GRAY. I would not be able to give you the estimate, Senator. Surely, there is some need to give the domestic market to the domestic producers of marine, animal fats and oils, and the excise tax will be of some help, but do not understand us as saying that the excise taxes are going to give us a closed market here, in the American market, for home products exclusively.

Senator CONNALLY. Those importations, however, would bring some revenue in, wouldn't they?

Mr. GRAY. I have brought out, in behalf of those whom we are associated with, the fact, Senator Connally, that this is primarily a revenue proposition. It is not an embargo proposition, and if it does enhance the price of some of the commodities in which these fats and oils find their markets in the manufactured forms, it will be exactly in line with the Agricultural Adjustment Act and the National Industrial Recovery Act, both of which were passed at the last session of Congress in 1933, for the purpose of raising agricultural labor and industrial prices in the United States.

Senator BAILEY. Wouldn't it be more in line with the Agricultural Adjustment Act to pass a law here forbidding these soap people to use copra or coconut oil, altogether? Wouldn't that be consistent with that act?

Mr. GRAY. If this committee wants to take that action, it would be a responsibility that the committee could assume. We are not recommending that action, although we would not resist the action.

Senator BAILEY. You would not resist it?

Senator CONNALLY. On the other hand, Mr. Gray, isn't it true that the operations of the Agricultural Adjustment Act tend to produce the protection on these domestic fats, and yet leave the door wide open to bring in these foreign foods to take their place, without the domestic producer getting any benefit by the reduction?

Mr. GRAY. The situation is exactly as you describe.

Senator CONNALLY. The Agricultural Act has several programs in operation, right now, to persuade the farmer, who seemingly does not need much persuasion, to reduce his amount of production in various farm commodities, and as he reduces his production in this home market, on fats and oils, on tobacco, on cotton, on wheat, or what not, if the home market is not given him by appropriate correlative legislation, such as this excise tax which, if enacted, the reduction of the American farmer is not going to get him prosperity, and it is going to furnish opportunities in the home market to the foreign farmer who does not reduce, and who ships his stuff in here, duty free, as in some cases, and at very low rates of duty, in others.

Senator MCADOO. That would be true as to fats, only to the extent, Mr. Gray, that the importations of coconut oil display other fats, that would otherwise occupy the market.

Mr. GRAY. Any fat and oil.

Senator MCADOO. Now, they each, as I understand it, have distinctive uses, and they do not infringe upon each other. I mean, a large part of it. I say I understand that to be true. I do not know whether it is or not.

Mr. GRAY. There is such a field of interchangeability, gentlemen of the committee, and Senator McAdoo, among and between these fats and oils, that the excess quantity of any one of them has a depreciating effect on the price of all. That does not mean to say that fat A in every instance is interchangeable with fat X, but it does mean to say that somewhere in the scheme and in the range of these fats and oils, there is such a degree of interchangeability that the relationship of price runs through them all, and the price of the lowest determines what otherwise would be the price of the highest, and we want, as Senator Connally indicated, an American market, at an American price, in conformity with the adjustment act and the National Industrial Recovery Act.

Senator BAILEY. And the American soap and American washing?

Mr. GRAY. Yes; we want American soap, and we want it made by American laborers, by American capital, and we want it made by American fats and oils.

Senator BAILEY. If that makes us dirty, we won't be any dirtier than our fathers were.

Senator KING. Mr. Gray, do you differentiate between the Philippine Islands, Hawaii, Puerto Rico, and foreign countries, or do you put those countries in the category of foreign countries? They are all under the flag.

Mr. GRAY. The way section 603 of the revenue act is drawn, it applies, Senator King, to any of these products, no matter where their origin might be.

Senator KING. I understand that.

Mr. GRAY. Which might be the Philippine Islands or elsewhere, and that meets with our approval, because if we, in addition to the Hawes-Cutting Act, which seems about to be enacted again——

Senator KING. I hope not.

Mr. GRAY. And contains large quotas, duty free, of the Philippine products, to come in here, then, if in addition to that, we let them have still larger access to our markets, under the failure to pass legislation such as you are proposing, we are just more and more giving the home market to what I might call in a general way, foreign interests, although legally that cannot be quite decided in relation to the Philippines, but we are giving the home market to competing and noncontinental producers, so that the intent of Congress in the Adjustment Act and in the National Industrial Recovery Act would seem to be violated. Therefore, answering your question, we want these excise taxes applied to all fats and oils upon which they are named.

Senator KING. But the question to which I directed your attention, was this: That a question was propounded a few moments ago, in which the words "foreign countries" were included or employed, and I was wondering whether or not, as a legal proposition, and as a moral proposition, you laid it down that the Philippine Islands, under the flag, are "a foreign country"?

Mr. GRAY. They classify as a dependent.

Senator KING. They are not a foreign country, when they are under the flag, are they?

Mr. GRAY. No, obviously so.

Senator KING. All right, proceed.

Mr. GRAY. And our proposition as you well know is to give them independence.

Senator KING. Absolutely.

Mr. GRAY. So that they may get what their citizens are clamoring for.

Senator KING. And as the Democratic party has been declaring for it, at every convention since 1920, and we have refused to carry out our platform pledge.

Senator WALCOTT. Mr. Gray, what amount of money do you think is involved in this whole question of importations of coconut oil on the basis of a 5-cent tax? Have you estimated that? How much revenue would we derive if we placed that 5-cent tax on it?

Mr. GRAY. Really, Senator Walcott, that is a guess.

Senator WALCOTT. A guess?

Mr. GRAY. And I would rather you would consult officials in the Bureau of Revenue Department, but we have estimated it as being $50,000,000.

Senator WALCOTT. That we would be deprived of? In other words, what has been the revenue from these oils in the past, on the other basis of 2 cents?

Mr. GRAY. Practically naught, because so much of the oil and fat that we import is of the coconut variety, coming from the Philippines, duty free.

Senator WALCOTT. That answers my question.

Senator MCADOO. Well, Mr. Gray, I was interested in your speaking of the necessity of preserving the home market here. It is your idea that the proposal to enter into trade agreements with other countries, by which they may be permitted to enter this market—is it your idea such agreements are unwise?

Mr. GRAY. That depends, Senator McAdoo, altogether upon the text of each agreement. I cannot answer the question. When an agreement is written with Colombia, or with China, or with Germany.

it will depend upon what we trade, to let in, and what we trade, to let out, as to how I would answer your question. Generically, I would say, Senator McAdoo, that the farm groups approach the era of reciprocity with fear and trembling.

Senator McADOO. I am strong for preserving the home markets to the fullest possible extent, but consistent with the national interest.

Senator BARKLEY. Are the groups that you represent satisfied that this extension of credits, made to all the nations in the world, and raising tariff walls so high that everybody will be self-depending and will have no markets in the world, which is partly responsible for the "fall down" in world trade now?

Mr. GRAY. No; that is going to the other extreme, isn't it, Senator?

Senator BARKLEY. Well, that is about where we have reached now.

Mr. GRAY. We have had some fall of our own, and there has also been some fall of the foreign governments, as well.

Senator BARKLEY. Well, I am perfectly willing for our country to take its share of the responsibility.

Mr. GRAY. It was our fault.

Senator BARKLEY. Because we have already started the process.

Senator BAILEY. But you do not want them to start this reciprocity at the expense of the farmers, do you?

Mr. GRAY. That is a fundamental principle with us, Senator, that in any trade agreements, or in the writing of excise taxes, or whatever the proposition may be, relative to retaining the home markets, or losing them, that the American farm products, in the case that is before the committee today, the marine products, as well, should have the home market. In other words, answering your question in a different way, in these reciprocal agreements we do not want raw stuff, farm stuff coming in and industrial stuff going out, and that is what has happened in every reciprocal agreement that has ever been written, and we have written them ever since 1854.

Senator HASTINGS. In other words, you are like everybody else—you do not want any of these reciprocal agreements to contain anything except that which will aid the particular field in which you are interested?

Mr. GRAY. That is a characteristic of tariffs, isn't it, Senator?

Senator HASTINGS. Yes, that is what I say.

Senator COSTIGAN. Mr. Gray, do you agree with the witnesses who testified that there is no substitute in domestic oils for lauric acid, contained in imported coconut oil?

Mr. GRAY. No.

Senator COSTIGAN. What is your position on that subject?

Mr. GRAY. There is a substitute. If not in whole, in part.

Senator McADOO. What is it?

Mr. GRAY. Much farther than witnesses whom you have heard today would indicate.

Senator McADOO. Well, what is the substitute, Mr. Gray?

Mr. GRAY. We have a witness, that I mentioned a while ago, a technical man, who will describe that, if you will permit it.

Senator HASTINGS. Is that Dr. Manning?

Mr. GRAY. No.

Senator HASTINGS. Somebody told me that Dr. Manning would testify that.

Mr. GRAY. Dr. Manning, as I understand, is a Government official. We have no authority to have Dr. Manning in our group.

Senator HASTINGS. He is going to be called in executive session.

Mr. GRAY. I have the understanding that Dr. Manning is going to be available to the committee as you gentlemen desire, whenever you desire.

Senator GEORGE. I understand he will be with the committee in executive session.

Senator GORE. Fifty-five percent of our cotton, I believe, is exported, and about 40 percent of our tobacco, and about 45 percent of our lard is exported. Now, those are all farm products. Now, if they go out as exports, something must come in as imports. I was just wondering.

Mr. GRAY. Trade needs a balance, Senator Gore, but it does not need to balance in every individual instance.

Senator GORE. Certainly, that is true. Cotton is the largest single export we have, as a rule, and your idea is to keep other farm products from coming in and retaining the export market for farm products?

Mr. GRAY. More particularly, Senator Gore, do we desire to expand the home market for farm products so we will not need either to curtail our production so much as is now the case in the United States, or to find a market abroad which we desire to gain or develop.

Senator GORE. Have you figured that cutting down the production of cotton might possibly encourage the production of cotton in other countries?

Mr. GRAY. Again, Senator Gore, I must apologize, because the noise prevented my getting the first part of your question

Senator GORE. Have you figured that the cutting down of cotton production here might invite other countries that can produce cotton to embark on that business, so as to offset what we do?

Mr. GRAY. As it stands, it is already visible.

Senator GORE. Argentina is already doing it, isn't it?

Mr. GRAY. I understand so, and Egypt and Mexico, also.

Senator GORE. Wouldn't it be more in harmony with our purposes if we paid the Filipinos to cut down these coconut trees?

Mr. GRAY. Answering the Senator, his question was somewhat facetious, but it is a serious one too, from a purely mathematical or fiscal point of view. I suppose, in the end, it would be a cheaper thing to do, as you suggest, and, in applying that to the home market, it might be cheaper for the Government to buy a lot of this land that is now producing crops upon which the Government is paying benefit payments, to get the farmers to reduce, than to continue to pay them the benefit payments. In other words, stating that differently, the Government would be out less money, Senator Gore, to buy the land outright than to pay benefit payments on it a few years.

Senator GORE. That would be cheaper for the taxpayers, but it would not be so beneficial to the farmers.

Mr. GRAY. Probably not, but I am speaking from the point of view of the Federal Treasury in making this statement.

I have finished with the formal statement. In connection with this I should like to file the brief in formal style.

The CHAIRMAN. You may file the brief.

(The brief of Mr. Gray has been hereinbefore set forth in full.)

Senator McADOO. Before you leave, Mr. Gray, I would like to ask just one question about this Philippine situation. Being a member of the Committee on Insular Affairs and Territories, I have had a good many letters recently about the Philippine exports into this country, and some resolutions about the proposed excise tax on coconut oil, and the hurtful effect it would have on Philippine trade with us. Now, the question of reciprocal trade rises. We ship to the Philippines. We shipped, in 1932, I think export to the extent of $48,800,000, I think, which is the record from the Bureau of Insular Affairs, and out of that, farm products were $18,500,000, products of our farms that went to the Philippines. Now, is it or not wise to take into consideration the fact that our farmers really get substantial benefit in the way of trade from the Philippines, and that therefore it would be unwise to pursue a policy with respect to our chief import, outside of sugar—that is, coconut oil—from the Philippines; whether or not it would be unwise to propose such a tax on that as to materially reduce the exchanges between our farmers or our country and the Philippine Islands.

Mr. GRAY. No.

Senator KING. Senator McAdoo, you are wrong. We believe in "one-way traffic."

Senator McADOO. I beg your pardon. I am trying to find out what his view is.

Senator CONNALLY. What were the imports from the Philippines?

Senator McADOO. I do not have that. I just happen to have the exports.

Senator CONNALLY. You ought to have the imports.

Senator McADOO. The imports consist of sugar and copra, coming in duty free.

Senator CONNALLY. We import a great deal more from the Philippines than we export to them, don't we?

Senator McADOO. I do not know. We import sugar and coconut oil. I think these are the two chief products that come from the Philippines.

Senator KING. Mr. Gray, we ship to the Philippine Islands, you know, more than $18,000,000 worth of wheat and flour and lard and agricultural products, to say nothing of the large variety of other commodities, so that their markets—which are compulsory, by the way, because they have to do what we tell them to do—we ship to them commodities of considerable value, and particularly farm commodities

Mr GRAY But I consider it, Senator King and Senator McAdoo, as very unwise "horse-swapping" to ship to the Philippines, as Senator McAdoo has quoted the figures, $18,000,000 a year, and then getting back several times that much in agricultural products which compete in our own market We are in not favor of that kind of a horse-swapping proposition

Senator CONNALLY. In 1931 we exported to the Philippines $48,805,000, and we imported $87,133,000. In 1932 we exported $44,000,000.

Senator McADOO. Just a moment. The breakdown of that is chiefly sugar and coconut oil, isn't it?

Senator CONNALLY. Well, it competes with sugar farmers here, some of whom you have in California. The Philippines, $44,000,000

in 1932. We exported $44,986,000, and we imported $80,877,000. That is no balance of trade. That is all one way.

Senator GEORGE. Mr. Gray, who is your next witness?

Mr. GRAY. Mr Jasspon will be the next witness.

Senator GEORGE. I do not know what definite time you are assigning to these witnesses. A considerable part of the time has been consumed.

Mr. GRAY. Before I leave the stand, Mr. Chairman, may I say that the National Cooperative Milk Producers Federation, which I named a while ago, cannot be represented here today by Mr. Holman, its Washington representative, he being out of town; but he has authorized me to state that the general statement which I have endeavored to make is in accordance with the thoughts and policies of the Milk Producers Federation.

Senator BARKLEY. Let me ask, what is the interest of the Milk Producers Federation in keeping out coconut oil? In what way does that coconut compete with butter and cheese?

Mr. GRAY. I am glad you asked that, Mr. Barkley. It is an indirect interest that the dairy people have in these fats and oils, because competition between these imported fats and oils, and dairy products, is not as direct as it is between fish oils and cottonseed oil, animal oils, on the domestic side, and the imported products on the other side. Their interest is that if they can get a good profitable market in America for all of these fats and oils, the man who produces cotton, or the man who produces hogs, or the man who produces beef, or any other product from which oils and fats may be extracted, will be happy and profitable in that business, and will stay in it and keep out of dairying.

Senator BARKLEY. Of course, that is a long way around, but as the dairy interests take this position, for instance, that if coconut oil is a more desirable ingredient for certain kinds of soap, assuming that neither butter nor cheese nor any other milk product goes into the manufacture of soap, that they want to keep coconut oil out of this country, going into soap, in order that, by a very indirect and roundabout way, some betterment might be brought about for butter and cheese, which is their product? Is that your idea?

Mr. GRAY. That is very largely their attitude, so far as soap is concerned. Some of their oils and fats are used in other ways than in soap.

Senator BARKLEY. In other words, they would rather have the American people use an inferior quality of soap than to use a superior quality that does not compete directly with either their butter or their cheese?

Mr. GRAY. We do not agree that if our plan should go into effect, that the American people would need or be required to use an inferior brand of soap.

Senator BARKLEY. Well, I do not know. That is a matter of argument, but to what extent will this class keep this coconut oil out of this country?

Mr. GRAY. That is an estimate, too.

Senator BARKLEY. Well, what is your estimate?

Mr. GRAY. I would imagine that in the course of the first year it might reduce the importations between 15 and 25 percent, and the longer the rate stayed on, Senator Barkley, the greater the tendency would be to give the market to the home producer.

STATEMENT OF W. H. JASSPON, MEMPHIS, TENN.

Mr. JASSPON. My name is W. H. Jasspon. I am a cottonseed crusher, operating mills in Arkansas, Tennessee, and Georgia. I also represent something over 100 independent cottonseed-crushing mills, probably 75 percent of the farmers in the Arkansas and Mississippi Delta. I am going to try, Mr. Chairman, not to give the committee any "soft soap", but a clean bill of facts.

Senator CONNALLY. Clean soap?

Mr. JASSPON. Yes, sir; in just a very few minutes, and I have a brief that I would like to submit, and I only want at this time to discuss certain phases that I have set out in the brief.

Senator GEORGE. You may submit the brief. Hand it to the stenographer, and it will go into the record.

Mr. JASSPON. I represent the viewpoint of the cottonseed crusher who processes cottonseed on what amounts to a toll basis and produces basic commodities such as oil, meal, hulls, and linters, the values of which—and therefore the prices paid to the farmers—are set by the world prices of the commodities with which they compete. I therefore speak in behalf of the cotton farmer primarily, but my statements apply equally to the dairy, cattle, hog, soya bean, corn, and peanut producer—to every branch of agriculture which produces oil and fat material.

The opposition to a proposed excise tax comes principally from soap and oleomargarine industries, both highly profitable commodities largely sold under trade brands and at more or less fixed selling prices. Both industries were built up on the use of American materials and not imported raw materials.

I urge an all-inclusive excise tax on the first domestic processing of the following oils: Coconut, palm, palm-kernel, sesame, sunflower, fish, and marine oils; to correct the inequalities caused by existing taxes on certain oils and fats. The effect of this tax will be twofold—it will provide a source of revenue from certain low-cost tropical and other oils, principally coconut oil, to the extent that they are technically and economically needed. It will enable many branches of American agriculture to obtain a price level approaching the 1909–14 parity and permit the tremendous surplus stocks to begin to filter into their normal channels of consumption.

I do not advocate a tax on such special imported oils as rape seed, tung, china wood, and castor oil which have certain specific industrial uses and are not, strictly speaking, interchangeable with domestic oils and fats; unless in the judgment of your committee a tax on these oils and fats also is desirable for revenue purposes only.

This condition which demands adjustment is due primarily to a world oversupply of fats and oils. Outside of fish oils, fats and oils are principally produced in the tropical countries of the world by peon and native labor and in everincreasing quantities.

During the hearing before the Banking and Currency Committee on the Gold Reserve Act of 1934, Professor Warren introduced a chart showing the change in the price level of various commodities between February and December 1933. This chart shows that cottonseed oil made the smallest percent advance (only 25 percent as compared to a minimum of 51 percent in all other commodities).

Senator GORE. That is the price on various kinds of oil?

Mr. JASSPON. Yes, sir, Senator Gore, that is the price of imports.

Senator BARKLEY. How does that compare with domestic production?

Mr. JASSPON. Our domestic production has increased in the 20 years.

Senator BARKLEY. I know, but in figures, you say last year it was a billion.

Mr. JASSPON. One billion seven hundred and forty-one million.

Senator BARKLEY. How did that compare with last year's production on all sorts of these oils and fats in this country?

Mr. JASSPON. Our production of all sorts of oils and fats was about 6 billion pounds in this country. I am not giving you other statistics here, because we haven't time, and I do not want to bother you with that, but my brief sets out here some very interesting statements.

In England, however, where conditions were more normal, all commodities advanced during the same period with the exception of cottonseed oil and tallow—two prime fats—which declined 29 percent and 7 percent, respectively. The significance of this statement lies in the fact that any attempt to advance our domestic prices without some minimum stabilization simply opens the gate still wider to flood us with a veritable tidal wave of oil.

Note our imports—1,741,000,000 pounds in 1933 against 1,278,000,000 pounds in 1932 and only 473,000,000 pounds in 1913. In that year (1913) we exported over 1,000,000,000 pounds of fats and oils, while in 1933 our exports only amounted to 784,000,000 pounds, mostly lard. During this period we changed completely from a net export basis of considerable proportions to a permanent net import basis, because we began piling up stocks. During this same period a complete reversal in price relationships occurred. This supplied the dollar incentive for these greater imports and changes in formulas, in which domestic oils began to play a less important part. For example, coconut and palm oils, prior to 1921, always sold considerably higher than most domestic oils for which they are substituted. Since then the position is completely reversed. While the price of palm oil was constantly declining, imports of this one oil increased from 101,000,000 pounds in 1924 to 280,000,000 pounds in 1933, at the direct expense of our own oils and fats. Coconut oil similarly increased from 91,000,000 pounds in 1913 to 369,000,000 pounds in 1923, and 697,000,000 pounds in 1933.

The question is how are we going to handle this world-fat situation without paralyzing the tremendous domestic commerce which has been built up from our own sources of supply. It has been stated that since we are dealing with byproducts there is no major problem involved. It is interesting to note that these statements originate from those who are entirely selfish in their desire to buy materials at the lowest price, regardless of the effect.

It is well known that through our progress in research and science we have so integrated byproducts with primary product values that one has become a part of the other. Not only have great industries been built around these byproducts (resulting in tremendous commerce) but millions of farmers either have spending money or they haven't, depending on the prices these byproducts bring. It is, therefore, a sorry argument that because we are dealing with commodities which are not produced for their own value that they need no friend at court.

Now, the statement was made before the Ways and Means Committee. Gentlemen, this is a very important thing, the farm viewpoint, and in subsequent press releases the statement was made that this tax will not help agriculture. Some of the opponents of the tax have gone so far as to say they were opposing the tax because they were the friends of agriculture. Let us examine the fact.

In the few months since this tax question has assumed formidable proportions, what has been the result on the price levels? Cottonseed oil has advanced from 3¼ cents to 4⅛ cents per pound—the equivalent of $4 per ton of cottonseed or a total of 18 million dollars, that could have been applied to last year's cottonseed crop.

Senator McAdoo. Do you attribute that solely to the discussion of this tax?

Mr. Jasspon. I certainly do, Senator.

Senator McAdoo. You attribute it solely to that?

Mr. Jasspon. Yes, sir; I do, and I think I can prove it in a minute.

Senator King. Do you think the operations of the N.R.A. and the Agricultural Adjustment Administration, and these other alphabetical organizations have been wholly ineffective?

Mr. Jasspon. As far as byproducts are concerned, Senator King; yes. Now, corn oil has advanced from 3⅛ cents to 4⅞ cents. Packers' tallow has advanced a half a cent a pound, and these low-grade greases have advanced half a cent or more a pound, but a more significant fact-----

Senator Walcott. When you say "low-grade greases", you are speaking only of animal greases?

Mr. Jasspon. Animal and garbage greases.

Senator Walcott. But not the mineral?

Mr. Jasspon. Not mineral, no. Now, a more significant fact is that during this same short period, the two major imported oils have actually declined to their lowest levels. That is why I attribute, Senator McAdoo, in part, at least, this advance, due to this agitation. We have seen buyers come in and want to buy oil, who have heretofore stayed out of the market. Our soap friends have been buying tallow and greases, which they did not buy, before. The stuff was here, but they did not think there was any necessity, and so they did not buy them. Coconut has declined to the lowest price on record. It is selling around $2.25 to $2.30, on the Pacific coast, right today. It never has sold as low in the history of man, and palm oil, which is almost equal to coconut oil in the effect it is having on our American agriculture, has been reduced, in this same short period of time, from 3⅛ cents to 2⅝ cents per pound c.i.f., New York, which is due entirely to the belief, in my judgment, that this particular Congress is going to recognize this 15-year struggle of the American producer to obtain real relief and it will result in a higher domestic price level, as we have predicted for many years.

Senator Barkley. Is that price the wholesale price that you speak of, $2.25 to $2.30?

Mr. Jasspon. Yes, sir; tank-car price.

Senator Barkley. Tank cars?

Mr. Jasspon. Yes, sir.

Senator Barkley. How does that compare with the wholesale price of cottonseed oil?

Mr. JASSPON. Cottonseed oil sold yesterday at 4⅛ cents a pound.

Senator BARKLEY. Is that up or down?

Mr. JASSPON. That is up, Mr. Barkley. It is up a cent and a quarter since this agitation.

Now, I am most urgently seeking with your committee and Congress, that you make permanent this improvement by writing into the revenue bill, section 602, with the necessary amendment to include the other oils that I have named. It is quite evident from our knowledge of the economic factors involved that the failure of Congress to pass this legislation will immediately result in a lowered price level and renewed activity in the importation and use of increasing quantities of these foreign oils or of those foreign oils that may not be taxed.

Senator BARKLEY. Has there been any recent increase in the production of cottonseed oil?

Mr. JASSPON. It has been about the same the last two years, Senator; probably a little less the last year.

Senator HASTINGS. Sometime before you get through, I would like to have the break-down of that 1,741,000,000.

Mr. JASSPON. I can give it to you in a very short time. Now, in 1931, I want to say, now, on this soap problem, because some of the statements that have been made here today are subject to a great deal of discussion, according to Government figures, we produced 3,107,000,000 pounds of soap, and we only consumed in soap, according to these same Government figures, 341,000,000 pounds of coconut oil. That is approximately 11 percent. That is all of this coconut oil that went into soap. Now, in the first place, soap consists of about 60 percent of total fats and oils. It does not consist of 100 percent, Senator Connally, like we were discussing here some time ago, and in no year has the coconut-oil percentage of these total fats and oils used in soap ever exceeded 24 percent; not 24 percent of the total weight but 24 percent of the 60 percent. Now, that is the Government figures for 1932. During the period of 1912 to 1914, which we consider as normal, the percentage of coconut oil only amounted to 10 percent of this 60 percent. In those days, this oil was very much higher in price than the oils it has since replaced. The tax actually will amount to a great deal less than the protective duty now prevailing on imported soap, and yet it has been reported to you members of this Congress that the soap industry is about to remove to Canada, because there was no duty on soap, when every one of you gentlemen and every soap man knows that there is a duty of from 15 to 30 percent on all soap.

Senator BARKLEY. What is the duty on coconut oil, provided in this bill?

Mr. JASSPON. Five cents a pound.

Senator BARKLEY. In percentages?

Mr. JASSPON. In percent?

Senator BARKLEY. Yes.

Mr. JASSPON. Well, the way to figure the cost of soap would be to take 100 pounds of soap.

Senator BARKLEY. I am speaking about oil. Just leave the soap out.

Mr. JASSPON. Two hundred percent.

Senator BARKLEY. Do you think that any commodity that is in common use can bear a 100 percent tariff duty and still come in?

Mr. JASSPON. Senator, I can answer you this way, by saying that with the tax, coconut oil will still be cheaper in price than what it was in 1926, even much cheaper than what it was in 1914. It will only raise the price of this oil to about 7¼ cents per pound, and permit our domestic fats not to take the place entirely of coconut oil—I do not claim it will entirely take the place of coconut oil—in fact, I make a statement of that sort in this brief, but in part, to begin to consume this surplus that we have in this country, where it can be used justly. I do not want it prohibited, or to put an embargo upon these oils. I think we need them in certain specific products. They ought to come in, but these oils always sold for more money than our domestic oils, under normal conditions. Today, after 10 years have passed, the reverse has been true, and these oils are so cheap in price, the lowest price oils, that there are, and that is the reason they are coming into this country. Now, there is exactly the same justification for a tax that will permit the possibility of higher prices on fats and on oils and materials as there is for the curtailed crop program and the processing taxes that are being assessed against consumers of many primary agricultural products. All of this is being done with the intent and the belief that it will enable agriculture to obtain a greater return for its effort and labor.

Now, this proposed tax will not embargo foreign oils. It will not even advance the cost of these oils to their 1926 or their 1909–14 level. It will permit an additional market, which we rightfully had for many years, and by every known rule of the game we should continue to enjoy for our own people.

Now, we cannot be accused of a desire to injure the Philippine Islands, where we get coconut oil, nor the tropical islands or countries that are sending in this palm oil and using our industries as a dumping ground. If we are being forced to curtail our production in this country, this same principle is equally applicable to these other sources of supply, in my judgment. Why should this country place itself in the position of a large vat, into which the whole world continues to dump its excess production, which never should have existed in the first place, when it adversely affects the well-being and buying power of millions of our own people?

Now, gentlemen, I am speaking for the cotton farmer primarily. My bread and butter comes out of his welfare, and I am interested in that, and I feel that the farmer is worthy of his hire. He buys everything that he needs, in a highly protective market.

Senator GORE. What is the value of coconut oil imported last year? About 8 million?

Mr. JASSPON. The imports?

Senator GORE. Yes.

Mr. JASSPON. About 732,000,000 pounds, considerably in excess of what it was the year before.

Senator GORE. In value? I saw a statement of the value.

Mr. JASSPON. About 20 million dollars, I would say roughly, at the most.

Senator WALCOTT. Between 17 and 18 million dollars.

Mr. JASSPON. In value. But, Senator Gore, the significance is that a small part of this foreign oil keeps the price of 6,000,000,000 pounds of American fats and oils down, from 2 and 3 cents a pound, in my judgment. That is the thing. In other words, we could give the

Philippines this additional money, and make 10 times as much net increase in buying power, considerably more than that, by the farmers and by the people in this country, who could gain that much additional, if they could get a higher price for their fats and oils.

Senator GORE. Is there any way to figure out how much this will damage the people who ship the goods out of this country, to pay for that imported oil?

Mr. JASSPON. Senator Gore, I could only say this to you, that what I propose would probably exclude not over four or five hundred million pounds of this fat a year. Most of that would come from the place where it comes today, from Africa and tropical islands.

Senator GORE. Of course, the exports that we pay for that would be kept at home.

Mr. JASSPON. Yes, sir. We would increase our buying power, in my judgment, so much that we would be better off by far, but I don't see how we can be hurt by stopping. In other words, the question is, where are we going to stop this import? We have got to stop it some place. If we would let this condition go along, and do not attempt to remedy it, it won't be but a little while until we won't have any fats and oils business in this country, so far as the farmers are concerned.

Senator GORE. Has this materially cut down our production of oils and fats?

Mr. JASSPON. Senator Gore, in certain instances, it cannot cut our production down, because none of our fats and oils are primary products, in this country as a rule.

They are byproducts, but let me show you, as you know, coming from Oklahoma, the importance of cottonseed as a byproduct. Four years ago, it was the fourth largest cash source of income in the South. We all know, who live in the South, that 75 percent of the farmers' cotton is marketed when it comes to the gin, but the only money that he has, in the way of cash money that he can go and spend right away, is the money that his cottonseed brings him, and when he is getting $7, and $8, and $10, and $20 a ton for his seed, it hardly pays the ginning rates any longer. He hasn't a thing to spend.

Senator GORE. What is the price of cottonseed now?

Mr. JASSPON. The price of cottonseed now is $30 a ton; and, right there, I want to make another comment. Why is it $30 a ton? The farmer is not getting it. When the farmer was selling, last fall, he was getting about $12 or $15. Prices are always low in the fall, when the farmer has to sell, and they are always high in the spring, when he buys.

Senator BARKLEY. That is always true of everything. It goes up when the farmer needs something, and it is down when he has anything to sell.

Mr. JASSPON. That is one of the things that is economically wrong, that we ought to try to improve.

Senator BARKLEY. How are we going to correct it?

Mr. JASSPON. This case?

Senator MCADOO. Not in this case, particularly, but generally. I am talking about the general proposition. The prices are low in the fall, and they are up in the spring. How are we going to remedy that situation? We are plowing up and paying rent on vacant ground, and using processing taxes, and still it doesn't seem to bring any benefit.

Mr. JASSPON. Well, I would rather not discuss that, now. It is a big problem. I would rather stick to my text.

Senator KING. Let me suggest that the hour and a half allotted to the proponents of this text is fast passing.

Mr. JASSPON. I won't take up any more time. I will file my brief.

Senator HASTINGS. I want that break-down.

Mr. JASSPON. I will break that down and give it to you in just a few minutes.

Senator BARKLEY. I want to ask this witness a question: Do you recognize any obligation on the part of the United States with reference to the Philippine Islands, because of their peculiar situation?

Mr. JASSPON. Senator Barkley, I may say this, that of this total amount of coconut oil which we bring into this country, a very large percentage—I don't know how much—maybe Mr. Williams can answer that question, but a very large percentage is made in this country and comes out of copra, that doesn't come from the Philippine Islands. It comes from all these other islands of the world—Java, and so on. Now, to assume, Senator Barkley, that some plan could be worked out whereby the Philippine Islands could not only furnish this country its coconut oil, but also the copra that we need, so that the Philippines would not be hurt, and yet we could, by a tax, get this protection, it is very interesting, and it is possible, because I cannot see why we should import copra from Java and Malay or some other tropical island, when we have this Philippine question to consider, and if the Philippine question looms as large as it does, and I recognize the moral obligation there, it seems to me that your committee probably can in some way consider how we can take this copra that we ought to bring into this country, and this oil, which almost all comes from the Philippines, because the other oil is taxed, but how we could bring in this Philippine copra and crush it here, and maintain the Philippine situation, even on a better basis than it is today; and I want to make one more statement, Mr. Chairman, if I may, and I will stop.

Senator KING. You have about 20 minutes left for your side.

Mr. JASSPON. I will stop then. The statement was made before the Ways and Means Committee—and in subsequent press releases—that this tax will not help agriculture. Some of the opponents of the tax have gone so far as to claim they were opposing the tax because they were the friends of agriculture! Let us examine the facts.

In the few months since this tax question has assumed formidable proportions what has been the result on the price levels? Cottonseed oil has advanced from 3¼ cents to 4½ cents per pound—the equivalent of $4 per ton of cottonseed.

Corn oil has advanced from 3½ cents to 4⅞ cents per pound. Prime packers tallow from 3¼ cents to 3¾ cents per pound. White grease advanced from 3 cents to 3⅝ cents per pound. Yellow grease advanced from 2⅝ cents to 3¼ cents per pound.

However, a more significant fact is that during this same short period the two major imported oils have actually declined to their lowest levels: Coconut oil from 2⅝ cents to 2¼ cents per pound. Palm oil from 3⅛ cents to 2⅝ cents per pound.

This has been due entirely to the belief that this Congress will recognize the 15-year struggle of the American producer to obtain

real relief and will result in a higher domestic price level, as we have so emphatically predicted.

I therefore most urgently plead that your committee and Congress make permanent this improvement by your approval of this provision of the Revenue bill, section 602, with the necessary amendment to include the other oils I have named. It is quite evident from our knowledge of the economic factors involved that the failure of Congress to pass this legislation will immediately result in a lowered price level and renewed activity in the importation and use of increasing quantities of these foreign oils, or of those foreign oils that may not be taxed.

This same opposition through the press criticized this Congress for proposing to protect the "garbage pail." But this very soap industry paid tribute to the garbage pail by causing an advance in the price of these greases through their recent purchases to a point where this so-called "scavenger industry" is willing to pay more money today for these debased products than the cost of the finest of all soap oils—so they claim—coconut. Our opponents also claim the tax which the House bill enacted will double the price of soap. They have tried to put every laundryman in the United States on record to this effect. Pardon me for saying that this seems a little like too much soap suds to hand out! Let us examine this statement:

In 1931 there were 3,107,000,000 pounds of soap produced, and only 341,000,000 pounds—or 11 percent—of coconut oil was used. In the first place soap consists of about 60 percent total fats and oils, and in no year has the coconut-oil percentage of these total fats and oils exceeded 24 percent. This is the Government figure for 1932. During the period of 1912–24, which we can consider as normal, the percentage of coconut oil only amounted to 10 percent of this 60 percent. In those days this oil was very much higher in price than the oils it has since replaced. The tax actually will amount to a great deal less than the protective duty now prevailing on imported soap. Yet it has been reported to Members of Congress that the soap industry will remove to Canada because there is no duty on soap, when it is a well-known fact the duty ranges from 15 to 30 percent ad valorem.

I shall refer to another widely circulated statement from the opposition. This statement forms the basis of and relates to what I think is a very harmful type of emotional appeal and quite unworthy of any industry. Through paid publicists and other channels appeals have gone to public institutions, hospitals, hotels, and public health officials asking them to "telegraph collect" statements in opposition to the tax from a health and social standpoint for use with Members of Congress. They claim that the proposed House bill tax of 5 cents per pound on coconut oil will add $25,000,000 per annum to the soap bill of the hospitals alone. I personally interviewed Mr. Bert M. Caldwell, secretary of the American Hospital Association, who stated he had been in touch with the soap people and admitted their claim was fantastic. He conceded that the total soap purchases of all the hospitals of the Nation only amounted to between three and four million dollars annually. In this request to the hospitals to wire him "collect" telegrams opposing the tax in order to aid in "crystallizing public opinion" he claimed an increase of 100 percent in the cost of soap directly due to the tax, but added this will amount

to "at least $1,000,000 per year." Both conclusions are inconsistent and unwarranted in fact.

In previous testimony opposition for oleomargarine sources spoke about the inadaptability of cottonseed oil for that purpose—oleomargarine is being manufactured every day from cottonseed oil and animal fats. Ask any oleomargarine manufacturer to show you his formula record for the past 20 years and you will find how this industry which, as I have stated, was developed to consume domestic by-product fats, changes its product almost in direct proportion to the change in price relationship of various oils.

There is exactly the same justification for a tax that will permit the possibility of higher prices on fat and oil materials as there is for the curtailed crop programs and the processing taxes that are being assessed against consumers of many primary agricultural products, all with the intent and belief that it will enable agriculture to obtain a greater return for its effort and labor.

This proposed tax will not embargo foreign oils. It will not even advance the cost of these oils to their 1926 or 1909-14 level. It will permit an additional market which we rightfully had—and by every known rule of the "game" should continue to enjoy for our own people. We cannot be accused of a desire to injure the Philippines where we get our coconut oil, nor the tropical islands and countries that are shoving in this palm oil and using our industries as a dumping ground. If we are being forced to curtail our production this same principle is equally applicable to these sources of supply. Why should this country place itself in the position of a large vat into which the world continues to dump excess production, which never should have existed, when it adversely affects the well being and buying power of millions of our own producers?

The farmer is worthy of his hire. He buys his needs not only in a highly protected market but on a man-made living wage cost. Is he therefore not entitled to some protection against the types of labor which are willing to continue to produce oils at starvation prices?

An excise tax must be placed on all imports in order to do the job. The record is clear on that point. The minute you tax one oil and omit any other, interchangeability begins, if the price incentive exists. I shall not venture my own opinion on this point—on which there has been already so much expert misinformation—but instead I desire to call your attention to official documents on the subject—A Department of Commerce, Bureau of Fisheries, Bulletin No. 7, entitled "Markets for Marine and Animal Oils in the United States"; to part II of the United States Tariff Commission Study on Certain Vegetable Oils—Economic Study of the Trade in and the Prices and Interchangeability of Oils and Fats, 1926. I want to further cite you to report no. 41, second series, of the United States Tariff Commission, dated 1932, entitled "Certain Vegetable Oils, Whale Oil, and Copra", as complete refutations of the charge that has been made that oils and fats are not interchangeable. Also the statistical survey which the Bureau of Agricultural Economics has just published shows how these shifts in consumption have occurred. I am filling with the committee quoted excerpts from these documents which do prove that all oils and fats are interchangeable. Even where they are not directly interchangeable A may be in part substituted for C, for example, thus

releasing C for substitution for F and so on. The dynamic importance of this statement lies in the fact that as long as we do not place all imported oils on the same basis there will be interchangeability and substitution limited only by the price relationship. Substitution is constantly occurring, depending entirely on the price relationship of one oil and fat to another. It is true that certain oils are best suited for certain purposes and as I have stated above this tax will not eliminate such oils. But I challenge any qualified expert to deny that cottonseed oil and other like domestic fats are not technologically practical for soap. We want these foreign oils to come in and be used where and when they are needed, but we want them to pay their "board", so that our own people may be placed in a position where they do can likewise.

This ' an age-old question. It was recognized in the last campaign. Upon i. .airy from certain farm organizations as to the position of the presidential candidates on the question of adequate protection, our President telegraphed on November 4, 1932, to the National Cooperative Milk Producers Federation as follows:

> Let me make it clear that I have consistently stood for a policy of tariff protection that will insure the domestic market for our American farmer.

Mr. Hoover, in his St. Paul speech in November 1932, stated:

> Your oils and fats are suffering entirely unnecessarily from foreign imports of of these commodities. The American market should be and must be reserved for the American farmer at all times whether in emergency or normal times.

The record is full of all sorts of suggestions on the part of these soap people that they are perfectly willing to see a tax placed on oils use edibly so long as they may be allowed to import their requirements free. Thus they convict themselves of a willingness to sacrifice their "edible brethren" so long as they may continue to occupy a preferred position in the commercial world. Why should this particular industry be granted a subsidy in this way? I want them to answer how this would help the price of tallow and grease or any other inedible domestic fat. Furthermore all edible oils can be used for soapmaking purposes and many oils primarily used in soap manufacture can be and are used edibly. It was recognized specifically during the last campaign. Both candidates stated unequivocally their adherence to a policy that would insure the domestic market for the American farmer. This refers particularly to the very oils on which we now ask a tax, namely: coconut, palm, palm kernel, sesame, sunflower, fish and marine oils.

Why are these people so anxious to offer this compromise? Because they know that just as the low end of a bale of cotton tends to establish the value of the whole bale, so will the cheap oils if, they remain cheap, for any purpose whatsoever, tend to hold down the price level of all oils.

If the soap and oleomargarine people will only accept the broader social viewpoint of the greatest good for the greatest number, if they will realize that they have been in an unusually favored industry position and be content with fair profits, they will give impetus to a clean new deal and play their part in aiding millions of people who will buy more of their products if and when they can afford to do so. More equitable distribution among our own people and human rights

are more important to our economic welfare than extra profits on the balance sheets of a few corporations.

Senator HASTINGS. Senator Barkley, it seems that we are putting a tariff on that which comes from the Philippines, indirectly doing that which we cannot do directly. Isn't that the thing that you have in mind?

Senator BARKLEY. That is part of it; yes.

Mr. JASSPON. This would get around that.

STATEMENT OF F. E. MOLLIN, SECRETARY OF THE AMERICAN NATIONAL LIVESTOCK ASSOCIATION, DENVER, COLO.

Mr. MOLLIN. My name is F. E. Mollin, secretary of the American National Livestock Association, with headquarters at Denver, Colo.

Senator GEORGE. It is impossible for the committee to keep the time of these witnesses.

Mr. MOLLIN. I won't take very long.

Senator GEORGE. I can merely remind you of what time you have left available.

Mr. MOLLIN. Our membership is composed of the Range Cattle Producers, and we have associations all over the Western States, to a total of 100 State, regional, and local associations, besides individual membership. The beef cattle industry is one of the most important industries in many of those Western States. The total annual slaughter of cattle alone, exclusive of the farm slaughter, amounts to about 12 million head annually. According to a book which has just been issued by Mr. Stein of the Bureau of Agricultural Economics, the total annual production of fats from the beef cattle industry amounts to about 700 to 800 million pounds. About one third of that amount is edible fat, and under present conditions much of the edible fat goes into the soap tank. Prime packers tallow, with the supply in excess of the demand, is today worth about 3½ cents a pound, which is little more than the grease price. A while ago one of the witnesses stated that they were buying all of the fats that they could get, all the tallow, but I have in this same table, gotten out by Mr. Stein, material which shows that the supply of inedible tallow in 1933, the stocks on hand, were 256 million pounds, which has gone up from a total of 67 million pounds in 1929, and they have gone up steadily, year by year.

The benefit from a tax of this kind would go to the beef-cattle producers. We are always told, whenever we come down here that somebody else is going to get the benefit. Generally they say the packers get it, but we as producers are necessarily interested in what the products of the cattle bring. The fat is the second in importance of the byproducts of the animal. When byproducts are valuable a dressed carcass of beef is sold at even less money than is paid for the live animal. The difference or minus margin between the cost of the animal and the sale of the carcass, plus selling and distribution costs, plus packers' profit, comes out of the byproducts. When the byproducts are cheaper, the producers receive less for the animals, and the consumers pay more for the beef. Beef producers are affected not only by direct competition with the fats involved, but indirectly and seriously by the effect of imports on the hog and tallow industries.

Hogs will ordinarily sell close to $2 a hundred, above cattle. With the low price to which lard has been forced, they have stayed close to cattle prices the last 2 years, and they have actually been below the cattle price part of the time. The piling up of large stocks of fat, such as lard and butter, have a bad effect on the trade in general. Beef-cattle producers will therefore benefit more than the increase in the price of the byproduct. A bill is now in conference between the two houses, making cattle a basic commodity, hence subject to a processing tax. It would seem futile to try to artificially advance prices in this country, if no attention is given to the increasing seriousness of imports of commodities which compete with domestic commodities, either directly or by substitution. The cost of ranch operations is materially increased by the adoption of N.R.A. codes. All supplies and equipment have advanced. Feed costs were advanced, as the price of corn and cotton seed were fixed. Livestock prices decreased as labor costs to the packer were advanced, and as retailers costs were advanced under their codes. This makes it imperative that every effort be made to protect these basic industries.

The relief available now under the Agricultural Adjustment Act is entirely inadequate to meet this situation which has been steadily growing worse for years. It does not make sense to tax ourselves to reduce production, and do nothing to restrict the imports on these other commodities. And I would like to just call your attention to another figure in this chart by Mr. Stein.

I think you will have this, probably, placed in the record later, but it shows that the production of inedible tallow in the year 1912 was 300,000,000 pounds, and in 1933, it was 637,000,000 which is more than double.

Senator GORE. State the years again, I did not get them.

Mr. MOLLIN. In 1912 the production of inedible tallow was 300,000,000 pounds, and in 1933 it was 637,000,000 pounds, but the increase in federally inspected slaughter between those 2 years was only from 7,253,000 head in 1912 to 8,655,000 head in 1933, so therefore there was an increase in the federally inspected slaughter in the 21-year period of about 20 percent, and an increase in the supply of inedible tallow produced in this country of more than 100 percent.

Senator BARKLEY. That is due to the fact that we have learned how to save the fats from slaughter that we did not know in 1912?

Mr. MOLLIN. Well, it is also due to the fact that we are producing less of the edible fats, because there is less demand, as the coconut oil comes in and displaces. In the margarine trade in particular we use about 100,000,000 pounds of beef fats. Last year, 15,000,000 pounds——

Senator GORE. State that again.

Mr. MOLLIN. At the maximum, we put into the margarine trade slightly over 100,000,000 pounds of beef fats. Last year, it was about 15,000,000 pounds.

Senator GORE. In oleomargarine?

Mr. MOLLIN. Yes.

Senator GORE. Does a good deal of this come from the garbage can?

Mr. MOLLIN. I do not think so, but I could not say.

Senator BARKLEY. The production in 1933 was 42,000,000 pounds in excess of 1932.

Mr. MOLLIN. Yes; there was a little increase.

Senator BARKLEY. And in margarine butter, 42,000,000 pounds in excess of 1932, so that there hasn't been any falling off in the production of these edible dairy products.

Mr. MOLLIN. No; there has been an increase in the production.

Senator BARKLEY. Yes.

Mr. MOLLIN. If you will go back a few years, you will find a sharp increase in the production of dairy products, and a small increase, if any, in the production of margarine. It varies up and down, but the increase in margarine, in my opinion, has not kept pace with the increase in butter.

Senator CONNALLY. Your point is that they have substituted these imported oils for tallow?

Mr. MOLLIN. Yes. We are almost out of the margarine trade now, except in places where we have——

Senator WALCOTT. But if you keep out a certain percentage of coconut oil, and palm oil, by the high tariff, won't you automatically increase the imports in other fats like tallow?

Mr. MOLLIN. I wouldn't think so, when we have surplus in this country. It seems to me the first thing we would do would be to advance the price level, and use the fats that are storing up in this country.

Senator WALCOTT. You think that won't increase the imports at all?

Mr. MOLLIN. Well, of course, it might, to a slight extent.

Senator WALCOTT. You think it might, to a large extent?

Mr. MOLLIN. But we have at least—if we can raise the price level in this country, which is what we are after, we think we will all be better off, the entire agricultural industry.

Senator WALCOTT. If you do it, you will surely have to raise the tariff, won't you, against the tallow, otherwise this would be a dumping ground?

Mr. MOLLIN. I do not see how we can remedy the agricultural situation in general, if we do not try and protect the producers of fats and oils.

Senator WALCOTT. Well, I am not arguing against you. I am simply trying to make it clear that you are very much in favor of a high tariff on all foreign products of this sort, on products that compete with farm products.

Mr. MOLLIN. Yes, sir.

Senator KING. You are going to impair the agricultural condition, are you not, if you ship more cotton and other commodities, of which we have a surplus to other countries?

Mr. MOLLIN. I do not know a thing about cotton.

Senator BARKELY. Well, we have to take that into consideration, don't we?

Mr. MOLLIN. Yes, I know we have to take that into consideration. I know we have a big surplus, not of cotton oil. I mean in the export of cotton.

STATEMENT OF DR. H. J. GRAMLICH, UNIVERSITY OF NEBRASKA, REPRESENTING LIVESTOCK PRODUCERS

Dr. GRAMLICH. My name is H. J. Gramlich, from the University of Nebraska, representing the livestock producers. I have a manuscript here which I would like to have read into the proceedings.

(The manuscript referred to is as follows:)

THE COCONUT-OIL PROBLEM AND AMERICAN AGRICULTURE

Gentlemen, it is indeed a pleasure to appear for a few moments on your program. I consider it a high honor to have been invited to address this serious-minded body of men representing the most vital cogwheel in the agricultural welfare of the United States.

The animals you produce are selling at prices much below the cost of production. You and the industry which you represent stand with backs to the wall. You are seeking enlightenment as to what can be done to help the plight in which you find yourselves engulfed. The placing of a loan value of 45 cents per bushel on corn, the major feed used in the fattening of livestock and of which the three States represented in this meeting produce annually one third of the Nation's entire crop, has brought this problem to a crisis somewhat more quickly than it might otherwise have come. With no thought of criticizing the fixing of the loan value of corn, but rather agreeing that under present conditions 45 cents is about the right basic price for corn and that were other agricultural commodities selling in proportion, we would have a fair degree of prosperity throughout this wonderful inland empire and our farmers would again become buyers of industry's products, I appear before you and will in the few minutes asigned to me confine my remarks to one particular factor which I feel has a very close bearing upon the problem in hand and to which I think we should give concentrated thought.

COCONUT-OIL IMPORTATIONS DETRIMENTAL TO UNITED STATES AGRICULTURE

I refer to the importation of coconut oil into this country. The growth of this industry is stupendous. Unless you have had an opportunity to see and study the statistics you can scarcely comprehend the tremendous expansion which has taken place during recent years in the importation of this commodity. When I say to you that it is literally undermining the interests of every agriculturist in the land, I mean every word I utter. A few years ago we thought this was a problem for the dairyman to wrestle with. When he tore his hair over the oleomargarine situation we sat contentedly by and felt that it was merely a display of jealousy on his part over the use of some of our byproduct fats in butter substitutes. While he might have been a little narrow in some of his fights a few years back, I have reached the conclusion that the folks representing the hog and beef-cattle industry can be justly criticized for having been asleep. At that time we had a foreign market for our surplus lard. We, seemingly, had ample places to put our tallow. Insofar as the animal fats were concerned, we were not worrying.

Today we waken from our long sleep and find that we have quite a decided headache. Our foreign outlet for animal fats has been cut off and we start to investigate where our home market has gone. One of the first intruders is found to be the coconut. The growth of the coconut-oil industry in the Philippine Islands has been stupendous during the past 25 years, the acreage planted to coconut trees having been trebled since 1910. All coconut-oil importations during recent years have been from the Philippine Islands and the majority of the copra which has entered the United States has likewise originated from that source.

COPRA AND COCONUT OIL, FREEDOM FROM DUTY

As you look at the statistics presented in the attached table pertaining to the importation of coconut products, you will find that they are listed under two heads, namely, copra and coconut oil. In order that you may be clear on this, permit me to say that copra is the dried meat of the coconut. This

contains, on an average, 63 percent coconut oil, the oil being removed after the copra reaches the United States. For purposes of clarity in my remarks, I am going to give you total coconut oil imported, using the oil imported as such added to the oil content of the copra. May I say that there is no duty on copra. Coconut oil comes in from the Philippine Islands duty free and from other than United States possessions carries a duty of 2 cents per pound. According to my sources of information, during recent years all of the coconut oil imported as such has come from the Philippines; consequently, entered the United States duty free; and most of the copra has come from there. In other words, our Government collects relatively little revenue from the coconut oil imported into the United States.

IMPORTS SHOW ASTONISHING INCREASE

During the 4-year period 1909-13, the average importation of coconut oil into the United States was 76,000,000 pounds per year. During the next 5 years, 239,000,000; the next 5 years, 425,000,000; the next, 514,000,000; and during the last 5 years, 1928-33, the average has been 679,000,000 pounds, or an increase of 8.9 times in the short span of a quarter of a century. To make matters worse, the figures obtained since the new fiscal year began on July 1, are alarming. In 1932, during the months of July, August, and September, coconut oil was imported to the extent of 152,000,000 pounds. During the same 3 months this year, 280,000,000 pounds of coconut oil have been imported. Should this same increase hold throughout the remaining 9 months of the fiscal year, the importations for the 12-month period would be 1,056,000,000 pounds, or by far the largest on record.

COCONUT OIL DISPLACING ANIMAL FATS IN MARGARINE MANUFACTURE

You may wonder whether coconut oil is a competitor of beef, tallow, and lard. To clarify my point on this, let me take you back a few years. In 1914 the average of the oleomargarine produced contained 74-percent animal fat and 26 percent vegetable, or, in round figures, 3 parts animal and 1 part vegetable fat. In 1931 the oleomargarine contained, on an average, 19 parts animal and 81 parts vegetable, practically speaking, 1 part animal to 4 parts vegetable.

What about the vegetable-oil content of margarine in 1914 and 1931? In 1914 margarine contained three tenths of 1 percent coconut oil. In 1931 coconut oil, on an average, embodied 66.8 percent of the content of margarine. Cottonseed oil in 1914 made up 20 percent of the content of margarine; in 1931 but 9 percent. Thus we see a tremendous expansion in the use of coconut oil in the margarine industry and a very drastic reduction in the use of animal oil and our own United States produced cottonseed oil.

COCONUT OIL EVEN ENTERS LARD COMPOUNDS

For a number of years manufacturers of lard compounds have been striving to overcome certain deficiencies of coconut oil in order that they might use it in their business. I understand that, as a result of new improvements in processing, coconut oil can be used successfully in lard compounds and there is a potential, if not an actual, usage of 160,000,000 pounds per year in this field.

Importations of coconut oil (as such and in the form of copra) into the United States for the 5-month period July 1 to December 1, 1933, amounted to, in round figures, 450,000,000 pounds in contrast to 244,000,000 pounds imported during the same period in 1932. This represents an increase of 84 percent, and if this increase is carried out throughout the remainder of the fiscal year the total importation of coconut oil into the United States will be 1,053,284,000 pounds.

UNITED STATES FATS AND OILS VERSUS COCONUT OIL IN SOAP MAKING

Needless to say, coconut oil serves one of its major functions in the technical field, where it is used in soap manufacturing. Coconut oil is without question a splendid constituent for certain types of soaps needed at the present time. However, inedible animal greases and home-produced vegetable oils surely would be used to a much greater extent in soap manufacturing if coconut oil were less accessible.

COCONUT OIL IMPORTATION IN TERMS OF ANIMAL FAT

I do not want to worry you with too many figures, and therefore am going to use a few illustrations which may help to impress on your minds the significance of these coconut-oil importations during recent months and their effect on our industry—namely, that of the home-produced animal fats. The markets of the United States today are flooded with prime long-fed yearling steers weighing 1,000 pounds. Each of these steers produces, conservatively, 100 pounds of rendered fat. This includes killing fats, kidney fats, retailers' trimmings, etc. The coconut oil which has come into this country during the 3-month period July, August, September 1933 amounts to the fat produced by three million 1,000-pound prime steers, or, putting it on a per-month basis, 1,000,000 steers per month. Normally there are about 9 million cattle and 4½ million calves slaughtered under Federal inspection per year in the United States. In terms of 200-pound hogs, producing 30 pounds of rendered lard per head, we see that the coconut oil imported into this country during the 3-month period mentioned is equivalent to the lard produced by 9 million hogs, or at the rate of 3 million hogs per month. The normal annual hog slaughter in the United States as federally inspected plants approximates 45 million head, or slightly under 4 million per month. Consequently the coconut oil imported during recent months has amounted to three fourths as much as the normal monthly lard production.

AMERICAN FARMER CANNOT COMPETE WITH PHILIPPINE LABOR

I am calling your attention to this problem, not only with the thought that the tremendous development which has been made demands serious thought but that the future holds seemingly almost unlimited possibilities for its expansion. In 1931 there were 65,000,000 coconut trees in bearing in the Philippine Islands, and there was an additional 35,000,000 planted and ready to come into bearing soon. In other words, only two thirds of the trees were in bearing. A coconut tree comes into bearing when about 5 years old. It reaches full production when 10 years of age, and, like the human, lives to a ripe old age, the span of life ranging from 60 to 100 years. Just think of the amount of coconut oil which can be dumped into the United States in the short span of a few years. We must bear in mind that the tropical conditions existent in the areas where coconuts are produced are conducive to tremendous production of vegetative growth and oils—intense heat, rainfall ranging from 50 to 200 inches, and a sandy soil adapted to the purpose. Add to these things an abundance of cheap labor and an occasional monkey to shake the coconuts off the trees, and you have a picture with which the American farmer cannot compete and maintain the standard of living which we feel he so highly deserves for himself and his family as citizens of the United States of America.

COTTON REDUCTION AND FURTHER OPPORTUNITIES FOR COCONUT OIL

A few weeks ago I had a conversation with a man vitally interested in the cotton business of the South. He made the statement that the proposed reduction in cotton acreage next year would result in a decrease in cottonseed-oil production equivalent to the lard produced by 16,000,000 head of 200-pound hogs. Bear in mind that with each bale of cotton there are produced 150 pounds of cottonseed oil. This gentleman went on to state that in case the reduction helped the hog producers of the Corn Belt he felt confident the southern farmers would be pleased, but that if it developed that a few more thousand boatloads of coconut oil came in duty free from the Philippine Islands to take the place of the cottonseed oil taken out of production, he doubted whether the Nation as a whole would materially benefit.

ALL AGRICULTURE MUST STICK TOGETHER

Gentlemen, I am wondering whether we have not been so engrossed in solving our own problems that we might be said to have looked so much at the tree that we failed to see the forest. I believe this problem is one of vital importance to every phase of agriculture. I think we should agree upon a united program and stick together. This is vital to you beef and hog men; it is vital to the dairymen who are witnessing a drastic reduction in the

price of butterfat which they are selling at a figure far below the cost of production. It affects the cotton farmer; it affects the corn farmer, because corn oil can have a material value if given a chance. Furthermore, the corn farmers might grow soybeans for oil were there an incentive for so doing. This problem affects each and every one of us.

A SERIOUS PROBLEM

We are gathered together with a constructive thought in mind. We do not mean to be destructive. We have no thought of partisan affiliations. This coconut-oil problem is a cancer which has been eating into the vital organs of the American farmer for a quarter of a century. Let's pull together and see if some constructive action cannot be taken to head off this octopus which seems to be intent upon strangling the very lifeblood from us. Let's study this problem and help work out a solution for it.

Importation of copra and coconut oil into the United States, 1909–33

[In thousands of pounds]

Year	1 Copra	2 Coconut oil in copra (63 percent of col. 1)	3 Coconut oil imported as such	4 Total oil (2 col. plus 3)	Average by 5-year periods
1909-10	21,306	13,423	48,346	61,769	(1)
1910-11	37,817	23,824	51,118	74,942	....
1911-12	69,912	44,045	46,371	90,416	....
1912-13	40,870	25,748	50,504	76,252	75,845
1913-14	55,735	35,113	74,386	109,499	....
1914-15	96,485	60,786	63,135	123,921	....
1915-16	118,613	74,726	66,008	140,734	....
1916-17	256,801	161,784	79,223	241,007	....
1917-18	507,576	319,773	259,195	578,968	238,826
1918-19	315,749	198,922	344,728	543,650	....
1919-20	258,229	162,684	271,540	434,224	....
1920-21	213,134	134,274	173,889	308,163	....
1921-22	294,104	185,285	230,236	415,521	....
1922-23	338,597	213,816	212,573	425,889	425,489
1923-24	344,920	217,299	181,230	398,529	....
1924-25	371,961	234,335	250,121	484,456	....
1925-26	444,278	279,895	200,878	480,773	....
1926-27	507,136	319,496	286,776	606,272	....
1927-28	518,173	326,449	273,309	599,758	513,958
1928-29	687,121	432,886	377,288	810,174	....
1929-30	546,888	344,539	370,600	715,139	....
1930-31	606,067	381,834	315,492	697,326	....
1931-32	487,223	306,950	297,083	604,033	....
1932-33 [2]	494,821	311,737	260,700	572,437	679,823

[1] 4-year average.
[2] 3-month period July, August, September 1932 compared to 1933:

	July	August	September
1932	135,047	66,050	152,510
1933	271,753	105,842	279,764

Copra is dried coconut meat which contains 63-percent coconut oil. There is no duty on copra. Coconut oil comes in free from the Philippine Islands. There is a 2-cent duty on it when imported from other countries. All coconut oil and most of the copra imported into the United States during recent years has come from the Philippine Islands.

More About the Imported Fat and Oil Problem

[By H. J. Gramlich, University of Nebraska]

Gentlemen: At the time I addressed you on December 12, I little realized that my remarks would be in part instrumental in arousing a general interest. I have since received a number of inquiries for information pertaining to certain phases of the imported fats and oils subject which were not covered in the address. Accordingly, I have elected to spend my time with you today in giving information which will to a large degree be supplemental to that covered in the first address. To some extent this will consist of a series of answers to questions which have been propounded by various members of your association who have become interested in the problem.

We are still confronted with a low market for American-produced fats and oils. Most of these commodities are selling higher than they were in December; however, they are far below the cost of production and certainly out of line with what producers have a right to expect.

COCONUT OIL AS A COMPETITOR IN THE EDIBLE FIELD

According to available statistics, approximately one-third of the coconut oil brought into the United States is used for edible purposes and two thirds for inedible. That which is used for edible purposes is to quite a large extent used in margarine production. As brought out in my first address to you, the margarine of 1914 was composed largely of animal fats. Oleo oil produced from the fat of beef cattle constituted approximately 50 percent, by weight, of the oleomargarine produced at that time, while leaf lard from hogs approximated 25 percent. The vegetable oils used in the oleomargarine of 1914 included 20 percent cottonseed oil and only three tenths of 1 percent coconut oil. Contrasted to this, the average oleo produced in 1931 contained 60.8 percent coconut oil, 9 percent cotton-seed oil, and less than 20 percent animal fats. From the above figures it is easy to see that coconut oil has to a very large extent taken the place of American-produced animal and vegetable fats in oleomargarine. The demand for edible oleo oil is so light that animal processors have all but discontinued making it during the past few months, the light demand and resultant low price having discouraged the extra expense involved in manufacturing this commodity. As a result, more inedible tallow is produced and when this product knocks at the door of the soap manufacturer it finds coconut oil again blocking its reception.

COCONUT OIL AS A COMPETITOR IN THE INEDIBLE FIELD

I have been asked a number of times whether coconut oil competes with American-produced fats and oils in the inedible or industrial field. It most certainly does compete with our fats and oils in the manufacture of soap. Statistics for 1932 show that 1,375,416,000 pounds of fats and oils were used in the United States in the manufacture of soap. There is an annual production in the United States of approximately 800,000,000 pounds of inedible tallow and grease. This constitutes to a large degree products produced from cattle and hogs. Normally, the great majority of it is used in the soap kettle. Prior to the importation of coconut oil on such a large scale considerable cottonseed oil was used in conjunction with the animal tallows and greases in the manufacture of American soap. Certain other United States-produced vegetable fats and oils were used to lesser extent.

DEMAND FOR INEDIBLE TALLOW AND GREASE VERY LIGHT

Since addressing you on December 12 I have taken occasion to look into the demand which prevails for the inedible fat products produced from your fat cattle and fat hogs. I have been amazed to find that during the past few years there has been a very indifferent market for these commodities. Prices have been exceedingly low, so low, in fact, that in many cases the waste fat has not been gathered and rendered, as there was no chance of handling this to advantage. Surely, imported coconut oil has come into the picture as a competitor of these so-called "by-products", which we produce.

I understand the soap manufacturers state that coconut oil is necessary in the production of certain types of soap. They furthermore state that some

coconut oil materially improves the character of most soaps. Granting that these statements are true, might it not be possible for the importations of coconut oil to be limited to such amounts as would enable a fair market to exist for our inedible animal and vegetable fats and oils and the soapers still continue to make acceptable products? According to quotations in the National Provisioner under date of February 10, 1934, prime packers' tallow was selling in Chicago at 3⅛ cents per pound. This product is produced in federally inspected packing plants from the internal fat of cattle. Fat steers yield this up to 5½ percent of their live weight. You men are largely finishers of cattle; consequently, when you sell a 1,000-pound finished steer you are supplying the potential source of 35 pounds of rendered prime packers' tallow.

Bear in mind that in addition to this inedible tallow, the steer produces much more fat. The carcass of a finished steer frequently contains as much as 35 percent visible fat. A great deal of this is trimmed off as suet and becomes inedible tallow or grease. Most suet (kidney and cod included) is 80 percent pure fat. Standard methods of cutting would produce 10 percent of carcass weight in the form of suet. This would make approximately 48 pounds of rendered inedible tallow or grease.

Bones contain 16 percent grease. Ten percent of the carcass goes into the bone box. Thus, there would be 9.6 pounds of rendered grease from this source. The reclaimed grease from public eating houses and other sources added to the above would conservatively bring the total to 100 pounds of rendered product per 1,000-pound finished steer. The value of this byproduct materially influences the price of the steer. If it goes up, the cattle market reflects the advance. Competition which this home-produced commodity has met from imported oil undoubtedly has been to a large extent responsible for the ruinously low market existing for it.

From the same National Provisioner (Feb. 10, 1934), I find that yellow grease is listed at 2⅝ cents per pound. This is the product produced in greatest quantity by renderers of inedible animal fats. It is composed of the fat salvaged from the offal of small and large packing plants, the shop waste of retail butchers, the kitchen grease from restaurants and hotels, the salvage from fallen animals, and numerous other sources. Remember, a considerable portion of this grease is produced at small salvaging plants scattered over the United States.

RENDERING INDUSTRY HARD HIT

I noticed an article recently calling attention to the fact that approximately 40 percent of the rendering plants in the United States have ceased operations. Without doubt this cessation of activities has been due to the price of rendered grease being so low that they could not afford to collect and process it. On a basis of the price prevailing on February 1, renderers were able to pay ¼ cent per pound for shop waste. In the large cities of the United States there is a tremendous amount of this shop waste.

We unconsciously produce it when we finish our livestock for market. The trade demands quality meat. This means a liberal admixture of fat with lean. The mechanism of the animal body is so constituted that when the steer intersperses fat with lean he likewise puts a rather thick covering of fat under the skin which, in the dressed carcass, appears as an outer covering over the lean. He likewise puts considerable in the cod and a large amount about the kidney. When the retailer takes the beef carcass and attempts to sell it to his customers, he finds that there is a distinct prejudice against external and mechanically separable fat. Propaganda spread throughout the Nation calling for slender waists is too strong to permit the feminine members of society to acquire a fondness for fat. The trade wants the bright-colored beef of the finished steer. It wants the juicy admixture of fat and lean; however, it objects to paying for that which must go with it. Consequently, trimming is imperative, and the basket under the retailer's counter fills several times per day with trimmings.

PREJUDICE AGAINST SHOP FAT

While at Memphis, Tenn., a few weeks ago, I had occasion to note some fairly heavy Nebraska-fed heifer carcasses. There was considerable external fat on the loins. The wholesaler was forced to trim most of this off in order to sell the product. He took 12 pounds of fat off of a 40-pound loin. This undoubtedly went into the inedible channels and wound up in the form of a grease which

must depend upon the soap market entirely for its utilization. A retailer in the same city purchased two 600-pound carcasses of beef which had been shipped from Chicago International. He put the trimmings from these carcasses in a separate container, and when the last of the beef was sold phoned to the party from whom he purchased the beef that he had 125 pounds of suet and that the renderer had bid him ¼ cent per pound for this. This is a glaring illustration of how the byproducts of our finished cattle suffer. We know from sad experience that the producer pays the bill in cases of this kind.

ANIMALS ARE COMPLICATED MACHINES

As I have said, on February 1 renderers were paying ¼ cent per pound for shop waste, a commodity which we produce in the Corn Belt in supplying the American table with the kind of meat it demands. If we were manufacturers in the true sense, we would change our models and in some manner overcome the difficulty; however, the animal body is a much more complicated proposition than any piece of machinery. The steer of today, in so far as his internal function is concerned, is like the ox that floated in Noah's famous boat. It is impossible for the American farmer to obviate the production of separable fat when he finishes his animals to a degree which will enable them to be shipped long distances and the meat to be stored sufficient lengths of time to supply the table with the class of product for which it clamors. Furthermore, nature stores considerable fat about the internal organs of all animals and even when they are in only stock condition there is a considerable accumulation of fat which can be salvaged when the animals are processed. In other words, this inedible fat we produce would not be entirely eliminated were we to completely discontinue the fattening of steers.

CONSUMER DEMANDS QUALITY MEAT—THIS NECESSITATES FINISHED ANIMALS

Furthermore, would the American consumer want the cattleman to desist from fattening his steers? Were he to do this, what would become of the corn? Do you realize that in the State of Nebraska a long-time average shows that 71 percent of our agricultural income is from the sale of livestock and livestock products?

CORN AND LIVESTOCK INSEPARABLE

Ninety percent of the Nation's corn is fed to livestock. What would we do with the corn without livestock? Its sole value would probably be that which it would derive as a competitor of coal in the stoves and furnaces of the Nation, and this would be mightly low. You feeders in this great State of Iowa, which stands without a peer as a corn producer, utilize almost all of your crop in finishing your domestic animals for the market. Those of you who are from Missouri know that somewhat the same condition prevails there. In other words, the Corn Belt of the United States has been developed on a basis of the production of a large crop of corn for consumption on the farms by the domestic animals which are an important part of each unit.

IS COCONUT OIL RESPONSIBLE FOR LOW PRICE OF FAT

We are fighting with our backs to the wall. For a series of years we have seen our markets gradually going down to a point where every animal we handled lost money. I have mentioned that one-fourth cent per pound was paid during February of this year for waste fat of inedible character. I find that a price of 3¾ cents per pound was being paid through this section for similar products in February 1928. I find that at that time prime packers' tallow and yellow grease were selling at approximately 9 cents per pound in Chicago; likewise, that coconut oil was selling at 9 cents per pound in Chicago. In other words, in the 6-year-span coconut oil, tallow, and grease have dropped from a 9-cent level in Chicago to a 3-cent level. Isn't it possible that the tremendous influx of coconut oil which has prevailed during this period has been responsible for not only lowering the price of this commodity, but likewise forcing the price of tallow and grease to such a low level that many engaged in handling these commodities have virtually been forced out of business and the credit of several dollars per head which we formerly received from the sale of these by-products produced from our cattle has been lowered to practically nil.

WOULD AN EXCISE TAX CAUSE SOAP TO DOUBLE IN PRICE?

I noticed in a recent article where someone connected with the soap trade made the statement that should a 5-cent-per-pound excise tax be placed on coconut oil, as provided for in the Shallenberger amendment to the United States revenue bill, the price of soap would be increased 100 percent. This aroused my interest and I, accordingly, looked into the wholesale price of a certain standard brand of high-quality laundry soap in January of 1928 and January of 1934. By doing a little calculating I found that this product had dropped 31 percent in the 6-year period. Furthermore, I found other brands had dropped materially less. I fail to see how the author of the article mentioned above could justify his statement that soap would have to go up 100 percent should coconut oil be raised from 3 to 8 cents per pound, when during the period 1928—— the soap went down only 31 percent and coconut oil dropped from 9 to 3 cents.

ARE OTHER IMPORTED OILS SERIOUS COMPETITORS?

I have been asked a number of times whether other imported oils were not at least partly responsible for the troubles which American animal and vegetable fat producers are experiencing. I would answer this in the affirmative. The only reason I talked to you entirely about coconut oil on December 12 was that it seemed to be the most vulnerable offender. As brought out in the discussion at that time, importations during the fall months of 1933 were running way ahead of those of a similar period in 1932, and I stated that should this increase hold through until July, the importations for the fiscal year would exceed 1,000,000,000 pounds.

AMERICAN FARMER DESERVES PROTECTION

I think there is no question but what the American farmer deserves some protection from the other oils. Chief among these would be palm oil, whale oil, fish oil, palm-kernel oil, and sunflower-seed oil. The chemist has been able to perfect methods whereby oils can to a large degree be interchanged. As a result of certain standardization processes undesirable odors, flavors, and colors can be eliminated; consequently it would seem as though we had reached the time when, as protection to the producers of animal and vegetable fats and oils in the United States, some limits were placed on the importations of all these commodities.

THE DILEMMA OF THE AMERICAN VEGETABLE-OIL PRODUCER

There is a tremendous amount of cottonseed oil on hand today. Furthermore, a considerable part of the 1933 cottonseed crop as not yet been crushed. The southern farmer is the Corn Belt's best pork customer. Why not limit the importation of fats and oils to such extent as to permit the surplus cottonseed oil to find a ready outlet and thus help keep our southern friends in the market for pork?

Soy bean, peanut, and corn growers could aid materially in supplying oil were they given a little encouragement to do so.

THE DESIRED BALANCE

By some adjusting surely a satisfactory balance can be reached without bringing disaster to any industry and at the same time aid materially in stabilizing the market for our home-produced fats and oils, which constitute such an important part of American agricultural production.

Dr. GRAMLICH. Gentlemen, we have produced under tropical conditions many products which are produced with a minimum of labor under Temperate Zone conditions, such as we have in this Nation. We have many products which are produced with a great deal of labor. We have crops which are of necessity, crops which require a great deal of work, consequently there is a cost attached to the production of these crops, which is quite a factor. We have a

relatively high standard of living under our conditions, and we find, under conditions existing in the tropics, a comparatively low standard of living, and it seems to be the problem which confronts us is, to quite a large extent, are we going to protect a standard of living of our American farmers? We cannot compete with these tropical products, produced where the temperature is practically 80° throughout a year, and a rainfall of over 100 to 200 inches, and these crops grow with practically no effort. Under the Temperate Zone conditions, where we have a cooler climate, more labor is required to produce crops. Our people are handicapped. I have right before me a quotation, which I would like to read, gentlemen. It appeared as an editorial in the Chicago Journal of Commerce, February 8:

> If the United States is right in excluding Asiatic peoples on account of competition with their labor, then why not place an embargo on imports produced by Asiastic labor, which disastrously competes with domestic agriculture products and labor?

Quoting just one more sentence:

> Palm oil, admitted free of duty, is virtually produced by slave labor, and coconut oil by laborers in the tropics receiving 6 to 10 cents per hour.

Now, under our conditions here in this country, we produce crops—corn, alfalfa, and crops of that kind—and feed for livestock. We last year produced close to 3,000,000,000 bushels of corn, and about 90 percent of that is fed to livestock.

Will you please get those samples of meat here?

Now, from the livestock we make the fat. A great deal of that fat is inedible, in spite of the fact that the condition has been described. There, gentlemen, is a kidney, taken out of a 1,200-pound steer, weighing a little over 700 pounds dead. That is a kidney fat. That weighs 15 pounds. We have that in each side of the critter, 26 pounds. During the summer that practically all goes inedible. A good deal of it through the winter goes inedible. And some of it goes into chili con carne, and things of that kind. Show the cod fat off of the fat steer, and then we want to show you the T-bone steak. There is a cod fat, weighing 5 pounds on either side of the critter, a total of 10. All right, now, show them the T-bone steak, please. Here is a steak off of the same carcass, gentlemen, providing someone hasn't stolen it. Right there.

Senator CONNALLY. Pull it out of the hat.

Dr. GRAMLICH. That steak was there a minute ago. Find it. That is it.

Gentlemen, there is a T-bone steak off of the same steer. Hold it up flatways so they can all see it. Can you all see? See the fat on the outside and the fat on the inside. All the kidney fat has been taken off. A certain statement has been put out that the butcher is paid for all the fat, that he weighs it to you, and then trims it off. All the kidney fat has been taken off. A great deal of the outside fat is to be trimmed off. Now, I am making the statement, gentlemen—Mr. Mollin has told us about the cattle we produce, over a billion pounds of tallow and grease in this country last year, and the market is very, very low for that product, and we feel that these importations of coconut oil are one of the things that are helping to hold down our prices, and I am passing around to you a sheet showing the importations of coconut oil during the 7

months, July 1 to February 1, this year, and a year ago, and they show a 63-percent increase. Will you please pass those? One of the clerks has them there. Pass them around. In other words, in the last 7 months, coconut oil has been coming into this country at the rate of approximately 3,000,000 pounds per day, 3,000,000 pounds per day, 50 tank cars per day, selling at disastrously low prices, and benefiting principally our beef-cattle people and our hog people and our livestock farmers in the Corn Belt.

We felt that that is a very very serious competition. In 1932 we came within 500,000,000 pounds of producing enough fat and oil to take care of our needs, and if we can cut down some of this amount oil, and some of the palm oil, and a few other oils that are coming in, I think, gentlemen, we can get a decent market for the producer and the farmer.

Now, there have been a number of things said that I would like to take just one moment to answer. It has been said, out in our State, of hospitals—they have had telegrams to the effect, among other things, that soap would be doubled in price. We operate a hospital. I am connected with the University of Nebraska, and we operate a hospital. I went up there and inquired what the idea is. I found that most of the soap which they use is a linseed-oil soap. There is a soap chemist here, who can verify or answer any questions along that line. Linseed oil does not enter into this picture in any way, for this use in hospitals. How can the cost of hospital soap be double?

Here is another one: Laundries in our State have been kind enough to send me wires or copies of wires that they have, and they have asked my advice, and I have told them, "Gentlemen, anything that helps the farmer helps every one of us." Whether we are doctors or lawyers, that holds true. That is the attitude I have taken. I had a talk with the leading laundryman in the city of Kansas City, Mo., and he tells me that he uses soap that cost him 1 percent of his total operating cost. The leading man in Omaha told me the same thing. In his laundry, he says that he uses a pound of soap per family laundry of 20 pounds. Now, when we can bring back some prosperity to the Middle West and to the agriculture of the United States, won't more people go to the laundry, even if they do charge a little more?

I found, gentlemen, that back in February 1928, before the depression, that tallow sold for 9 cents a pound in Chicago, and I found that on the same day, this year, 6 years later, it was selling at approximately 3 cents a pound, or a drop of 67 percent.

Why should it be necessary for the price of soap to be doubled?

Now, you talk about the imports from the Philippines. I do not have figures on that, but how many citizens and United States employees do we have over there? What percent of our exports of condensed milk, and products like that, that go to the Philippines are consumed by people working for American citizens, the Army and Navy, and all that sort of thing? I do not know, but I have an idea the experts do not include all those figures.

Now, I have run over my time, and I must not take more time. I feel very keenly that this is a problem that every agricultural association in the State of Nebraska is interested in, likewise in the State

of Missouri and other States joining us there, and they feel that this would help very, very materially. I thank you.

Mr. GRAY. The next witness will be Dr. Meerbott.

The CHAIRMAN. There is only about 6 minutes left.

Dr. GRAMLICH. Mr. Chairman, may I make this one short statement as the next witness is coming up here?

The statement is made about coconut oil. In Consumers' Research of October 1931 I read:

> Coconut-oil soap, above 25 percent, should be avoided except for salt and marine soaps, since any greater concentration may be irritating to the skin.

Mr. Chairman, may I ask to have read into the record President Roosevelt's telegram regarding protection to the American farmer in his campaign?

The CHAIRMAN. It has already been read into the record, hasn't it?

Dr. GRAMLICH. In connection with it here I ask the permission of having that read in.

Senator METCALF. We had sound money and economy during his campaign.

Dr. GRAMLICH. This pertains to this particular subject, Mr. Chairman, and with your permission, I should like to have that read into the record.

The CHAIRMAN. Well, it will be incorporated in the record.

Dr. GRAMLICH. The telegram was referred to in the Congressional Recorded, preceded by the following statement:

> When the last presidential campaign was on, the American National Livestock Associations and other farm organizations wired the Democrat and Republican candidates for President, Mr. Roosevelt and Mr. Hoover, asking for a statement as to their position on the question of adequate protection of American oils and fats, and the raw materials from which they are extracted, in order to save the home market for the American farmer. In reply, Mr. Roosevelt wired:
>
> "Let me make it clear that I have consistently stood for a policy of tariff protection that will insure the domestic market for our American farmer."

STATEMENT OF PERCY B. MEERBOTT, CHEMIST AND SOAP MANUFACTURER

Mr. MEERBOTT. I fear, gentlemen, that this afternoon the advantage of coconut oil in soap has been grossly misstated. It is an absolute fact, it is nothing to laugh at, that coconut-oil soap is irritating.

Senator REED. I am told that nearly 100 percent of shaving cream is coconut oil.

Mr. MEERBOTT. All right. We will explain that. That has free stearic acid added to it to neutralize it. There is no free alkali there.

Coconut-oil soap, or at least coconut oil, in other words, requires at least 18 percent caustic to saponify it. Tallow takes 14.4 percent of caustic to saponify it. Back in 1912 nobody attempted to use more than 10 percent of coconut oil. It was the maximum, and there wasn't a piece of soap on the market—I am speaking of toilet—that contained more than 10 percent, many of them only 5.

Now, when coconut oil became cheaper, cheaper than tallow, it was used as a substitute.

Now, we have taken a series of soaps and made analysis of them. A soap made 3 years ago by a concern whose product is called Georgian had a saponification value of 203.7. We made a mixture of 75 percent tallow and 25 percent of coconut oil, and its saponification value was 213.5. We made another one of 90 percent tallow and 10 percent coconut oil, and we found a saponification value of 206.3.

In other words, the basic charge is very close to 203.7, establishing the fact that there was only 10 percent of coconut oil use in that soap at that time. A soap 2 years old, coming within the period where the importation of coconut oil had increased, showed saponification value—this was made by the same concern—of 211.3, or 20 to 25 percent of the coconut oil. Then we came along with another sample, 1 year old, 212.9, and one 1 month old, 211.3.

Now, we secured some expensive imported soaps, one was by Roger & Gallet, made in France, a soap that cost $1.31 per dozen, which had a saponification value of 209.2, 10 percent of coconut oil. Yardley, $1.26 per dozen, 208.8, 10 percent coconut oil.

Now, the argument is that you cannot make a good soap unless you have more coconut oil. That is refuted right here. We all recognize Yardley and Roger & Gallet as being equal to our soap, although I would like to say that we make the best soap in the world.

Senator GORE. Did you make a test with cheaper soap?

Mr. MEERBOTT. Yes. I had taken two cheap soaps. One is Camay. Camay has a saponification value of 215.6. I do not know how old that sample is. It may contain more today, but that specific sample shows about 25 percent of coconut oil. Then No. 4711, made by Mellin & Graff, rather surprised to say so, because it is a German concern, but it is a cheap soap. Well, at 83 cents a dozen, that had a saponification value of 217.2, which indicates a high content of coconut oil. Now, made in this country—back in 1912, as I said, there was no more than 10 percent of coconut oil used. Now, as you increase the coconut oil in a toilet soap, it wastes away fat. Of course, it lathers freer, but after all is said and done, lather does not wash. Some laundrymen think they must have a pile of suds in order to wash. Take the suds and try to wash something, and see if it will wash. The object of soap in washing is that it should act as a solvent to break down the surface tension of the water, so that the water can enter the interstices of either of the fibre or interstices under the dirt which adheres to the skin, so as to float the dirt away, and it is really a floating acting, partially emulsifying, too.

Now, when you take coconut oil, which has a high saponific value, it is going to ionize and liberate alcohol more freely than tallow does. If you will take a tallow soap, and wash your hands with 10 percent tallow soap, you will find it will be more pleasant to the skin than one of 10 to 25 percent. I know some people who are very sensitive to coconut oil. There was a concern I was with, James Pond & Sons, some years ago. Mr. Pond's daughter could never wash with anything but a straight tallow soap. The moment she touched other soap she would irritate.' Some of us have a little stronger skin and can resist it better.

Senator BARKLEY. Do you know the contents of Woodbury's Facial Soap?

Mr. MEERBOTT. I do not today, but I did know it. Woodbury's Facial Soap was made by John T. Stanley, when I was associated with him, and had 5 percent of coconut oil at that time.

Senator WALCOTT. Do you know about Squibb's Shaving Cream?

Mr. MEERBOTT. No; I do not know the analysis of that, but it is a high-grade shaving cream.

Senator WALCOTT. You don't know the percentage of that?

Mr. MEERBOTT. No; I am sorry; I do not remember.

Senator WALCOTT. Don't you think the percentage of coconut oil runs high?

Mr. MEERBOTT. Yes; the percentage of coconut oil in shaving cream does run high, but it is neutral—in fact, your modern shaving soap—one of them is nothing more than a cold cream. I can't think of its name right now.

Senator BARKLEY. Mollé?

Mr. MEERBOTT. Mollé, and another competitor.

Senator BARKLEY. You get a very poor shave out of it.

Mr. MEERBOTT. You are right.

Senator GEORGE. The hour and a half allotted to the proponents has about expired.

Senator HASTINGS. Mr. Chairman, I suggest we give this man additional time. He is a technical expert. I suggest we give him 5 minutes more.

Senator MCADOO. I suggest you give him 5 minutes more.

Senator GEORGE. His time has run over right now, but if it is agreeable to the other members of the committee, he may proceed.

Mr. MEERBOTT. Thank you. Now, it is my opinion that this whole situation has come to the point where the soap manufacturer has always sought the cheaper material, naturally, and when coconut oil has receded in price to the degree it has today, it is the cheaper product to use. Now, there is a statement made that you should wash silk with a coconut-oil soap. I have been in probably most of the big silk mills in the country—in Paterson and Shawmuck; Sunbury, Pa. Attempt to get a silk man to use coconut-oil soap, and he will throw you out, because he will have marks on his silk, and after he dyes he will have a hue all over it, and he wants an olive-oil soap. The laundryman wants a tallow soap, which will not break down when the heat is applied to his wheel; the suds won't disappear. The cotton man wants either a cottonseed soap or a tallow soap. The woolen man wants either porous soap or a soap made from an oil which is a distillation from tallow, or he wants tallow soap.

Senator GORE. What group is it that uses that?

Mr. MEERBOTT. I do not know any textile group that uses coconut-oil soap.

Senator GORE. It would not be the ordinary laundry?

Mr. MEERBOTT. Used by the housewife, used for household use, and especially cosmetics. The most of the textile industries will not permit the use of a coconut-oil soap, and if you were to apply it to silk, as I said before, the result would be absolutely disastrous. They could not get level dyeing. I think that is all I can state.

Senator WALCOTT. Mr. Chairman, we have heard nothing from the fish oil company, and I believe there is one man here who is very anxious to be heard for a few minutes. It is a large group in New England.

The CHAIRMAN. Mr. Hayes.

Senator BARKLEY. In that connection, Mr. Chairman, a gentleman has just spoken to me here who represents the candy industry. Nobody has been heard yet from them. He desires to make a very brief statement.

Senator GEORGE. The time is parceled out by the proponents.

Senator REED. There is still some 25 minutes left for the opponents of the measure.

Senator GEORGE. About 12 minutes, but it is being lengthened out to about 20 now.

It is understood, of course, that any witness here may file with the stenographer any brief or any tabulation of figures that he wishes to enter into the record, and it will go into the record.

STATEMENT OF THOMAS H. HAYES, CONSOLIDATED FISHERIES CO.

Mr. HAYES. I represent what is called the "Consolidated Fisheries Co.", the manufacturers of menhaden fish oil, and that is extracted from the menhaden fish. It is caught along the Atlantic seaboard. When I say "we", that is the company with which I am connected. We own six plants. We fish from Maine to Florida waters. We have some thirty-odd steamers. There are other plants besides ours, and these oils are produced in practically every coastal State of the United States; it takes in Maine, Massachusetts, Connecticut, New York, New Jersey, Delaware, Virginia, North and South Carolina, Georgia, Florida, Alabama, Louisiana, Texas, California, Oregon, Washington, and Alaska. The total production annually is about 100,000,000 pounds. That gentlemen, with 50 plants, with 50 percent of the plants not operating, due to this importation of foreign oils—and when I speak of foreign oils, I want to include palm and palm kernels, and all other competing oils. We ourselves have an investment of somewhere in the neighborhood of $10,000,000. In 4 years we have been unable to operate anything, with the exception of the last season. We operated 1 plant out of 6. We operated 6 steamers out of thirty-odd—34 or 35. Ordinarily my company employs somewhere in the neighborhood of 3,500 men. We employed last year perhaps 500.

We operated but 2 months. Our loss then will show $150,000. There was no way we could operate more, and that is characteristic of the business. Now, there has been some remark made here about the oil business. In 1929 there were 223,000,000 pounds of this oil consumed in the United States. The soap industry used 130,000,000 pounds; lard substitutes, 14,000,000 pounds; paint and varnish, 1,000,000; linoleum and oil cloth, 10,000,000; and other miscellaneous industries 21,000,000 That shows or proves, I believe, that these oils are interchangeable with these other oils.

In 1926 the price of these oils was about 47 to 48 cents a gallon. These importations of foreign oil have driven the price of fish oil down to a price, if you are able to sell it, of 1½ cents per pound,

or in other words 10 cents a gallon, hardly the tax on gasoline in some of these States. We find the cost to produce menhaden fish oil is 46 cents per gallon. When I say "we", that is, independent of the industry. That is our cost and others. That is made up from different people.

Senator WALCOTT. You are getting now about 10 cents.

Mr. HAYES. We are getting 10 cents a gallon. There is 7½ pounds to a gallon.

The question has been asked here, is this tax prohibitive? If you will take that tax, 7½ times, you will see that we have about a 46-cents-a-gallon price, or a 47-cents-a-gallon price, that we had in 1926, and that price, we must get to cover the cost of production. In Chesapeake Bay area, where this fishing is carried on quite extensively—that is in the State of Virginia—they have had 17 plants there. That has dwindled to nine, over this period of 4 or 5 years, while this has been going on. When I say "this" I mean these importations of oil. These factories, from necessity, are located in isolated places. The odor is objectionable. They cater and employ very peculiar persons. They employ a person that has no other means of livelihood. They raise large families. They do not need any luxuries. The school is usually 4 or 5 miles away. There are no other industries about. It is essential that those people should be given employment. We have heard a lot here today about silk stockings and electric washing machines. These people have no stockings and no electric washing machines. That is the condition of the people that work in my industry.

Senator BAILEY. Are you under the N.R.A.?

Mr. HAYES. We are under something. We cannot operate. We are just still.

Senator BARKLEY. What is the average wage?

Mr. HAYES. Last year we paid fishermen $20 a month and their board. We boarded them. That is what we paid, and even then we lost, as I say, on one fifth of our operation, or one sixth of our operation, $150,000.

Senator BARKLEY. What is the rate of wages, or what was the rate of wages in 1929?

Mr. HAYES. About $60 a month. I was operating. It was sixty. That was the wage. That is the crew. Now, the officers' wages, the captains and pilots and mates——

Senator BARKLEY. We are talking about the ordinary man.

Mr. HAYES. The ordinary man was $60. We, of course, can be considered the tail end of this kite, but it is a very important industry. There are one hundred and some fifty million dollars invested in it on the Pacific coast, with the rehabilitation of it, so that we could operate again. It would put 1,000 vessels to work, now idle, and approximately 50,000 men—that is, seamen—but they are now idle and doing nothing, just on account of these conditions.

Senator BAILEY. I am prepared to corroborate your statement from my knowledge of the conditions on the North Atlantic coast. The industry is destroyed in the State, and is suffering prostration.

Mr. HAYES. The Hayes plants in North Carolina, Senator, and Wilmington. We have two plants on the Cape Fear River, and we haven't operated either one of them in 5 years.

Senator BAILEY. There are plants all up and down the coast, and there is the greatest abundance of these Manhaden, but do you think we have in sight a sufficient remedy?

Mr. HAYES. With this type?

Senator BAILEY. Yes.

Mr. HAYES. Yes; I do.

Senator BAILEY. You think that will be sufficient to restore that industry?

Mr. HAYES. It will get us back to the 1926 level. That would be very constructive, and would permit us to again do something.

Senator WALCOTT. Did you make a profit in 1926?

Mr. HAYES. We did make not an exorbitant one, but we did make a fair profit. Yes; I think we made probably 6 or 7 percent; something like that.

Senator BARKLEY. What did you get for the oil then?

Mr. HAYES. Forty-seven and one half cents, just the same price now that that tax would bring it.

Senator BARKLEY. Forty-seven and one half cents a gallon?

Mr. HAYES. Yes, sir.

Senator BARKLEY. This tax is only 5 cents a gallon.

Mr. HAYES. A pound. That is 7½ pounds.

Senator BAILEY. What nations are your chief competitors in shipping in fish oils?

Mr. HAYES. Well, fish oils don't hurt us so much as these coconut and palm oils and palm kernel. Those are the crux of the whole thing. They are the ones that floor us.

Senator BARKLEY. Into what commodity does the coconut oil go that has driven your fish oil out?

Mr. HAYES. Well, you see, Senator, these oils mostly are interchangeable. For instance, you have heard cottonseed oil discussed here today. Cottonseed oil, a great deal of it went abroad. That market has, as has been shown here, been lost, in a great part.

Senator BARKLEY. Do you know why it has been lost?

Mr. HAYES. Foreign countries, I presume, are raising their own seed.

Senator BARKLEY. Their own tariffs?

Mr. HAYES. No; I do not think that. Seeds, they raise their own seed, and so forth and so on.

Senator BARKLEY. Do you know whether it is due to the raising of the seed or the raising of the tariff?

Mr. HAYES. No; I understand it is the raising of the seed, but I have nothing on that. I heard some discussion awhile ago about this trade. I would like to read an article that was in the New York Herald, one day in February.

Senator GEORGE. Mr. Hayes, will you let me suggest that you just put that article in the record, because we have extended the time, about as far as we can, in order to get through with the other side at all.

(Newspaper article, submitted by Mr. Hayes, is as follows:)

JAPAN GAINING FILIPINO TRADE AS UNITED STATES LOSES—NIPPONESE SALES UP 50 PERCENT, AMERICAN DOWN 12 PERCENT IN YEAR, SURVEY INDICATES—GREAT SHIFT IN TEXTILES—COTTON PRODUCTS' MARKET PASSING TO NEW CONTROL

[By the Associated Press]

MANILA, P.I., February 17.—Sales of Japanese goods in the Philippines increased about 50 percent last year as compared with 1933, while American sales declined 12 percent, preliminary estimates by E. D. Hester, American Trade Commissioner, reveal.

The principal Japanese gain was in the sale of cotton textiles, and the view that this market is definitely lost to the United States unless a new tariff is imposed was expressed by officials. In 7 months of 1933 Japan's share of the textile trade, normally amounting to only $10,000,000 a year, increased from 8 to 56 percent.

Because of the free-trade relations between the United States and the Philippines, Japan's total trade with the islands remained only a little more than a tenth of that of the United States, however.

TOTAL TRADE INCREASES

The total Philippine trade for 1933 was approximately $176,000,000, slightly larger than the year before. Shipments to the United States amounted to $90,500,000, as compared with $83,000,000 the year before, but imports were only $48,500,000, as compared with $51,500,000. Total trade with Japan was $12,000,000, imports increasing from $6,150,000 to $9,000,000 and exports from $250,500 to $3,000,000.

The Philippines' favorable trade balance for the year was approximately $30,000,000, the third largest on record and nearly twice the $16,000,000 of 1932. The United States duty-free market was the economic savior of the islands again, as the favorable balance with the United States alone was $45,000,000.

SUGAR LEADING EXPORT

Sugar accounted for about 70 percent of the value of Philippine exports, as compared with 63 percent the year before, all going to the United States. The American share of the textile market was 85 percent last May and Japan's only 8 percent, but in November Japanese sales of cotton goods had grown to 56 percent and the American had shrunk to 32 percent.

The end of the Chinese boycott of Japan in May was believed to be the chief reason, but higher American costs under the N.R.A. formed another factor. The boycott was effective in the Philippines because retail trade is largely in the hands of Chinese merchants.

The insular legislature rejected proposals for an increase in the tariff on textiles in 1932.

Senator BAILEY. Mr. Chairman, if this speaker is through, I would like Mr. Blalock, the president of the National Cotton Co-ops, who is present from North Carolina, to have an opportunity to be heard with respect to cottonseed oil.

Senator GEORGE. It is, of course, the pleasure of the committee. We are simply here to carry out the previous arrangement. Mr. Hayes, you can put anything in the record that you desire to.

Mr. HAYES. Yes; we probably will file a brief. I would just like to add a few words, Senator George, with your permission.

Senator GEORGE. Yes, sir.

Mr. HAYES. Our industry has been probably harder hit than any other industry by reason of these oils being interchangeable.

STATEMENT OF CONSOLIDATED FISHERIES CO. FILED WITH THE SENATE FINANCE COMMITTEE RELATIVE TO "TAX ON CERTAIN OILS"

(By Thomas H. Hayes)

We are engaged in the taking and the reduction of menhaden fish on the Atlantic coast.

Products manufactured by our industry are menhaden fish meal (utilized in stock and poultry feeding), menhaden acidulated fish scrap (very desirable source of available ammonia in fertilizers), and menhaden fish oil which is consumed in the manufacture of soaps, rubber, paints, linoleum, leather, oilcloth, etc.

Due to interchangeability, no sale of menhaden fish oil can be made except in direct competition with imported, palm, palm kernel, coconut, whale, fish, and other foreign-produced oils. The wholesale prices of these imported oils is always the governing factor in the price that we are able to get for our oil.

The prices at which these cheaply produced foreign oils are offered has depressed the price of domestic-produced fish oils from an average of 45 cents to 50 cents per gallon during the period 1925–30 to a level of from between 10 cents and 15 cents per gallon since that period.

It is the policy of the governments of most countries to not only encourage, protect, and assist their fishing industry but in many instances to subsidize them. A concrete example is the case of the Oriental Development Co., promoted by the Japanese Government and whose bonds have been floated in the United States and traded in extensively on the New York Stock Exchange. The Oriental Development Co. have provided a fund of approximately $20,000,000 for the development of the fisheries of Japan. A most important part of Japan's fisheries is the herring industry which produces fish oils, fish meals, and fish scraps. These products are sent here in large and increasing quantities to compete with domestic products.

It is a matter of common knowledge that we have an overabundance of room for the expansion of our own domestic fisheries. We have from Eastport, Maine, to the Mexican border over 100,000 square miles of fishing area with another 100,000 square miles off our Pacific and Alaskan coasts, where the supply of those other prolific fishes, the sardine and herring, is assured. A striking illustration of the possibilities of extending our fisheries, provided proper protection to insure our domestic market is afforded, is seen in the fact that during the early development of these fisheries on the Pacific coast, 1916 to be exact, there were but 25,000 gallons of fish oils produced on the Pacific coast, but in the 1929–30 season this increased to the total of 8,359,777 gallons.

Menhaden abound in the waters of the Atlantic coast and the Gulf of Mexico. Reducing plants are located at strategic points and of necessity in isolated locations. The fisherman as well as the factory worker are generally the heads of large families who depend upon fishing entirely for their livelihood and usually they do not prosper at any other occupation. They usually own their own home and in the past have been self-sustaining desirable citizens. During these recent years, when because of this competition the producer was obliged to reduce wages due to the decreased revenue obtained from the sale of his fish oil, there has been a marked tendency on the part of the fisherman to migrate to the larger centers of population where usually he found considerable difficulty in securing employment.

Some idea of the drastic reductions in the wages paid these fishermen, due to this ruinous competition offered by these imported oils, may be gathered from the following facts: From 1925 to 1930 the average wage paid the fisherman was $65 per month and board. Since that period the monthly wage paid the same fisherman for the same work was $18 per month and board. Each menhaden steamer employs from 35 to 40 men, and the average monthly pay roll per steamer was between $3,500 and $4,000 for the period 1925–30, compared with between $1,000 and $1,100 since that period. The factory worker has also been reduced from $60 per month during the first period to $20 per month during the latter period. This in spite of the fact that the average catch of fish per season was far in excess during the period 1931–33 to the catch of 1925–30. In fact, the catch since 1930 has been the largest per steamer in the history of the industry, which extends back well over 100 years.

It must be admitted that a fisherman cannot go on earning $18 per month and support a family, and neither can the producer pay more unless the imports of these cheaply produced foreign oils and fats are restricted and he obtains a fair price for his product, which will enable him to again pay a living wage. The only other solution is for the fisherman to give up his work, move his family to other locations, and endeavor to find more remunerative employment. If he fails to find other employment of a gainful nature it naturally follows that our Government must support him either by dole or some other method.

During the World War the lack of domestic fats and oils caused such a reduced supply of glycerin for Germany that it has been said that this was a most serious factor in the termination of the war. Is it good policy for us to depend for our supply of fats and oils from which glycerin is derived from a source that can be shut off almost instantly as asserted by some highly regarded military authorities? Would it not be better policy to encourage and protect the domestic production of oils and fats now and be sure of our supply in case of emergency?

Moreover, during the late war our Government called upon the menhaden industry for her steamers and found them in good condition and ready to serve. There were many menhaden steamers taken over by this Government, and among them were a few now owned by ourselves, namely, *Vester*, *Walter Adams*, *Long Island*, *Margret*, *Mary B. Garner*, *Ranger*, *Alaska*, *Eugene F. Price*, and *Peter C. Struven*.

Other of our steamers served the Canadian Government, namely, *William B. Murray*, *Amagansett*, *Rollin E. Mason*, *Hebert N. Edwards*, *Martin J. Marran*, *Leander Wilcox*, and *Rowland Wilcox*.

These vessels are approximately 160 feet long by 24-foot beams, and were used as patrol boats and mine sweepers. Many owned by other operators also served.

At this time our Government also called on our industry for trained watermen, men who knew the coast and many menhaden fishing officers served well.

With the ruinous prices we have been forced to accept to compete with these imported products coupled with the large increases in the cost of ship repairs under recent Government rules, we will be unable much longer to keep our steamers in the repair they should be kept to be of service to any one.

The cost of our nets, twine, cordage, fuel, oars, food, etc., have all increased but the selling price of our products still decline.

That the imposition of this proposed tax and the amendment to include the other oil imported fats and oils will not hurt anyone is quite evident when one considers that with the proposed tax included the selling price of these foreign oils and fats will not be in excess of the 1926 levels. This fact is substantiated by Bureau of Statistics figures.

Trade balances between the United States and the countries from which we import oils and fats are as follows:

	Our exports	Our imports
1931		
Philippines	$48,805,000	$87,133,000
Nigeria	1,874,000	6,020,000
Dutch East Indies	19,402,000	34,240,000
Ceylon	1,250,000	10,906,000
British Malaya	4,674,000	83,073,000
Belgian Congo	828,000	2,576,000
French West Africa	2,860,000	2,296,000
1932		
Philippines	44,896,000	80,877,000
Ceylon	737,000	5,915,000
British Malaya	2,497,000	34,806,000
Nigeria	1,693,000	3,157,000
Dutch East Indies	7,116,000	29,827,000
1933		
Philippines	44,781,000	93,037,000
Nigeria	1,230,000	3,326,000
Dutch East Indies	6,890,000	33,076,000
Ceylon	815,000	7,013,000
British Malaya	2,397,000	59,944,000
Belgian Congo	575,000	1,614,000
French West Africa	1,696,000	845,000

In view of the above figures it is rather difficult to conceive how the imposition of this proposed tax could affect the balance of trade unfavorably in the great majority of these countries.

We, therefore, urge the passage of this tax to be levied upon both denatured and natural foreign produced fats and oils as being necessary to the preservation of this branch of the American fisheries which has always afforded gainful employment to the American fisherman who now so badly needs employment at a fair wage.

Respectfully submitted.

CONSOLIDATED FISHERIES CO.,
R. C. HAYES, *President.*

STATEMENT OF U. B. BLALOCK, DIRECTOR AND REPRESENTING THE AMERICAN COTTON COOPERATIVE ASSOCIATION OF NEW ORLEANS, LA.

Senator GEORGE. Mr. Blalock, it is not the wish of the committee to restrict anybody or to prevent any testimony, but we started out with a fixed program. We will ask you to put into the record anything that you desire, and make a statement as brief as possible. Cover what you had in mind.

Mr. BLALOCK. All right, Mr. Chairman. I just simply want to make this statement, that the price of cottonseed, which is the third largest cash crop produced in the South, has gone up since the agitation for this tariff started, from about $15 a ton, to about $32.50 per ton, and we are now getting for our seed about $46.75 per ton, which puts us back to a pre-war parity price on one of our products. As has been promised us by the present administration, we people in the South, if we could have sold our cottonseed, as produced, a 13-million-bale crop last year, for the price that we can now get, would have received more than $100,000,000 more for our cottonseed than we received for it as we marketed it last year. Furthermore, I want to say that, if we can get this excise tax on foreign oils, if that is the cause for this enhancement in price, and we can continue to get that price, we people down south will again be able to send our shirts to the laundry. We will be able to buy some tires from Detroit. We will be able to buy some leather goods from Boston, Mass. And, incidentally, I think that we will be able to pay that 1 cent extra per cake on soaps.

Senator CONNALLY. Mr. Brenckman is here representing the National Grange.

STATEMENT BY FREDERIC BRENCKMAN, WASHINGTON REPRESENTATIVE, THE NATIONAL GRANGE

Mr. BRENCKMAN. Mr. Chairman and gentlemen. This whole subject of fat and oils can be made very complicated, and it can also be made very simple, as we look at it. It must be manifest to almost any fair-minded person that we are not going to get anywhere with our campaign to reduce domestic acreage in production if we are going to allow competing imports to come in free and unrestricted.

Senator BAILEY. On that proposition, you take the view that the agricultural-reduction program protects high tariff on agricultural products; is that your view?

Mr. BRENCKMAN. Well, as we look at it——

Senator BAILEY. Isn't that a simple statement of it? Isn't that what you are asking for?

Mr. BRENCKMAN. Yes.

Senator BAILEY. All right.

Mr. BRENCKMAN. What we want is that all imports shall be restricted in at least the same degree that we are restricted in our domestic acreage in production.

Now, there has been talk here about what this will do to the price of soap. Here are just a few interesting facts. Coconut oil is the principal imported soap oil. It was bringing, in 1906, 10.6 cents per pound. The 1933 price was 4.2 cents per pound, a decrease of 6.4 cents per pound, 60 percent. However, laundry soap was wholesaling in 1926 at 4.85 cents per bar. In 1932, the wholesale price on the same kind of soap, on the same market, was 4.23 cents per bar, a decline of 0.72 of a cent.

Senator REED. What was that market, Mr. Brenckman?

Mr. BRENCKMAN. Well, that was the wholesale market.

Senator REED. The price that has been given us by the soap makers is very different from that.

Mr. BRENCKMAN. I am speaking now on the 1933 prices.

Senator REED. According to them, the price has gone down since January 1, 1933, from 3.70 per box to 2.30 per box.

Mr. BRENCKMAN. I was speaking of a bar. At any rate, while the price for their raw material went down 60 percent, the price of the finished product went down only 14.8 percent.

Senator REED. That is not the figure they give. They show a decline of 48.8 percent in laundry soap from 1926 to 1933, so our problem is to find out what the facts are.

Mr. BRENCKMAN. I think that these facts are reliable. Some of these figures have been taken from the United States Bureau of Labor Statistics. I just want to say in a word, Mr. Chairman, that Congress is now passing legislation, appropriating hundreds of millions of dollars for the relief of the dairy industry, and the beef-cattle industry, and we are in favor of it. Those industries need it, but it would be a great pity, while we have the chance, not to do something to deal with the situation that brought about this distress in those industries, and that is what this proposed excise tax is intended for.

Now, this is what I want to close with, speaking to higher prices. The farmer today is worse off, according to the commodity index, than he was when our agricultural-industrial legislation was passed.

Senator REED. I think you are right.

Mr. BRENCKMAN. The average price level of the agricultural commodities, on May 15 when this legislation was passed, was 62, taking the pre-war period as 100. Industrial commodities then were at 101, leaving a spread of 39 points, to the disadvantage of agriculture. The last price index I saw on February 21 shows that the average price level of agricultural commodities now is 75, or a pre-war average price by farmers for things they buy, 118 pre-war, a spread of 43 percent to the disadvantage of agriculture, which is 4 points more than it was on May 15.

Senator BAILEY. But was there a time when the spread was 57 points?

Mr. BRENCKMAN. Yes.

Senator BAILEY. So we are better off in that respect?

Mr. BRENCKMAN. And that spread is entirely too great to be workable, and I want to say now that there is no such thing as restoring prosperity to this country until we restore the purchasing power of agriculture, and give agriculture that parity that Congress intended and that agriculture should have when it passed the agricultural-industrial act. This is going to be a help, so we are for it. I thank you.

Senator REED. Mr. Brenckman, I know the Pennsylvania farmers tell me they are considerably worse off than they were a year ago, and they say if we do not quit relieving them we will ruin them entirely.

Mr. BRENCKMAN. Well, you are not going to ruin them by this legislation, because dairy farmers of Pennsylvania want this legislation, to protect their industry.

Senator CONNALLY. Mr. Chairman, I should like to have an opportunity given here to another man of the producers of edible food association.

Senator REED. We have been sitting here since 10 o'clock this morning. I, for one, would like to quit.

Senator CONNALLY. If you are going to quit, let this other man go on for 2 minutes on that side.

STATEMENT OF GEORGE LINK, JR., NEW YORK, N.Y., REPRESENTING THE AMERICAN PRODUCERS OF DOMESTIC INEDIBLE FATS

Mr. LINK. I represent the rendering industry in the United States, and our condition in that industry is rapidly approaching the same condition that exists in the fish industry. In 1929 we had 300 plants engaged in the rendering business. Now, the rendering business is a very important business. It is the byproduct end of the fat industry of the United States. That is a most important industry. If Germany had been able to secure more fats, the outcome of the World War might have been different. It is a different industry. It is an industry that should be preserved. Since 1929 one third of the plants of the United States, in the rendering industry, have had to close their doors by reason of the importation of these foreign oils. We are today compelled to pay our labor 35 and 40 cents per hour. That labor must compete with labor getting 6 to 18 cents a day. Our labor must have food, clothing, heat, and a place to live. The labor with which it competes requires nothing but a loin cloth. The prices which we have been getting for the rendering products are between a cent and a half and 3 cents per pound, based on quality. That price is dependent entirely upon the price of these foreign imported oils. You cannot get away from it.

The soap interests come here and they have repeatedly stated that our condition is due to poor merchandising. Well, you cannot merchandise anything with this tremendous quantity of coconut oil always hanging over the American market.

Now, Congress itself has recognized the need of protection as far as coconut oil and these other oils are concerned, because they themselves have placed a 2-cent tax on it, but unfortunately it did not

cover the Philippine situation. So that practically all the coconut oil we get is Philippine coconut oil. Now, I cannot for the life of me understand why we subsidize this thing and subsidize that thing, in order to get more producers to send in their products into this country and displace and kill the vacuum which we are trying to create here, so that these industries can be put on their feet. Now, there is not a renderer in the United States that is not today losing money. Some of these concerns are losing at the rate of $6,000 per month, hoping against hope that that industry which is a very necessary and important industry will be preserved. Now, I have heard some statements made here, for instance, today, one man talked about the road-building industry. Now, the product that he sells probably sells between 8 and 10 cents per gallon and yet, probably, in his 8 or 10 cents per gallon price the amount of coconut oil he uses is probably an infinitestimal amount so that based on the amount of coconut oil that he uses in his product, he would be saving a lot of money if he kept on using tar entirely, or, if he could not use tar entirely, he still probably gets more for his coconut oil at 2½ cents plus the tax than he would for road tar as he now presents it.

Senator METCALF. What do you render at your place?

Mr. LINK. We render the fats which have been shown to you here, and then we also render excess of the waste fats from the butcher. We also render the waste fats from dead animals. I mean it is an industry that has been in existence for generations. It is a necessary industry, and it should be preserved, and if we continue as we are now going on, it will be destroyed.

Senator CONNALLY. Where are your plants located? Where is the industry located?

Mr. LINK. All over the United States, every city, because you can readily understand, you first have your restaurant waste, your butcher waste, the garbage waste, and the waste that accumulates in every large city. You cannot transport that far, first, because of its condition; second, because of its cost. It is cheaper to import coconut oil. I mean, from a freight standpoint, it is cheaper, from the Philippines to Chicago, than it is to send our product from New York to Chicago; so, you can see why we have a battle all along the line. Now, if you want to throw all those men out of employment, and render worthless the capital investment of over $50,000,000, continue to permit this coconut oil and these other competitive oils to come in on the present basis, without any protection to this particular industry.

The CHAIRMAN. I make an apology. I had to go to the White House. I understand the 2 hours have been consumed by the proponent on this measure, and that only an hour and 18 minutes has been consumed by those who are opposed to it. Now, have we finished those who are in favor of it?

Senator GORE. Yes.

The CHAIRMAN. Everybody has been heard? Let us proceed to those who are against it.

Senator REED. I suggest we adjourn.

The CHAIRMAN. What time is it?

Senator REED. A quarter past 5.

The CHAIRMAN. We will hear for 48 minutes in the morning those who are against this measure. Will the committee meet in the morning at 9:30?

Senator REED. No.

The CHAIRMAN. All right. Then we will meet at 10 o'clock.

AFTER RECESS

The CHAIRMAN. Where is Mr. Gordon? There are 48 minutes left for those who are opposed to this 5-cent tax on oil. We have closed the proponents' side of the case unless the opposition should take more than the 48 minutes, in which event additional time will be allowed to the proponents. We hope that the witnesses will govern themselves accordingly, because we have a considerable number of other matters here to go into. We have already given much more time to this question than we had expected to. The subject of the tax on oils is specially set for this afternoon. When we get through with that, we will try to hear some of the other witnesses, so they can get away. We are just as anxious for them to get away as they are to get away.

We will now hear Senator Elpidio Quirino, representing the Philippine producers of coconuts.

You have been allotted 2 minutes. I want to say in this connection that I have told Mr. Quezon that the committee is going to hear him for about 15 minutes, when we go into executive session.

STATEMENT OF SENATOR ELPIDIO QUIRINO ON BEHALF OF PHILIPPINE PRODUCERS OF COCONUTS

Senator QUIRINO. Mr. Chairman and gentlemen of the committee: There is a delegation from the Philippine Islands, sent by the Philippine Legislature, to make representations before Congress in connection with pending legislation in this legislative body. I am a member of that delegation. I do not believe I can present the whole Philippine case on this side within 2 minutes, but I will try to express it in a few words, and I do not believe I could take more than 2 or 3 minutes of your time to discuss only one point which has been brought out in these hearings.

From the testimony of witnesses who have advocated the adoption of section 602 of the revenue law, or the revenue bill of 1934, it is evident that their object is to exclude Philippine coconut oil and, indirectly, Philippine copra, from the American market, because of the mistaken belief that these Philippine products compete with American products, fats and oils, in this country, Mr. Chairman.

The CHAIRMAN. May I ask, were any of the representatives of the Philippine Islands heard yesterday? I was away for a brief time.

Senator BARKLEY. No.

Senator QUIRINO. No.

The CHAIRMAN. It seems that it is fair that these gentlemen should be heard for a large part of the remaining 48 minutes. This committee started out to give an hour on each side, and the Philippine Government is perhaps more interested in this than anybody else. I think it is fair that a large part of the remaining 48 minutes be given to them. If the 48 minutes is exceeded in the presentation of the case of the opponents, time will be allowed to the other side accordingly.

Senator QUIRINO. I am not going to take more of the time than I need, for the benefit of the other gentlemen who want to speak against this section of the revenue bill, Mr. Chairman.

I started out to say that in the Philippine Islands we observe that during our long political relationships with the United States, many American goods entering freely into our country directly compete with Philippine goods. Some of these are dairy products, meats, and even vegetables, but we have always considered that these products imported from the United States were not foreign products, but were products to be protected equally by the Philippine Government—to the same extent that we would protect Philippine goods—and, Mr. Chairman, we never attempted to impose any burden upon any of these products entering the Philippine Islands from the United States simply to avoid or to prevent their competition with Philippine goods. On the contrary, out of gratitude or loyalty, perhaps, to the United States Government and people, the Philippine Government has been approving legislation tending to protect not only Philippine goods but American goods that enter our country.

I am going to cite several instances in which the Philippine Government has done this. In 1932, we approved three tariff bills. The first was a generalization of the tariff law of the Philippine Islands, for the purpose of protecting both American and Filipino goods and not only for revenue purposes. On the same occasion, the same legislature, in 1932, we approved a parity law, compelling importing countries to pay the tariff on their importations in gold equivalent, and in order not to give them undue advantage, which they were enjoying because of the depreciation of their currency, which is silver.

In the same session of the legislature, Mr. Chairman, we also approved the antidumping law. I think we went ahead in the Philippine Islands, of the United States Congress, on this question, in order to prevent or check the importation of cheap goods from neighboring countries, so as to protect American goods, especially, as well as Filipino goods in our own country. There was a specific instance, not more than 6 years ago, where the Filipino legislature at its own initiative, or indirectly at the behest of the Federal Government, revised its tariff on tobacco, increasing the rate of duty on Sumatra wrapper tobacco, in order to equalize the rate imposed by the American tariff for the protection of American manufacturers of cigars, and against the protest of some of the Filipino manufacturers who employ Sumatra wrappers also in their industry.

Mr. Chairman, to exclude, now, the Philippine coconut oil, and, indirectly, the Philippine copra, under the circumstances, when the Philippine Government and people have been making efforts to

protect American goods during all of these political and commercial relationships between these two countries, would, we believe, be unjust to this people whom you have considered as wards.

The CHAIRMAN. When the Filipino independence bill was passed, did we fix a limitation on coconut oil or copra?

Senator QUIRINO. Yes, sir.

The CHAIRMAN. What was that?

Senator QUIRINO. You have fixed a limitation of 200,000 tons every year during the 10-year transition period, and you also imposed, besides that, an extra taxation of 5 percent of the American duty, beginning with the sixth year of the transition period.

The CHAIRMAN. What is the exportation now to the United States of coconut oil?

Senator QUIRINO. Of coconut oil? I will give you the exact data.

Senator REED. And copra?

The CHAIRMAN. That was the limitation. And copra?

Senator QUIRINO. The actual exportation?

The CHAIRMAN. Yes.

Senator QUIRINO. We have that.

The CHAIRMAN. How much is now coming into the United States?

Senator QUIRINO. I will give you the exact amount.

The CHAIRMAN. As a matter of fact, if you can, just furnish that to the record, because the record should show how much is now coming in, so we can understand how this limitation will affect it in the future.

Senator QUIRINO. The importation of copra?

Senator KING. May I say, they rejected that bill that we passed, so there is no law.

The CHAIRMAN. Well, I understand, though, there is a liklihood of their accepting the law.

Senator QUIRINO. We have hopes of revising also the economic provisions, which we consider prejudicial to our interests.

Senator KING. If you accept it, you won't get any revision. Proceed.

Senator QUIRINO. We will be hoping against hope, then.

The CHAIRMAN. I did not catch that colloquy. It may have been that you gentlemen were whispering to each other.

Senator QUIRINO. Senator King said that it would be very hard to secure a revision of the economic provisions.

Senator KING. If they accept. If they put the chain around their necks, they are going to keep it there.

Senator QUIRINO. And I said we hoped that this provision would be revised or improved, to our benefit. If there is no hope of securing improvement, and I said then it would be "hoping against hope."

The CHAIRMAN. As one Member of the Senate, I hope that you will approve what we have done.

Senator KING. As another Member of the Senate, I hope that you do not, and that you vote for a Filipino bill giving you your liberty, right away.

Senator QUIRINO. Thank you very much.

I was going to give you the exact figures on our importation of 1932 to the United States on coconut oil. This is ₱14,671,039. One

peso is 50 cents, and this represents 95 percent of our total export in 1932 of coconut oil.

The CHAIRMAN. Can you transfer that into pounds?

Senator QUIRINO. That is, more or less, $6,800,000.

The CHAIRMAN. You need not give any more time to that. It will be filed in the record. We will have that.

Senator QUIRINO. I am glad to be excused from giving these data.

Mr. Chairman, the present free-trade relations between the two countries have been imposed by the United States Congress upon us in 1909. Both our Representatives in Congress as well as the Filipino people back home opposed the establishment of these free-trade relations then, but we were powerless, and it was imposed upon us; and because of these free-trade relations between the two countries, the coconut-oil industry, the copra, and all other industries in the Philippine Islands have been greatly encouraged and developed tremendously, to the extent of increasing also, commensurately, our purchasing power.

To illustrate the big increase in our trade with the United States, I wish to make it of record that from 1909 to 1930 our imports from the United States have increased 1,113 percent, and our exports to this country have also increased 615 percent. The commerce of the Philippine Islands, external trade of the Philippine Islands, because of the free-trade relations, has been practically absorbed, almost all by the United States. Before the occupation of the Philippine Islands by the United States Government the participation of the United States Government in our trade was only about 20 percent. It jumped now to 87 percent, leaving the 13 percent of our export trade to the rest of the world, so we are now at the mercy of the United States commercially. Our only hope is the fulfillment of the moral obligation, spontaneously assumed by the United States, to develop our country, that we may be prepared, not only for a self-governing existence but also to be a happy, prosperous people.

Mr. Chairman, to exclude any of our industries from the United States territory or market, while American goods enter into our country freely without any duty, without any limitation, and precisely an industry which affects more than one fourth of the total population of the Philippine Islands, whose livelihood depends almost exclusively upon the coconut oil industry, is almost a cruelty to this people, and I want to say to this committee that it will be disastrous to at least 21 provinces of our country.

Senator GORE. How many provinces are there altogether?

Senator QUIRINO. Forty-nine, Mr. Senator.

Senator GORE. Could you give us the number of the people in those provinces?

Senator QUIRINO. More than 5,000,000.

Senator GORE. No, but I mean in those provinces having coconut trees.

Senator QUIRINO. Yes, sir; more than 5,000,000.

Senator REED. Senator Quirino, could you tell us whether we produce any coconut oil or copra in the United States?

Senator QUIRINO. I think you do, but very, very little.

Senator REED. And there is a little produced in Hawaii?

Senator QUIRINO. Yes, sir.

Senator REED. And a little in Puerto Rico?

Senator QUIRINO. Yes, sir. And because practically, I think, 80 percent of your coconut oil that comes from other countries comes from the Philippine Islands, the effect of the imposition of a 5-cent tax upon our coconut oil will be to exclude our oil from the American market; and indirectly, because copra comes here, it will be crushed and turned into oil, also affecting our copra industry.

There is apprehension that the coconut industry in the Philippine Islands is so flourishing that it will perhaps flood the American market with Philippine coconut oil, to the serious detriment of American fats and oils used in this country. I would like to bring to your attention the fact that from 1928 we have been decreasing our imports into this country, not only because of the depression——

Senator GORE. You mean the aggregate imports?

Senator QUIRINO. Imports in this country; yes.

Senator GORE. Aggregate imports of all sorts.

Senator QUIRINO. Coconut and copra.

Senator GORE. Well, that is what I was getting at.

Senator BARKLEY. It was stated yesterday that for 1933 there was a considerable increase over 1932.

Senator QUIRINO. A little increase, Senator; but there has been a steady decrease in our imports to this country from 1928, which is considered the biggest amount of importation here for the last 5 years.

Senator GORE. What was it then?

Senator QUIRINO. From 1928?

Senator GORE. How much was it in 1928?

Senator QUIRINO. I was just going to give you the figures, Senator.

Senator GORE. Pardon me.

The CHAIRMAN. In 1933, the exports to the United States were $44,000,000 plus; the exports to the Philippines from the United States that year were $93,000,000 plus.

Senator QUIRINO. In 1928, our imports of copra to this country were 45,084,000 pesos, or about $24,500,000. In 1929 they went down to 31,000,000 pesos; to 26,000,000 pesos in 1930; and to 18,000,000 pesos in 1931.

Senator GORE. Please convert that, each time. It doesn't mean anything to the committee.

Senator QUIRINO. In 1932, 10,000,000 pesos, or a little over $5,000,000. From practically $25,000,000 in 1928, it went down as much as $5,000,000 in 1932. That is, in copra. In coconut oil, in 1928, we exported to this country $23,000,000 of coconut oil, and this amount went gradually but steadily down to 15,000,000 pesos, or $7,500,000.

Senator BARKLEY. Was that decline due to the reduction in the actual quantity brought in, or to the price?

Senator QUIRINO. Both, Senator, because we have been exporting here, in decreasing volumes, and also in the less amount, represented by these figures.

Senator GORE. The volume has gone down as well as the value?

Senator QUIRINO. Yes, sir.

Senator REED. Now, Senator Quirino, I have the figures here from the Tariff Commission, which show the imports in 1928, from the

Philippines, 145,000 tons of coconut oil, and 158,000 tons of copra, in terms of oil.

Senator GORE. Was that thousands the last time, Senator Quirino?

Senator REED. One hundred and fifty-eight thousand tons of copra, in terms of oil.

Senator GORE. Yes. You did not say "thousand."

Senator REED. That means, also, the importation of oil, in one form or another, in 1928, of 303,000 tons—303,000 tons.

Did all that copra come from the Philippines?

Senator QUIRINO. No, sir.

Senator REED. I haven't the separate figure for the balance.

In 1933 our total importations of coconut oil and copra, from all sources, were higher than they were in 1928. They aggregated 732,000,000 pounds, which is 366,000 tons.

Senator QUIRINO. That is the total imports in the United States.

Senator REED. That is the total imports to the United States.

Senator QUIRINO. Yes, sir.

Senator REED. So we did increase our importations between those years?

Senator QUIRINO. You decreased from the Philippine Islands.

Senator REED. But decreased from the Philippines?

Senator QUIRINO. Yes, sir. I did not want, Mr. Chairman, to utilize all the time.

The CHAIRMAN. You have used 19 minutes of the time.

Senator QUIRINO. Nineteen?

Senator GORE. Let me ask one question: How many pounds of coconut oil do you get out of 100 pounds of copra?

Senator QUIRINO. Pretty nearly 60. I do not pretend to enter into the technical side or phase of this question with regard to the effect of section 602 upon the importation of coconut oil or copra, which, according to our own experts, will be tantamount to exclusion of these articles from the United States market. My only object in emphasizing my point was to bring out the fact that while the United States has the absolute right to enter freely into our market without any restriction, to bring in any goods into the Philippine Islands, the Filipino people have got their duty in protecting these goods at the same time that they have allowed them to enter freely. According to the present trade arrangements with this country, Mr. Chairman, Filipino goods do not all come freely into this country. They only come free when they do not contain more than 20 percent of foreign goods, while American goods, when even they contain 60 or 70 or 80 percent of foreign goods, enter freely into our own country without any restriction.

Senator MCADOO. What are the 4 or 5 principal articles of our exports to the Philippines?

Senator QUIRINO. I beg your pardon?

Senator MCADOO. Name the 4 or 5 or several of the principal exports from this country to the Philippines.

Senator QUIRINO. You have your cotton, your steel and iron, your mineral oils, and automobiles, wheat flour, and many others.

The CHAIRMAN. Have you concluded, Senator?

Senator QUIRINO. Out of courtesy to our companions on the other side, Mr. Chairman, I am going to concede the floor to the others.

The CHAIRMAN. Secretary of Agriculture and Commerce of the Philippine Islands, Mr. V. Singson Encarnacion. Mr. Secretary, how much time do you want?

Secretary ENCARNACION. Oh, I think 2 or 3 minutes, Mr. Chairman.

STATEMENT OF HON. V. SINGSON ENCARNACION, SECRETARY OF AGRICULTURE AND COMMERCE AND ACTING SECRETARY OF FINANCE OF THE PHILIPPINE ISLANDS

Secretary ENCARNACION. Mr. Chairman and gentlemen: My name is V. Singson Encarnacion. I have the honor of being the present Secretary of Agriculture and Commerce of the Philippine Government.

I desire to be permitted to oppose the excise tax of 5 cents a pound on coconut oil in section 602 of the pending revenue bill.

The proposed tax rate is roughly double the price of the commodity. With it, the price would be trebled. Common experience shows that the consumer will not absorb so steep a price increase.

The inevitable result would be the shutting off of coconut oil from the United States and the consequent shutting down of the coconut-oil mills in the Philippines.

Such a debacle would not produce revenue for the Federal Treasury while it would appreciably reduce the already diminished income of the Philippine Government.

May I say that the destruction of our coconut-oil industry would take away the livelihood of more than a quarter of the entire population of the Philippine Islands, and the suddenness of the infliction would, I am afraid, be subservice of public order and good government in the Philippines.

Another inevitable result of the proposed tax will be the practical abrogation or derogation of the present free trade relation between the United States and the Philippines. If so heavy a taxation is imposed on our coconut oil, later, equal or similar taxation may be imposed on our hemp and other products which will also be barred, consequently, from the American market.

Gentlemen, our present mutually beneficial commerce is worth preserving. The Philippine imports from the United States during the worst depression year of 1932 amounted to $52,000,000. It should not be overlooked that from the above amount, cotton goods, $10,573,-798; meat and dairy products, $2,347,747; which make a total of $12,921,545. While coconut oil export to the United States amounted to $7,335,820.50.

I wish to call to the attention of the American cottonseed producers and dairy farmers that the coconut-oil industry is a very substantial element in our purchasing power.

It has been stated that copra and coconut oil are manufactured by "coolies" receiving 6 cents a day wage. In the first place, we do not have coolies in the Philippines. In the second, the wages paid by the Philippine coconut oil industry range from 75 cents to $1.50 a day, which represent the highest wage rate that is paid in any country in the Orient. Besides these facts, if the labor cost in the Philippine coconut oil industry is as low as it is represented

to be then the coconut oil industry in continental United States, which uses Philippine copra, would not be able to compete with our industry, and that is not the fact, for the industry here can more than hold its own in the field of competition.

Representatives of the Philippine coconut oil industry, I understand, have already proved to the committee that coconut oil with its peculiar chemical properties occupies a noncompetitive position in its industrial utilization.

I now close, Mr. Chairman, refusing to believe that the United States Government will deliberately crush through confiscatory taxation a major industry that is already in travail.

Senator GORE. Referring to the figure contained in your brief, Secretary Encarnacion, of $7,000,000, is that cotton and dairy products, of cotton and pork? I did not understand.

Secretary ENCARNACION. I beg your pardon?

Senator GORE. What were the two items?

Secretary ENCARNACION. Meat and dairy products. As I heard yesterday, the most impressive appeal against coconut oil, I think, came from the farmers of this country, but I would like to call their attention to the fact that we are importing from this country, in meat and dairy products only, $2,347,000, and we are exporting only for edible oil, about $1,600,000. I say "only" $1,600,000 because our total exports to the United States of coconut oil amounted only to $7,335,-000, and of the total amount of oil that we exported to the United States only 22 percent is for edible purposes.

The CHAIRMAN. Thank you very much.

Senator GORE. One question: Have you taken any census showing how many bearing coconut trees there are in your country?

Secretary ENCARNACION. Mr. Senator, we have several million coconut trees, but, do you know, not all the trees are bearing fruit every year, by reason of some earthquake, sometimes by reason of the typhoon, so it is very difficult to say how much we will produce in any given year.

Senator GORE. Anyway, is there any average that would have any significance as to the number of nuts produced on these trees?

Secretary ENCARNACION. I beg you your pardon?

Senator GORE. Is there any average production of coconuts, per tree, that would be of significance?

Secretary ENCARNACION. I should say that there is a difference in the bearing in different Provinces. In some Provinces they can get from 15 to 30.

Senator GORE. I mean the number of nuts produced on a tree. If you could state an average, it would be worth while.

Secretary ENCARNACION. I should say about 25.

Senator GORE. In selling the coconut properties, the land, you sell them by the tree, do you not?

Secretary ENCARNACION. Yes, sir. Yesterday, it was stated that we are flooding, with coconut oil, this country; that we are increasing our production of coconut oil. That cannot happen, Mr. Senator, because you cannot produce, the next year, any amount of coconuts that you wish. To produce a coconut, you must wait 10 years. You plant to coconut, and you must wait from 7 to 10 to 12 years, before you get any fruit.

Senator GORE. The output varies a good deal, from year to year?
Secretary ENCARNACION. You cannot gage them.
Senator METCALF. Does the number of coconuts on a tree vary from year to year?
Secretary ENCARNACION. Oh, yes.
Senator GORE. The total crop in the country varies from year to year, substantially?
Secretary ENCARNACION. Yes. It is substantially different, from one year to another, bearing according to the rainfall, and according to the temperature, more or less, and the typhoon. You can never tell, Mr. Senator.
Senator GORE. That is all.
The CHAIRMAN. Have you finished your statement?
Secretary ENCARNACION. Thank you.
The CHAIRMAN. The Hon. Mr. Guevara, Resident Commissioner of the Philippine Islands.
Mr. GUEVARA. Mr. Chairman, I should like 3 minutes, if you please.
The CHAIRMAN. All right. Proceed for 3 minutes.
Senator REED. Mr. Chairman, I would like to put an observation in the record. These gentlemen from the Philippines have come a long way to give us their views, and I do not want them to go back, feeling that we have not given them a fair hearing, Mr. Chairman; while, on the other hand, some of our witnesses are from this country, and they have come from California. There is one gentleman waiting to testify, and we must not shut him off too closely, because they have gone to great pains to come here and give their views.
The CHAIRMAN. I do not think anybody can accuse this committee of shutting off the witnesses on this oil proposition. They have had about four hours and a half, and I am trying to be generous with these gentlemen; and I have told Mr. Quezon that we would hear him for 15 minutes in executive session. It was because he was a Member, occupying the position he does. We are going to hear him, as we are going to hear Government representatives, but we have to finish the matter some time. If any of the Filipinos think they haven't had ample time, let us know, but we must divide this time equally, because the people on the other side have a right also to be heard.

STATEMENT OF HON. PEDRO GUEVARA, RESIDENT COMMISSIONER OF THE PHILIPPINE ISLANDS

Mr. GUEVARA. Mr. Chairman, I would like to address the committee just for a few minutes, because as the constitutional representative of the Filipino people in Congress, I do not believe that the representatives of the coconut-oil industry in this country could discuss the question that I am now going to discuss before this committee.
I am now appearing before this committee on behalf of the Legislature of the Philippine Islands to oppose the enactment of section 602 of the pending revenue bill on the following grounds:

First. Because such section is in opposition to the Philippine policy formulated by the President of the United States in his message to the Congress of the United States on March 2, 1934;

Second. Because said section may destroy the second major industry of the Philippine Islands, and practically throw into misery and starvation about 4,000,000 Filipinos, who owe allegiance to the Government of the United States; and

Third. Because the enactment of that provision will cause social, political, and economic disturbance and disorder in the Philippine Islands, by reason of which the Government of the United States will be called upon, in the long run, to spend millions and millions of dollars to preserve public order and to protect the lives and property in the Philippine Islands, for under international laws the Government of the United States is obligated to protect the lives and property of foreigners in the Philippine Islands.

Mr. Chairman, it is beyond imagination, what will happen in the Philippine Islands if you suddenly close the market of the United States to our coconut oil. Three or four million people will be thrown into misery and starvation. They will be jobless, and they will be dedicated to plunder those villages and perhaps all their fellow countrymen and foreigners who are doing business in the Philippine Islands. The Province of Tayabas, having a population of about 385,000 people, and the Province of Laguna, with a population of about 350,000 people, whose livelihood all depends on the coconut-oil industry, will be completely thrown into misery and starvation. These two provinces will have to close up their provincial and municipal governments. They will have to dismiss their municipal police, because they cannot afford to maintain their local government, and about 700,000 people, under these conditions, will be going around to other provinces, plundering the towns and villages, destroying properties, robbing foreigners, and the insular government will be incapable of maintaining public order or protecting lives and property, especially of foreigners. The Government of the United States will be compelled to send armies, or to use its army in the Philippine Islands, to maintain public order, and to protect the lives and properties of foreigners.

The Government of the United States cannot adopt the policy which was followed in Cuba, because the American flag still flies over the Philippine Islands. The Government of the United States is still responsible for the protection of lives and property of foreigners of different countries, and this Government will be compelled to spend millions and millions of dollars to protect the property and lives of foreigners in the Philippine Islands.

That is the situation, Mr. Chairman. The Government cannot do what has been done in Cuba, because Cuba is a foreign country, while the Philippines is not.

Under international laws, the Government of the United States is responsible primarily to maintain law and order and to protect the lives and property of foreigners, if the insular government is not capable of maintaining that order, and to protect the lives and property of foreigners, and if you shut the doors of your market to our coconut oils suddenly, without giving us time to adjust ourselves, you will be compelled under the international laws to use

your army and to spend money for the upkeep of the army, in order that you may be able to protect the lives and property of the people.

The CHAIRMAN. Thank you.

Senator GORE. What is the quota as provided in the Independence bill on this?

Mr. GUEVARA. Two hundred thousand tons.

Senator GORE. Two hundred thousand what?

Mr. GUEVARA. Tons.

Senator GORE. Tons?

Mr. GUEVARA. Yes, sir.

Senator GORE. Was that satisfactory?

Mr. GUEVARA. Yes; 250,000 tons would be better.

The message of the President, dated March 2, 1934, referred to above, is as follows:

> May I emphasize that while we desire to grant complete independence at the earliest proper moment, to effect this result without allowing sufficient time for necessary political and economic adjustments would be a definite injustice to the people of the Philippine Islands themselves still short of a denial of independence itself. To change at this time, the economic provisions of the previous law, would reflect discredit on ourselves.

Senator BARKLEY. Let me ask you this: You have been emphasizing the fact that if importation of oil into this country is shut off suddenly that the United States will have to spend a lot of money to protect the people of the Philippine Islands. The Philippine people are fairly law-abiding, as I have been led to believe. What will be the cause of this difficulty?

Mr. GUEVARA. Well; because the people will be jobless.

Senator BARKLEY. Will it grow out of resentment on their part?

Mr. GUEVARA. No, sir.

Senator BARKLEY. Or their inability to live?

Mr. GUEVARA. Certainly, because they will have no livelihood. They will have no source of living and hunger recognizes no law.

The CHAIRMAN. Suppose that we were to take this 5 cents a pound, and give it to the Philippine Government for a while; how would that suit them?

Mr. GUEVARA. Oh, immediately? That will be the most tragic thing for the coconut planters, just the same, if not to the Philippine Government, Senator. I am telling you the truth.

Senator GORE. What is that? I did not get it.

The CHAIRMAN. I asked, if we would impose this tax of 5 cents a pound, and instead of putting it into the Treasury of the United States, we gave it to the Philippine Government, how would that suit them. But that doesn't matter. I withdraw the question so we wont's get into an argument.

Mr. GUEVARA. No, Mr. Chairman. It is a known fact that the Democratic Party is committed to grant the people of the Philippine Islands independence.

The CHAIRMAN. I don't think anybody has suggested that. I do not know why that came into my mind.

Mr. GUEVARA. But I want to direct the committee to the message of the President, who is the spokesman now of the Democratic Party. The leader of the Democratic Party, who has been advocating independence for the Philippine Islands, did not dare to recommend the granting immediately of Philippine independence, because

he knows very well that the granting of immediate independence to the Philippines will mean the defeat of the Filipino independence if it is not given reasonable time to adjust its economic conditions.

Senator GORE. What is the principal diet of your people in the provinces where they produce so much oil?

Mr. GUEVARA. Rice, fish, sugar, vegetables, and meat.

Senator LONERGAN. You say that there are 4,000,000 people depending on the coconut-oil industry?

Mr. GUEVARA. Yes, sir.

Senator LONERGAN. How are they divided?

Mr. GUEVARA. I will give you the provinces.

Senator LONERGAN. How many of them are owners, out of the 4,000,000?

Mr. GUEVARA. About 98 percent are owners.

Senator LONERGAN. They are owners?

Mr. GUEVARA. Yes, sir; coconut planters.

Senator LONERGAN. And how many do they employ?

Mr. GUEVARA. About 4,000,000.

Senator LONERGAN. Just 2 percent out of the 4,000,000?

Mr. GUEVARA. No, no.

Senator LONERGAN. How many are employed?

Mr. GUEVARA. About 10 or 15 percent.

Senator LONERGAN. About 10 or 15 percent?

Mr. GUEVARA. Yes, sir.

Senator LONERGAN. And the remainder are members of the family, when you say 4,000,000 are dependent?

Mr. GUEVARA. Yes, sir.

Senator LONERGAN. The children?

Mr. GUEVARA. The children; yes, sir.

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

Mr. GUEVARA. Now, Mr. Chairman, I shall want permission to print in the record of the hearing of the committee a resolution of the Coconut Planters Association of the Philippine Islands, also a calegram I have received this morning from the president of my home town, Mr. Valenzuela.

The CHAIRMAN. That privilege will be given to you. Just hand them to the stenographer.

The committee has received the following letter from Mrs. Ildefonsa C. Osias, written for her husband, Resident Commissioner Camilo Osias, who is absent from the city. I ask that it be printed in the record.

HOUSE OF REPRESENTATIVES,
Washington, D.C., March 16, 1934.

The FINANCE COMMITTEE,
United States Senate, Washington, D.C.

GENTLEMEN: In the absence of Mr. Camilo Osias, Junior Resident Commissioner from the Philippines, I have been present during your committee hearings on the revenue bill of 1934, section 602, tax on certain oils. I listened with a great deal of interest to all interested parties who testified for and against the proposed measure. These witnesses represent divergent interests in the United States and included three Filipinos, who ably presented the ruinous effect of this measure to the coconut industry of the Philippines.

It is indeed very gratifying to note the generosity of the chairman in allotting ample time to our representatives and also the interest shown by the members of the committee in listening to their pleadings on behalf of our people.

It is not my intention to burden the committee by adding more facts to sustain our objection to section 602 of the revenue bill of 1934, as it affects the people of the Philippine Islands, but with your kind indulgence, may I make a brief observation.

First. It must be conceded that all the representatives of the soap industry who testified voiced a strong opposition to the imposition of 5 cents tax to a pound on the ground that it would impose a burden on all soap users.

Second. That this proposed tax will drive out of business those engaged in the legitimate soap and other allied industries.

Third. Aside from the above considerations, may I please plead with the committee that such a tax imposed on Philippine coconut oil will greatly affect the economic welfare of the Filipino people. It will retard rather than hasten their economic recovery in this period of the depression.

On behalf of the Filipino people, I plead to you, as Mr. Osias has pleaded before the agricultural commissioners' convention held in Washington, D.C., under the auspices of the Southern Tariff Association on June 17, 1929, when he said:

"My plea is for the observance of the Golden Rule in American-Filipino relations. We in the Philippines wish to see you Christian people in the West ever happy, prosperous, and free. Do you wish us Christian people in the East any less? I prefer not to believe it. Then you cannot be enemies but friends of the people of the Philippines. Economically and politically, citizens of America, as ye would that others do unto you, I pray, do ye not unto the Filipinos likewise."

Very respectfully yours, ILDEFONSA C. OSIAS.

(The papers referred to are as follows:)

[Radiogram received Mar. 8, 1934]

SECRETARY OF WAR, COX., MARCH 8, No. 102.
Washington, D.C.:

(Par. 2.) The following resolutions were approved by the Philippine Coconut Planters Conference, and upon their request am forwarding to you with request that copy of the resolution pertaining to President Quezon and his mission and the Resident Commissioners be transmitted to them. The balance is self-explanatory and, I know, sincere:

"*Resolved by the Philippine Coconut Planters Conference,* To express to President Quezon and the members of his mission, and to the Resident Commissioners, its satisfaction for their efforts exerted since the beginning to prevent the approval of the excise tax on Philippine copra and oil;

"*Resolved further,* To express the hope that they would continue their effort on behalf of the coconut industry until final success is attained.

"*Resolved by the Philippine Coconut Planters,* To express through His Excellency Gov. Gen. Frank Murphy to Secretary of War Dern its deep gratitude for his personal appearance before the Senate committee in Washington to oppose on behalf of the Filipino people the excise tax on copra and oil. The coconut industry represents the economic efforts of 4,000,000 Filipinos continued for generations. It is in the hands of small landholders, whose economic ruin would destroy their only means, livelihood, and seriously affect their purchasing power and their capacity to pay the taxes. The ruin of the coconut industry might also affect the stability of the government.

"*Resolved further,* To request the Secretary of War to express to the President of the United States the earnest and sincere hope that he will endeavor to maintain the spirit of open cooperation between America and the Philippines by fostering a mutually beneficial trade, which is the lasting foundation of cordial amity between the two peoples.

"Unanimously approved in Manila on the 5th day of March 1934."

MURPHY.

[Radiogram received Mar. 5, 1934]

Commissioner PEDRO GUEVARA,
Washington, D.C.:

Santa Cruz Coconut Planters protest approval oil excise tax in convention held today. Please convey message to President Roosevelt, Senate President, and Speaker United States Congress.

BONIFACIO VALENZUELA BALANTACEO VALDES.

EXCERPT FROM THE MINUTES OF THE ORDINARY MEETING OF THE MUNICIPAL COUNCIL OF NAGCARLAN, LAGUNA, HELD AT THE SESSION HALL OF THE COUNCIL ON JANUARY 31, 1934

Present: Mr. Jose T. Coronado, acting municipal president; Mr. Juan Urriza, councilor; Mr. Lucio Espiritu, councilor; Mr. Pablo Arceta, councilor; Mr. Nemesio Esmilla, councilor; Mr. Rosalio Dorado, councilor; and Mr. Casiano Corales, councilor.

Absent: Mr. Candido Cariga, municipal president; Dr. Vicente Chipongian, councilor; Dr. Zosimo Cortezano, councilor.

RESOLUTION NO. 29

By unanimous consent.

Resolved, That the following resolution be adopted:

Whereas the Committee on Ways and Means of the House of Representatives of the United States yesterday approved a bill imposing excise tax of 10 centaves for every pound on all coconut and sesame oil manufactured or imported into the United States;

Whereas said bill, if enacted into law, will cause the ruin of coconut industry in these islands, already weakened caused by the low prices of coconut products and the leaf-miner infestations on coconut plantations;

Resolved therefore, That the Philippine legislative mission, headed by the Honorable Manuel L. Quezon, president of the Philippine Senate, and Resident Commissioners Hon. Pedro Guevara and Hon. Camilo Osias be, and hereby are, respectfully requested to oppose the passage of the said bill when it comes on the floor of the House of Representatives of the United States:

Resolved further, That the secretary send copies of this resolution to the Honorable Manuel L. Quezon, chairman Philippine legislative mission, Hon. Pedro Guevara, and Hon. Camilo Osias, Resident Commissioners, all of these in Washington, D.C.

Unanimously approved.

I hereby certify to the correctness of the above resolution.

RUFINO MONTEROLA, *Municipal Secretary*.

The CHAIRMAN. Mr. W. F. Williamson.

Mr. WILLIAMSON. Mr. Chairman and gentlemen of the committee, I do not know how much time I am supposed to take.

The CHAIRMAN. There is 7 minutes left.

Mr. WILLIAMSON. It is utterly impossible to do much.

STATEMENT OF W. F. WILLIAMSON, PRESIDENT OF THE EL DORADO OIL WORKS, SAN FRANCISCO, CALIF.

Mr. WILLIAMSON. I am W. F. Williamson, president of the El Dorado Oil Works, a company operating a coconut plant and oil plant in San Francisco. We have not been interested at any time in the manufacture of soap, or in the manufacture of edibles from coconut oils, but we have been, throughout a period of 40 years, the crusher of coconut oil from copra, and I expect we have a history that is coincident with the history of the use of coconut oil in the United States, and, to a very large extent, that goes hand-in-hand with soap making.

The CHAIRMAN. How many plants are there that crush coconuts in this country?

Mr. WILLIAMSON. There is in this country 1—we will start in the Eastern States—there is 1 in Hoboken, N.J., Franklin, Baker & Co.; there is 1 at Baltimore; there is 1 in the Mississippi Valley at Ivorydale; there is another 1 at Portland, Oreg.; there are 3 at San Francisco, on the bay; and there are 2 operating in Los Angeles, with one or more that sometimes operate.

Now, there have been statements made with regard to the increase in the manufacture of coconut oil and its effects upon other industries, and I wish you would bear with me just a few minutes, if I tell you something of our history, because I believe that it bears upon those points.

In 1894 we were manufacturing linseed oil, hoping to sell it for soap purposes. At that time the state of the United States was in a flux, people were abandoning red woolen underwear, women were giving away woolen garments and cotton stockings, and we were talking more about leisure and about sports, and we were changing the types of our garments, and, singularly, but nevertheless truly, that is what inspired a desire for the change in the character of soap.

At that time, no coconut oil was made in the United States and no soaps were made from coconut oil. Whatever was used in the way of manufacture of the harder, white soaps, were oils imported from Europe, mostly coconut oil.

The CHAIRMAN. What year was that, Mr. Williamson?

Mr. WILLIAMSON. 1894; and the soaps that were used, of that type, as distinguished from the old yellow soap, and that was used in the rain water, caught in the rain barrel, were imported from France, and paid a duty here. Now, it was because of that change and that flux and that apparent demand, that we abandoned our industry of linseed crushing, and went into coconut crushing. As I say, cottonseed oil had been tried and had failed in the soap kettle. Then, as proof of the fact that that was properly so, we know that now they are using 99 percent of cottonseed oil in edibles, and coconut oil has supplanted it, because of its own ingredients and its own virtues.

Now, when we started out in this industry, there were no steamship lines operating out of San Francisco. There was no cable. There was no radio. There was no telephone, and our only source of communication with the South Sea Islands and the other portions of the Pacific, commonly called Australasia, and so on, where the coconut was grown, was by means of the schooners that operated irregularly out of San Francisco—then, at least, the important harbor of the Pacific, and those men that took those skippers of a class that are no longer to be seen on the high seas took shipments of manufactured articles. They took linen; they took cottons; they took woolens; they took canned goods; they took canned meats; they took flour; they took lumber; they took various things that were made in this country, and they sailed into those darkened seas to do trading, and they found, in time, that the only thing that they could sell their goods for was that which those people raised, and ultimately that proved largely copra. That was the beginning of the copra trade.

Now, with the advance of years, transportation has improved, quantities have increased, but just today, as well as it was 40 years ago, we are still compelled to buy copra a year ahead, to meet our demands for the soap makers—a year ahead. We still are compelled to use the ocean as a warehouse, and we still have all the uncertainties that attended the trade then.

Now, that is the way that we are situated today. We have built up a large business. We have millions invested. We employ a great many laborers. We, with those who are similarly situated on the Pacific coast, produce $3,000,000, in round figures, in revenue to the

steamship lines, which depend more particularly on our cargo as a back haul against the goods that they haul out and sell for this country than upon anything else.

The railroads operating out of San Francisco, and other points on the Pacific Ocean, are dependent very largely upon the freight that we give them. For example, I know many months we pay them $75,000 or $80,000 in freight money, but it aggregates, those amount to more than $4,000,000 a year. They, in turn, are dependent upon this trade.

Now, that leaves out of consideration all the employees of their business, of the terminals, and of our own. We have looked at this question very earnestly and very seriously, because it has confronted us several times in the last 10 years, and we do not believe, and we say so with a great deal of seriously to this committee, we do not believe that we can continue to do business if this tax goes into effect. I can see no outcome but that.

Senator CONNALLY. Let me ask you right there——

Mr. WILLIAMSON. Yes, sir.

Senator CONNALLY. If these soap people say that they have to have coconut oil to make certain kinds of soap and that they will still buy it, that won't put you out of business, will it?

Mr. WILLIAMSON. Senator Connally, I do not know whether they say they will have to have it or not. I noticed that one of the gentleman said so, in a very equivocal way yesterday, but I want to say to you this, that since this matter was up in the Congress we have not been able to sell anything at any price unless we could deliver it today, before some action was taken.

The CHAIRMAN. Mr. Williamson, are there many copra crushers in the Philippine Islands?

Mr. WILLIAMSON. Yes, sir; there are. Incident to the World War, a great number of plants started there. But there are less operated now than was the case during the period of 1914 to 1919.

There is something about copra and coconut oil that I believe you should take into consideration. We are today, happily, living in a state of peace, but we do not know when we may be called in to defend democracy, and perhaps to save ourselves. Now, it developed in the World War that the one thing that was sought by all nations and all our allies was the glycerin content of coconut oil. It is roughly about 15 percent of the coconut oil itself. It is absolutely essential in the manufacture of munitions. Now, the first thing that England and France did at the time of that war was to lay an embargo upon the shipment of coconut oil, and ultimately we, as a Nation, took over largely that business into our own hands; and that is one of the reasons why the imports and the activity in that business grew so rapidly, from that period on.

Now, I think I have told you our story. I think I have expressed our grievances, and I think that we are really the "forgotten man" in this proposition. We are the one institution, or type of institution, that has been spending our money developing a business and building a commerce and maintaining it for the good of the whole Nation, and I do not believe that this committee, whether to produce revenue or otherwise, would deliberately take action here that would ruin that business and ruin our business and ruin that industry.

Now, I would like to say, if I could, one more word about this question, that I feel is, perhaps, out of my province, but, nevertheless, worthy, I think, of some consideration, and it is this: I do not wish to be misunderstood—I thought of this matter seriously during the 5 weeks that I have been here, and I realize that this committee is confronted by a great problem, and I believe that you gentlemen all feel the seriousness of it—I think everybody must admit that there is a surplus of a great many things in this country, not only of those which the farmer raises but of all other industries as well. That surplus may, in part, be due to increases in production or overproduction. It is in part due to the fact that the people haven't the money with which to buy. It is in part—and very, very largely—due to the fact that we have limited our exports. Now, I do not believe that the gentlemen who are contending for this tax are right in their assumption that a tax will do everything. The experience that we have behind us, if we wish to look for it, is that a tax, while it may debar—and that is the avowed purpose of those who are sponsoring this tax—while it may bar coconut oil, it will not raise the price of other substances. We have, for example, peanuts, with a duty of 7 cents plus, selling domestically at 2¼ to 2½ cents. We have wheat, 42 plus, selling at 25 and under; and one of the most outstanding examples in the last few years, the soybean, which, under the Hawley-Smoot——

The CHAIRMAN. I would not mention that if I were you.

Senator GORE. Let him finish that.

Mr. WILLIAMSON. Well, I might make the statement, anyway, and pass the name.

Senator REED. You haven't noticed the Democrats trying to change it, have you?

Mr. WILLIAMSON. I have not, sir; and I do not know what they can do.

The CHAIRMAN. The illustrations you offered of 7 cents for peanuts was sufficient.

Mr. WILLIAMSON. I tried to be nonpartisan and put both wheat and peanuts into the illustration, and, now, the soybean—because I am going to Illinois—now selling for $1.20 a bushel. On soybeans, within 2 years, we had such a surplus that we were seeking foreign markets, and we sold those soybeans in Rotterdam for 40 cents, to the farmers, and that is all he got in Illinois.

Now, I do not believe, in the light of that and innumerable examples that might be brought to your attention, that taxation is the only remedy.

Senator GORE. But you cannot restore faith in them.

Mr. WILLIAMSON. I think that you have got to reach this on other and broader lines. Oils and fats and grease are not simply local. They are not national. They are international, and, to those who make a study of the question, as the Tariff Commission of this country has, will all be convinced, as I am, that it is almost the element of trade balance in the foreign commerce of this Nation, and you have got to take it from broader angles. I believe that this committee is not constituted, with all the eminent men that there are upon it, and all the talent that you will give to it—I do not believe that you can solve this question and solve it rightly.

MEMORANDUM IN BEHALF OF THE ELDORADO OIL WORKS BY W. F. WILLIAMSON, VICE PRESIDENT

To the Honorable Chairman and Members of the Committee on Finance of the United States Senate:

In accordance with your permission, I am submitting herewith our views on certain phases of the proposed coconut-oil excise tax which the shortness of the time allowed me for my oral statement did not permit me to cover.

When our company—the Eldorado Oil Works—began the manufacture of coconut oil in 1894 margarine was being manufactured in the United States, as it is today. There was then the competition between the margarine made of animal fats and the margarine made in part of vegetable or nut oils. In fact, the strife between butter and these substitutes had taken such shape that in 1886 the Congress had legislated in that behalf.

Coconut oil did not, therefore, inspire the manufacture of margarine or substitutes for butter, and the discontinuance by embargo or otherwise of the use of coconut oil would not prevent the manufacture of margarine.

The case is almost identical with the relationship between the rubber and leather industries. Leather was used for shoes, belting, hats, and outer garments, and wool and cotton were used in the manufacture of clothing, before the introduction of rubber. Rubber, on the other hand, supplied elements of protection and utility not possessed by any other materials; consequently there has developed the tremendous use of rubber with cotton in the manufacture of overshoes, tires, raincoats, and similar articles. Also, in conjunction with other substances, in the manufacture of belting and articles of that type.

It would be just about as reasonable to impose a tax that would debar the use of rubber in the United States as to impose this proposed tax that will debar the use of coconut oil. The obvious absurdity and injustice of this attempt is very clear. Certainly, the Congress should not resort to a tax that would be destructive of an existing industry, without the clearest necessity, and some advantage to be gained in revenue. The following pages will demonstrate that neither of these conditions exists:

The avowed purpose of those who seek the tax is the exclusion of this oil from the United States. If this should be accomplished, and we believe that such would be the result, no revenue would be covered into the Treasury of the United States, and, therefore, viewed from that point, the tax is without merit.

By whatever name called, this tax is really a tariff on coconut oil and copra. We know from experience that a tax may debar imports without raising the price of the article sought to be protected. For example, 2 years ago the duty on peanuts was 7 cents a pound, but domestic peanuts were selling between 2 and 3 cents a pound. Likewise, in the case of wheat which sold below 25 cents with a tariff protection of 42 cents. And, again, in the case of soybeans, within a year after a duty of $1.20 a bushel was fixed in the 1930 tariff act, soybean production har so far increased that it became necessary to export them in large quantities, and they were sold in Rotterdam at less than one half of the duty. This in turn established a market price to the Illinois farmer equivalent to one third of the tariff duty.

What is really sought by the sponsors of this tax is a raise in the prices of all domestic oils and fats, which are admittedly low due to surplus production and the abnormal curtailment of exports. It should be clear to anyone who studies the facts as disclosed by the reports of the Tariff Commission, the Bureau of the Census, and the Department of Commerce, that the tax in question will not only fail to raise the prices of domestic oils and fats but that it will have the opposite effect.

Over a period of years the United States has sold in Europe at a higher price than they could be utilized at home, edible fats including lard, lard compounds, oleo oil, and edible tallow, of which we have had a surplus. On the other hand, we have imported coconut oil and copra, containing said oil, and certain other vegetable oils, at a low price to supply our requirements for soap making and other industrial uses. This was because we have suffered, as we still suffer, from a shortage of those inedible oils.

During recent years we have consumed approximately one half of the world supply of coconut oil. The remainder has gone to Europe. If, then, we shall exclude coconut oil from the United States, it also must seek a market in Europe. The natural effect will be a lowering of the price level of all oils

and fats in Europe. Europeans would be willing to use for edible purposes the oils that we have utilized for industrial purposes when price differences are favorable. Therefore, to a certain extent, the increased quantity of coconut oil going to Europe would be utilized there for edible purposes, and to that extent, or perhaps entirely, would destroy the market in Europe for those edible oils and fats, above mentioned, which normally have been purchased from the United States.

Let us next consider what the effect of this would be in the United States. Such quantities of lard and edible fats as we may sell to Europe under those circumstances must be sold in competition with the depressed price of fats resulting from the increased importation of coconut oil. That quantity of edible oils and fats which we have normally sold in Europe, but which we would not then be able to sell, will be forced back upon the American market to increase the already existing surplus. Since the surplus arises from the fact that we cannot consume them as edible fats, they must be used in the only other fields; that is, in soap manufacture, or, to a limited degree, in other industries. Inasmuch as these domestic fats cannot supply the chemical properties, pertaining to coconut oil, they cannot serve these other industries. Therefore, practically the whole of this surplus must be utilized in the soap kettle. In this use it will compete with, and can bring no better price than, the rendered fats and other inedible substances so used.

The inedible fats are derived principally from rendering and other refuse sources. If they should advance beyond a half cent a pound, the existing tariff rate on tallow, the doors would be opened to the competition of foreign tallow and other fats. This would further depress the price of American inedible fats.

Some sponsors of this tax claim that it will benefit the cotton grower. Cottonseed oil is used 99 percent in edibles, but represents only twenty three one hundredths of 1 percent of the oils and fats used in soap manufacture. On the other hand, coconut oil is used approximately 70 percent in soap manufacture, but constitutes only 3 percent of the total oils and fats used in the edible field. The only place where coconut oil and cottonseed oil could compete is in the manufacture of margarine. In the vegetable variety of margarine cottonseed oil is practically used not at all, whereas coconut oil constitutes a major ingredient. Cottonseed oil is used in the making of the animal-fat variety of margarine and according to the accepted formula constitutes less than one third of the fat content. Therefore if coconut oil were excluded entirely, cottonseed oil could replace only one third of the coconut oil used in that field. This quantity is equivalent to two tenths of 1 per cent of the amount of cottonseed oil available for consumption in 1933. In Canada, where coconut oil is not used in edibles and the manufacture of margarine is prohibited, the price of butter is uniformly lower than in the United States.

Cottonseed oil and coconut oil do not compete in soap manufacture. This is indicated by the figures stated above and also by the price range. During the year 1932 the average price of coconut oil was 3.57 cents per pound, as compared with 3.07 cents per pound for cottonseed oil. Yet the use of cottonseed oil in soap making was not increased. The fact is that cottonseed oil contains none of the lauric acids characteristic of coconut oil and essential in the manufacture of soap and in other industries wherein coconut oil is principally used. A soap maker buys coconut oil because it contains lauric acid and does not buy cottonseed oil because it contains none of that acid and could only be used in soap making after hydrogenation and to produce an inferior article.

If we assume that coconut oil will be entirely excluded from the United States, and that all inedible oils and fats normally available and adaptable for industrial uses, have been so applied, there would still be a shortage in the required amount of such inedible oils and fats. All those oils and fats are on final analysis merely byproducts. It is elementary that you cannot produce byproducts without at the same time producing the primary products. What the shortage would be is a matter of conjecture. The correct answer could only be learned by a practical application of the tax. However, assuming for the purposes of this letter, that the shortage was 580 million pounds, or the total consumption of coconut oil in the United States during the year 1933, and that this shortage was to be made up from cottonseed oil, it would require 3,866,000 bales of cotton of 500 pounds each. The 1932 production of cotton in the United States was 12,727,000 bales. Therefore, it would be necessary to increase the

cotton production for that year by 30 percent in order to supply the shortage resulting from the exclusion of coconut oil. This would of necessity further depress the market price of cotton, injure cotton producers, and work directly against the plowing-under program of the President, in which many millions have already been expended.

Again, to supply that deficiency in inedible fats with animal fats or tallow, would require the annual slaughter of over 19 million steers, weighing 1,000 pounds each. This is on the basis of recovery, by rendering, garbage collection, and otherwise, of 30 pounds per steer of fats and oils, whereas the average is much less than that figure (Packer's Encyclopedia, p. 131). The amount of the slaughter would vary according to the extent of the shortage to be covered, which would probably be less than 580,000,000 pounds annually, but the formula would apply and as many cattle must be slaughtered as would produce in byproducts the shortage in fats resulting from the exclusion of coconut oil. In any event that shortage could only be supplies by largely increasing the quantity of meats and primary products, of which there is already a surplus. This would only further depress the price the farmer would receive for his steer.

It cannot be denied that there is in the United States a surplus of edible oils and fats as well as butter and cottonseed oil, just as there is a surplus of almost every kind of manufactured article. The surplus is due to the fact that there has been normal and in some cases unusual production, while there has been a material curtailment in exports, due to retaliatory tariffs, and unfavorable exchange in addition to reduced consumption, chargeable to the depression. We believe that this condition must be improved, not by taxing other industries but either by curtailing production or increasing exports. The latter is to be preferred because it means an expansion of our foreign commerce with consequent benefit to labor, steamships, railroads, and other industries. We cannot see that these temporary conditions would justify, from any viewpoint, the ruination of the coconut-oil industry of the United States, with its large attendant foreign commerce, simply because other industries, no more lawful in themselves, are suffering from overproduction.

We assume that you have in mind the injuries to California that will naturally follow and the imposition of this tax, but we will briefly list them:

(*a*) The California copra crushers, three in the San Francisco Bay area, and an equal number at Los Angeles, will be forced out of business because their customers cannot stand a 200-percent increase in the cost of a substantial part of their raw material.

(*b*) Our sales of American goods to copra-producing countries, to the amount of $48,000,000 annually in the Philippine Islands alone (including $18,500,000 in farm products) will be lost because copra is the only product those countries have to offer for our goods.

(*c*) The steamers plying the Pacific will, therefore, lose the outward cargo as well as the return cargo of copra. This backhaul cargo alone has yielded the steamship lines, in freight, $2,750,000 annually.

(*d*) The overland railroad lines operating from the Pacific Coast ports have derived annually $4,100,000 from the movement of copra, and its products. This revenue would be lost to them.

(*e*) Thousands of men (both skilled and unskilled labor) employed in and about docks and terminals, on board steamers, and in railroad activities, in addition to those employed in the coconut oil plants, would be thrown out of employment with consequent loss of earnings and resultant hardships. This would be too great a price to pay even if some good end were served.

Respectfully submitted.

A. F. WILLIAMSON,
Vice President of Eldorado Oil Works, San Francisco.

The CHAIRMAN. Are there others, now? We are over our time on this proposition, may I say. Mr. Craig, how much time do you want?

Mr. CRAIG. Fifteen minutes.

The CHAIRMAN. We are now 4 minutes over the 48 minutes.

Senator GORE. Now, these men cover different phases of this?

The CHAIRMAN. I do not think so.

Senator CONNALLY. You will equalize the time, by giving the other folks equal time?

The CHAIRMAN. The other group will, of course, be allowed time again.

Senator CONNALLY. That is right.

The CHAIRMAN. Then, if they go over it we will have to give these gentlemen time to balance that up. There are witnesses here on other subjects who have never been heard. How much time, Mr. Craig, will you require? Can you get along with less than 15 minutes?

Mr. CRAIG. It depends entirely upon the interruptions which I encounter. If I am permitted to speak uninterruptedly I will get through, I think, relatively soon.

STATEMENT OF JAMES D. CRAIG, ASSISTANT TO THE PRESIDENT OF SPENCER-KELLOGG & CO., BUFFALO, N.Y.

Mr. CRAIG. My name is James D. Craig, assistant to the president of the Spencer-Kellogg & Sons Co., Inc., of Buffalo, N.Y. I appear to express opposition to section 602 of the revenue bill, levying an excise tax of 5 cents a pound on coconut oil, on behalf of our company and the entire Philippine copra-crushing industry.

Senator GORE. Put in the record what your company does.

Mr. CRAIG. Our company is an American company, engaged in processing vegetable oils, of which coconut oil is only one. Our coconut oil crushing mills are in the Philippines.

At this point, it is relevant to state here that we own and operate vegetable-oil plants in eight States of the United States, using products of the American farmer. In fact, we use more raw materials of the American farmer than we purchase in the form of copra from the Philippines.

If our Philippine coconut-oil business were injurious to American agriculture, it would inevitably be injurious to us, and it would only be common sense for us to give it up, if we knew it was detrimental to the larger section of our business.

It has been contended here that the use of coconut oil depends to a large extent on price consideration. This contention is incorrect. Our company is selling coconut oil to the margarine industries, the confectionery industries, the textile soap industries, the laundry soap industries, and a multitude of other miscellaneous users, regardless of whether the price of coconut oil is higher or lower than cottonseed oil or tallow or any other domestic oil. I need cite only one example.

Beginning in the latter part of 1931, extending throughout the year of 1932 and well into the year of 1933, the price of cottonseed oil averaged a half a cent a pound above the price of cotton oil, and three quarters of a cent a pound above the price of tallow.

Senator GORE. You have it wrong in some way, because you said the same thing.

Mr. CRAIG. I should have stated that the price of coconut oil averaged a half a cent a pound above the price of cottonseed oil, and three quarters of a cent a pound above the price of tallow.

Now, the users of this oil did not use it, because they had any sentiment or love for the producers of coconut oil. They used it because of chemical considerations. The technical features of the oil dictate its usage. During that period the manufacturer of oleomargarine did not turn to the use of cottonseed oil. He continued to use coconut oil. I need give you only one scientific reason to show why coconut oil is used in oleomargarine.

In the first place, the American consumer displays a marked preference for food products composed of vegetable fats rather than of the animal fats. In this particular case coconut oil, due to its very unusual chemical position, possesses the unique property, when it goes from a solid to a liquid, of changing more rapidly than most any other oil. It absorbs heat so rapidly from surrounding bodies that it imparts a distinct cooling sensation. When you put heat under a lump of ice you melt that ice to water, but the temperature of the water does not change, it remains at the same temperature as the ice, and that heat, which the ice absorbs in going from a solid to a liquid, we call the latent heat of liquefaction. That same property is one of the scientific reasons why coconut oil is used for this purpose, which makes it produce that distinctly palatable effect in the mouth. It does not have the objectionable or distasteful flavors that are so common to so many other oils, both foreign and domestic.

In the case of soap, with coconut oil, averaging throughout the year 1932, as I have just cited, at three quarters of a cent a pound above the price of tallow, we find an increased usage of coconut oil, with respect to tallow, of nearly 2 percent in comparison to the usage of 1929, when the price of tallow was nearly three quarters of a cent a pound over the price of coconut oil.

Again, that usage was not brought about because the soap manufacturers had any particular sentiment for the producers of coconut oil. It was used because the consumer of those products demanded those properties in them, and coconut oil, barring the lone exception of palm-kernel oil, was the only oil which would impart those characteristic properties demanded in those finished products by the consumer. It contains, as was brought out here yesterday, lauric acid.

With the sole exception of palm-kernel oil, it is the only oil which contains lauric acid.

Senator GORE. How do you spell that?

Mr. CRAIG. L-a-u-r-i-c.

The CHAIRMAN. What percent of the palm-kernel oil is imported as compared to the coconut oil that is imported?

Mr. CRAIG. There was relatively a very small percentage of palm-kernel oil imported during the past 2 years. It is subject to a tariff of 1 cent a pound, if it is for edible purposes, and it is subject to no tariff if it is used for inedible purposes, if denatured or rendered unfit for edible purposes.

Palm-kernel oil, I might mention, has distinctly objectionable qualities in other ways, which offset the desirable properties imparted to the finished products from the lauric acid which it contains. It becomes rancid very quickly, and causes discoloration in the soap, and the average American manufacturer will always use coconut oil in preference to palm-kernel oil. In the second place, palm-kernel oil

comes primarily from the West Coast of Africa, whereas we obtained during this last year 80 percent of our coconut-oil requirements from the Philippines.

At the close of my remarks I will file a statement which shows an analysis of the imports of coconut oil and copra from the Philippines, and copra from other countries, covering the past 5-year average, and the imports for the year 1933.

Now, referring, for a minute, to the subject of oleomargarine, just within the past few weeks one of the outstanding professors of agricultural economics from a State university in one of our principal livestock States—Montana—has prepared a treatise on the effect of the tariff on vegetable oils, on dairy products. In the preparation of this treatise he was assisted by and collaborated with three eminent agricultural economists from another very important dairy State—Wisconsin. I need refer only to a conclusion:

> If the proposed duties raised the cost of coconut oil high enough to eliminate it from oleomargarine manufacture, or if its use were prohibited, the benefit to American producers of cottonseed, soybeans, and peanuts, or beef and pork, is doubtful.
>
> The proposed duties of coconut oil and copra would result in burdens to the American public greatly in excess of any possible benefit to be derived from them.
>
> There is no benefit to any home group sufficient to offset this burden.

I would like to file, at the conclusion of my remarks, this complete statement, in order that it will be available in the record.

Senator GORE. What is the name of the author?

The CHAIRMAN. Well, put it in the record.

Mr. CRAIG. The author of the book is Dr. Roland R. Renne, assistant professor of agricultural economics of the Montana State College. That is an important livestock State.

Senator GORE. What is the name of the book?

Mr. CRAIG. It is called "The Tariff on Dairy Products."

Senator CONNALLY. "Edited by J. R. Commons, B. H. Hibbard, and W. A. Morton."

Mr. CRAIG. Those men need no introduction to anybody, because they are recognized, outstanding agricultural economists, connected with the University of Wisconsin, which is located, as you know, in one of our most important dairy States.

Senator GORE. I know two of them.

Senator CONNALLY. Who financed this research work?

Mr. CRAIG. I assume the University of Wisconsin and the University of Montana.

Senator CONNALLY. It says, "Published by the Tariff Research Committee, Madison, Wis."

Mr. CRAIG. I am sorry that I can give you no information on that point except to say that the coconut-oil interests had no part in it.

Senator GORE. Is there such a committee out there?

Mr. CRAIG. I cannot answer that question.

The CHAIRMAN. Thank you, very much.

Mr. CRAIG. I have not finished yet, Mr. Chairman. I have already pointed out that the reason coconut oil is used in these products is because of its peculiar characteristics. I have stated it was used by the textile-soap industries. A gentleman made the remark here yesterday that it was not so used, but I see in the audience here one

prominent textile soap manufacturer, to whom we are selling coconut oil, and I shall therefor ask Mr. Daniel McIver to verify this statement.

Mr. Daniel McIver. Yes; we have been compelled to use it, of late. In the past years we did not use it, but at the present time we are using quite considerable, because of the change in the manufacture of goods, and among the cotton mills, where today they insist on having a more freely sudding soap.

Mr. Craig. The next point that I wish to bring out in this maze of confusing information that arises on the discussion of fats and oils is this: Mention was made here about fish oil selling at one half the price of coconut oil, and that coconut oil was causing that condition. Now, obviously, that statement answers itself, because, again, the user of coconut oil is not going to pay a premium of 100 percent for it, if fish oil will take its place. Probably one reason why so many of the fish-oil plants were closed, along the North Atlantic coast, is due to the fact that the fish are not going up there, and I do not believe the imposition of this 5-cent excise tax will have anything to do with bringing them back.

Senator Gore. What would you recommend?

Mr. Craig. There are gentlemen here in this audience also representing soap industries that I am sure would be willing to buy that gentleman's fish oil at a higher price than he says he is able to obtain for it.

The further statement was made that the cottonseed oil prices——

Senator Connally. Why don't they buy it?

Senator Walcott. What price would they pay for it?

Mr. Craig. The gentleman stated that he was unable to obtain 10 cents, and I am sure the representatives of some of the larger soap companies here would pay him at least 15 cents for it.

Senator Walcott. Well, he said it cost him 26 cents, though.

Mr. Craig. Well, another factor in his competition, don't overlook, Senator, is sardine oil on the Pacific coast, which is an infinitely better oil for soap-making purposes and edible purposes, and for drying-oil purposes, I believe, than the menhaden oil. That is my understanding from the consuming industries.

The statement was made that agitation for this excise tax was one of the most important factors in bringing about the recent rise in cottonseed-oil prices. That rise has more probably been brought about by the increase in hog-lard prices, resulting from the imposition of the processing tax on hogs, and the better prices obtained for it in European markets brought about through depreciation of our currency.

Furthermore, the Bankhead bill, which contains a restriction on cotton production for the next year, has also been a decided factor in bringing that condition about.

Senator Connally. You think it is fair for us to do that, under the Bankhead bill, cutting down our production of vegetable oils, and letting the foreign producers take the place?

Mr. Craig. I have just been trying to explain to you that coconut oil, whether the price is higher or lower, is not displacing this domestic oil, for chemical considerations not price factors dictate the usage of coconut oil.

Senator CONNALLY. They will still buy it, then, regardless of what we do. We will shut it out?

Mr. CRAIG. I am coming to that point in a minute, if you will permit me to proceed, and I will develop that point to your entire satisfaction.

Senator CONNALLY. You won't do that, I am sure.

The CHAIRMAN. You have occupied 12 minutes.

Mr. CRAIG. Domestic inedible fat consumption has increased from 600,000,000 pounds in 1912 to 900,000,000 pounds in 1932, a 50 percent increase, compared to a population increase of approximately only 30 percent. Now, unquestionably, the large number——

Senator GORE. I did not get what you said. What kind of oils?

Mr. CRAIG. Domestic inedible oils, utilized in the soap kettle.

Unquestionably a large portion of that increase has been brought about by the fact that coconut oil carries more of those oils into consumption than would be possible without the use of coconut oil.

The next point I wish to develop is that the Philippine crushers of coconut oil, of which our company is one, is in the same position as the Pacific coast crushers.

Senator CONNALLY. You mean you have a plant in the Philippines?

Mr. CRAIG. Yes, sir; two of them.

Senator CONNALLY. You do not want to pay any tax, of course, on what you make in the Philippines and bring over here?

Mr. CRAIG. I hope that will not be necessary. The United States is our only market. The colonial policies of European governments, in developing commerce with their insular possessions, has been to favor their own insular possessions. We have heretofore followed that same policy with regard to our insular possessions. Canada now has a tax upon coconut oil and copra coming from countries other than within the British Empire, but they have access to unlimited quantites of coconut oil and copra coming from countries within the British Empire, many of which countries are large producers of copra.

The CHAIRMAN. They admit it free?

Mr. CRAIG. They admit it free, from their own possessions—the possessions of their own empire.

The CHAIRMAN. What particular countries do they get most of that from?

Mr. CRAIG. I should say that most of it comes from Ceylon, Australia, British India; to some extent, in the southern part of the peninsula, and other island possessions which Great Britain controls, in that immediate region of the Pacific.

The advocates of this tax admitted yesterday that there would unquestionably be a 25-percent reduction very quickly. Now, if the coconut-oil tax is increased by 5 cents, palm-kernel oil, which I have already explained is duty free, will come in to replace a large part of the coconut oil, to the extent that that is possible. You have heard other witnesses testify yesterday that they would be able to manufacture their products in which coconut oil is so essential, in Canada, paying the nominal ad valorem tariff rates applying on those products, and bring them in here at a materially lower price than it would be possible to do if they are compelled to pay this excise tax on coconut oil.

The CHAIRMAN. Then your conclusion is that if we put it on coconut oil and copra, we should also put it on palm-kernel oil?

Mr. CRAIG. I would say that that is wholly inadequate, for the reason that there must be likewise compensating taxes put on the finished products into which these oils go, and when you are doing that, you are getting into the whole question of the tariff.

The CHAIRMAN. You did not answer my question. If it should be put on coconut oil, you think it should also be put on palm-kernel oil?

Senator REED. And soap?

Mr. CRAIG. It must be put on soap in the same way.

The CHAIRMAN. I did not ask you about soap. I asked you about palm-kernel oil.

Mr. CRAIG. Yes, sir.

Senator REED. I did.

Senator GORE. Then would you have to raise the tariff?

The CHAIRMAN. Of course, it would go on soap and the other things that it entered into.

Senator GORE. And imports from Canada would have to be subjected to an increased tariff, wouldn't they?

Mr. CRAIG. Yes.

The CHAIRMAN. What would you say about whale oil?

Mr. CRAIG. Whale oil is not a competitor of coconut oil. That is a competitor of other hard, high-melting-point oil, or what we call "high-titre" fats, and it doesn't in any sense take the place of coconut oil. In fact, its use in soap requires a larger percentage of coconut oil than some of the other "high-titre" fats. The same is true of fish oil. They both have to be hydrogenated, that is, treated by a chemical process, to include hydrogen in the molecule of fat, before it is possible to use these marine oils in soap.

Senator GORE. It is your contention that the increased use of coconut oil encourages the additional use of other oils?

Mr. CRAIG. Yes, sir; very definitely. I have given statistics to confirm that fact. I have already explained that the increased consumption in inedible fats from 1912 to 1932 amounted to 50 percent, whereas the population increase, or the expected per capita consumption on the basis of population increase, should have accounted for only an increase of 30 percent.

Senator GORE. And the oil increased 2 percent?

Senator CONNALLY. Fifty.

Mr. CRAIG. Inedible oil consumption has increased 50 percent.

The CHAIRMAN. Are you practically through?

Mr. CRAIG. I am very, very near to the end; yes, sir.

Now, the next point is that if you put this tax of 5 cents per pound on coconut oil and, we will assume, the palm-kernel oil, that benefit is not going to be reflected to the producers of domestic inedible fats, for the reason that if it were, there is a duty of only a half a cent a pound upon inedible tallow. The maximum benefit obtainable therefore, granting that this benefit would be reflected in these domestic products, would be only the extent of the present existing tariff, which is a half a cent a pound on inedible tallow. I cannot see the reason for inflating the price of coconut oil and palm-kernel oil on this basis.

The duty on tallow is the determining factor, if we granted that there were competition, and science, I think, will absolutely refute that contention.

Now, we might, at the same time, produce soap in the Philippine Islands, and bring that soap in here, on which there would be no duty, and certainly do it at an appreciably lower cost than it would be possible to produce the soap in this country, paying that 5-cent excise tax. Our company, I believe, could and would have to do it.

Senator GORE. That would be in accordance with our usually enlightened policy.

Mr. CRAIG. How is that?

Senator GORE. That would be in accordance with our usually enlightened policy, to drive these interests abroad, and then have them ship their finished product in here.

Mr. CRAIG. That seems to be one inevitable result which would come from this proposed step.

I want to offer this——

The CHAIRMAN. Mr. Craig, you have talked now 20 minutes.

Mr. CRAIG. I want to offer this constructive suggestion, Senator, to your committee, that this whole program seems futile. It won't accomplish what its proponents claim for it. We are sympathetic to any program that will bring tangible and lasting benefit to American agriculture. Application of tariffs or excise taxes on coconut oil or other oils, in our opinion, is not the solution. The fat and oil problem is not alone a broad economic problem, an international problem, but a complex, scientific problem. The solution of the coconut-oil problem, if indeed there be a problem, then, must be found by first considering the scientific facts or the chemical problems involved in it.

Now, due to the maze of confusion about the subject of interchangeability, obviously, then, the chemist is one of the most necessary individuals to be consulted. I want to suggest that, although we cannot give you a concrete proposal of how to solve this problem, the industry stands ready to cooperate and to help in every way it can. If it is the will of the committee that the problem should be turned over to some other body to make a thorough study, such as the Tariff Commission or the Department of Agriculture, which now has this subject under consideration, as I understand it, we stand ready to donate the time of our research talent to assist in working out some solution to this perplexing problem, to determine, once and for all, the actual, scientific facts about this subject of interchangeability. Chemistry is an exact science, and there is no basis for all of this controversy which keeps coming up every few years.

The CHAIRMAN. Well, we thank you very much, Mr. Craig, for the suggestion.

Mr. CRAIG. I would like to file, with your consent, one or two statements, and I will give them to the stenographer.

The CHAIRMAN. Just file them.

Mr. CRAIG. In accordance with my statement made to you during the course of Senator Quirino's remarks, I am filing herewith an analysis of the coconut oil and copra imports into the United States, showing the comparisons for the imports in 1933 with the 5-year average, 1928–32.

ANALYSIS OF COCONUT OIL IMPORTS INTO UNITED STATES

	Pounds
1. Coconut oil, as such, imported from Philippine Islands, yearly average for 5 years, 1928 to 1932	318,957,000
2. Coconut oil, as such, imported from Philippine Islands in 1933	316,078,000
3. No coconut oil, as such, is imported from other countries	----------
4. Copra imported from Philippine Islands, yearly average for 5 years, 1928 to 1932	296,927,000
5. Copra imported from Philippine Islands in 1933	442,168,000
6. Copra imported from other countries, yearly average for 5 years, 1928 to 1932	218,350,000
7. Copra imported from other countries in 1933	218,704,000
8. Coconut oil in copra imported from Philippine Islands, average for 5 years, 1928 to 1932	190,033,000
9. Coconut oil in copra imported from other countries, average for 5 years, 1928 to 1932	140,384,000
10. Coconut oil in copra imported from Philippine Islands, 1933	282,988,000
11. Coconut oil in copra imported from other countries, 1933	139,970,000
12. Coconut oil, as such, and in copra, from Philippines, average for 5 years, 1928 to 1932	508,990,000

or 78.4 percent of our total supply of coconut oil, valued at $29,521,000.

13. Coconut oil in copra from other countries, average for 5 years, 1928 to 1932, was 140,384,000 pounds, valued at $7,137,000.

14. Coconut oil, as such, and in copra, from Philippine Islands in 1933 was 599,066,000 pounds, or 81.1 percent of our total supply of coconut oil.

Source of data: Annual and monthly reports on foreign and domestic commerce of the United States as issued by Bureau of Foreign and Domestic Commerce of the United States. United States Department of Commerce.

Mr. Craig. A further question was asked of Secretary Singson relative to the total number of coconut trees in the Philippines and the number under bearing. I wish to file a supplementary statement continuing a brief analysis setting forth the facts, which will answer the question asked by Senator Gore. It is as follows:

THE SUPPLY OF COPRA IN THE PHILIPPINES

It is contended that the present alleged effects of the competition with domestic fats and oils will be materially increased in the future because of the large increase of acreage devoted to the cultivation of coconuts and the consequent increased production thereof, as well as the cheapness of production.

Probably the basis of the fear expressed here comes from statistics published by the Department of Agriculture of the Philippine Islands. Their statistical bulletin, published in 1932, gives data showing trees under cultivation and trees in bearing, there being a difference of approximately 35,000,000 trees. This report, which is merely theoretical, is qualified by explanations that all of the total trees under cultivation never come into bearing at the same time.

It is a fact well known to all practical horticulturists that the difference between actual production and theoretical production is a very wide difference. It must be kept in mind that there are hundreds of thousands of trees dying yearly. In addition, the coconut palm is susceptible to as many different types of plant diseases and ravages of insects and pests, such as scales, fungi, etc. Unfavorable weather conditions and typhoons take a heavy toll of the trees actually in bearing each year, the trees being tall and slender, hence peculiarly unable to withstand the destructive winds.

In fact, since 1929 every year has brought forth some serious damage which adversely affected copra production. One year there were two earthquakes which had serious effects resulting in greatly decreased copra production. Another year saw an unusually large number of severe typhoons and still another year the insect pest called the "leaf miner" took a great toll of coconut trees out of production. An actual study of the production of coconut trees shows that the rate of increased production is really very little in excess of the rate of destruction.

Prominent Filipinos holding high positions in the Philippine Government and thoroughly familiar with the copra situation are the authorities for the

statement that the areas under cultivation are not being materially increased. In fact, there is a very definite tendency for the copra planters to shift to other lines of endeavor by reason of the unprofitableness of copra production in recent years.

I offer a telegram from Mr. J. D. Nelson, secretary of the Andrew Jergens Co., of Cincinnati, Ohio, to correct information regarding the manufacture of Woodbury's Facial Soap, reading as follows:

> Wish to correct erroneous statement before Senate Finance Committee today that John T. Stanley Co. makes the genuine and advertised John H. Woodbury facial soap. This brand is owned completely by and has been manufactured solely by the Andrew Jergens Co. since the year 1901. In excess of 15 percent of coconut oil is used in its manufacture and no other raw material could be substituted therefor.

The 1934 revenue bill, H.R. 7835, contains a 5-cent-per-pound excise tax upon coconut oil, as passed by the House of Representatives.

During the latter part of 1933, a publication entitled "The Tariff on Dairy Products", was written by Ronald R. Renne, assistant professor of agricultural economics of the Montana State College, and edited by John R. Commons, Benjamin H. Hibbard, and Walter A. Morton, of the University of Wisconsin. A portion of this publication deals with the proposal, rejected by the Congress when the 1930 Tariff Act was being framed, that a tariff of 45 percent ad valorem be levied upon all imported oils and fats, regardless of their origin.

Since the proposed excise tax of 5 cents per pound on coconut oil is more than double that which was proposed in 1930, the observations of these eminent agricultural economists, 1 from a principal livestock State and the other 3 from a principal dairy State, are exceedingly timely. The essence of their conclusions in the publication which they have just issued is that even if a prohibitive duty were levied upon coconut oil, "the benefit to American producers of cottonseed, soybeans and peanuts, or beef and pork is doubtful."

In respect to the use of coconut oil in soap, they estimate that it would create a burden on the public far out of proportion to any benefit accruing to the domestic producers of fats and oils and state that "there is no benefit to any home group sufficient to offset this burden."

Herewith is reproduced the more tangent portions of the publication dealing with coconut oil:

THE TARIFF ON DAIRY PRODUCTS

By Ronald R. Renne, Ph.D., Assistant Professor of Agricultural Economics Montana State College

POSSIBILITY OF MAKING THE DUTIES EFFECTIVE

Proposed duties.—In the hearings on the 1930 tariff the dairy interests, through their representatives, requested Congress to impose a duty of 45 percent ad valorem on all extracted oils and a duty of 40 percent ad valorem on the raw materials regardless of the uses for which the oils were intended or of their country of origin. The Hawley-Smoot tariff passed in June 1930, made no substantial changes in the oil rates, however, and left coconut oil from the Philippines and copra from any source on the free list.

Possible effects on use of coconut oil.—If a 45 percent ad valorem duty were placed on coconut oil from any source and a 40 percent duty on copra, it is doubtful that oleomargarine manufacturers would cease using coconut oil. In

1931, the wholesale price of coconut oil at New York averaged 5.3 cents per pound. Assuming that the 45 percent duty were fully effective, the cost of coconut oil would be increased by about 2.4 cents per pound. In spite of this additional burden coconut oil would still be cheaper than lard but more expensive than peanut and soya bean oil. (The average wholesale price of lard, peanut, and soya bean oil at New York in 1931, were 8 cents, 6.2 cents, and 6.6 cents per pound, respectively.) Cottonseed and oleo oil would be but about 1.5 cents per pound cheaper. The use of cottonseed oil in oleomargarine manufacture is limited because it imparts its characteristic flavor to the finished product, but oleo, peanut, and soya bean oil would probably be used in larger quantities than at present. Nevertheless, it must not be forgotten that coconut oil is peculiarly adapted to the manufacure of oleomargarine, and would have to become considerably more expensive than these oils before its use would be discontinued or even greatly curtailed. The proposed duties would not be sufficient to do this.

Probable effects on oleomargarine consumption.[1]—It is not likely that the possible increase in the cost of making oleomargarine resulting from the levy of the proposed duties discussed above would be sufficient to curtail oleomargarine consumption to any considerable degree. At the present time a pound of average grade nut oleomargarine is 52 percent coconut oil. If the proposed duties were fully effective they would increase the cost of each pound of oleomargarine by about 1.3 cents.[2] This figure is based on the assumption that the use of coconut oil would continue, since even with the 45 percent duty it would still be nearly as cheap or cheaper than most of the other available oils and fats. However, if oleomargarine manufacturers ceased to use coconut oil and replaced the 128,000,000 pounds used in 1932 with such products as oleo oil, neutral lard, and cottonseed oil, of which we have large exportable surpluses, the increased cost would, if anything, be less than 1.3 cents a pound. Certainly it would not be more, or the manufacturers would continue to use coconut oil. This 1.3 cents is but a very small proportion of the present or past price spread between butter and oleomargarine. During the 8 years from 1922 to 1929, oleomargarine prices averaged about 21 cents a pound below butter prices. Chapter IV showed that a 2-cent per pound tax on oleomargarine apparently failed to decrease consumption, and it is difficult to believe that a possible increase in cost of 1.3 cents would accomplish what the 2-cent tax could not. Furthermore, it is possible that the manufacturers could absorb the proposed tariff charge and still sell oleomargarine at its present ratio to butter prices.

If the importation or use in oleomargarine manufacture of coconut oil were prohibited, it would not necessarily follow that oleomargarine consumption would be greatly or even sligtly reduced. With large exportable surpluses of such prime first-class oleomargarine ingredients as oleo oil and neutral lard, oleomargarine manufacturers would have only to increase their use of these materials combined with increases in cottonseed oil, oleo stock, and tallow, all of which show exportable surpluses, in order to maintain the present output of oleomargarine. Our exportable surplus in lard alone is more than double the amount of coconut oil now used in oleomargarine. If oleomargarine were made entirely from animal fats and oils, the increased cost would not be as much as 3 cents per pound.[3] This maximum possible increase is about one seventh of the average price spread between oleomargarine and butter. Oleomargarine would still be about half as expensive as butter and its consumption would probably not be materially decreased.

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[1] For the year ending June 30, 1932, a total of 247 million pounds of materials were used in manufacturing oleomargine in the United States. Of this amount 128 million pounds, or 52 percent, was coconut oil. See Report of the Commissioner of Internal Revenue for the fiscal year 1932.

[2] In 1931 the average wholesale price of coconut oil at New York was 5.3 cents per pound. At this price the 45 percent duty would increase the cost of a pound of coconut oil 2.4 cents. Since oleomargarine in 1932 was 52 percent coconut oil, the increased cost of a pound of oleomargarine would be 1.2 cents. Allowing 10 percent profit on this additional cost, a pound of oleomargarine would cost not over 1.3 cents more than at present.

[3] In 1931 only one of the principal oils or fats used in oleomargarine was as much as 2.5 cents per pound higher than coconut oil. This was lard, which sold at wholesale in New York at 8 cents a pound, as compared with 5.3 cents for coconut oil. At the same time, oleo oil sold for 6.4 cents, peanut oil 6.2 cents, soybean oil 6.6 cents, and cottonseed oil 6 cents. The average price of all these oils, excluding coconut, was 6.6 cents, or but 1.3 cents per pound more than the price of coconut oil.

POSSIBLE BENEFITS AND BURDENS OF EFFECTIVE DUTIES

Possible benefits.—The possible benefits accruing to Americans from effective duties on oils and fats may be grouped under two heads: (1) Benefits to dairymen, and (2) benefits to producers of domestic oils or their raw materials.

It seems evident from the preceding pages that the proposed duties would not secure the results dairymen hope for. A comparison of figures 12 and 13 indicates the small possible reduction of the present spread between butter and oleomargarine prices as a result of a tariff on Philippine coconut oil or its elimination from oleomargarine manufacture. These figures also show clearly the relative importance of the tariff and oleomargarine substitution as butter price factors. It is obvious that the proposed duties on oils, which would reduce by but about 10 percent the present large spread between butter and oleomargarine prices, would be of comparatively insignificant benefit to American dairymen.

If the proposed duties raised the cost of coconut oil high enough to eliminate it from oleomargarine manufacture, or if its use were prohibited, the benefit to American producers of cottonseed, soybeans, and peanuts, or beef and pork is doubtful. Our exportable surplus of lard alone is more than twice the amount of coconut oil now used in oleomargarine. Cottonseed oil and oleo oil show exportable surpluses. Also, the use of cottonseed oil in oleomargarine is limited because its characteristic flavor cannot be neutralized. In the United States soybean oil is a relatively unimportant byproduct, and the great bulk of the domestic peanut crop is grown for purposes other than oil production. Any attempt to raise the price level of all domestic oils and fats by increasing the price of the 128,000,000 pounds of oleomargarine ingredients represented by coconut oil will be futile if for no other reason than the existence of large exportable surpluses in the United States of such prime oleomargarine ingredients as oleo oil and lard.

Possible burdens.—The proposed duties on coconut oil and copra would result in burdens to the American public greatly in excess of any possible benefits derived from them. In 1931, 867,911,000 pounds of coconut oil [4] were used in the United States. Since more than 60 percent of our consumption is in the manufacture of soap,[5] at least 520,747,000 pounds of this oil were used in soap making in 1931. Assuming that the 45 percent ad valorem duty would be fully effective and increase the price of coconut oil by about 2.4 cents per pound,[6] the burdens to consumers from the increased cost of soap would amount to approximately $12,500,000. Since the proposed duties would not materially check oleomargarine consumption nor benefit dairymen or producers of domestic oils and their raw materials, there is no benefit to any home group sufficient to offset this burden.

Out of the 868 million pounds of coconut oil imported, only 156 million were used in oleomargarine manufacture in 1931 and 521 million pounds in soap manufacture, leaving approximately 191 million pounds to be accounted for in other uses. About 5 percent of our total consumption is used in making lard substitutes and smaller quantities in the confectionery and baking industries, and in the preparation of emulsions, cosmetics, and perfumes. The increased cost of these products resulting from the proposed duties would amount to about $4,584,000. In addition, the increased cost of olemargaine in 1931 would have amounted to approximately $3,744,000. Consequently the total burdens to the American public in 1931 would have amounted to almost $21,000,000.

It should be noted that since the tariff tax proposed in 1930 was equal to 2.4 cents per pound, the present proposed excise tax of 5 cents per pound is more than double. Therefore, the burden upon the American public from the 5 cents per pound tax on the basis of the estimates of these noted agricultural economists, were they to make an estimate based on the present 5 cents per pound tax proposal, would total just under $44,000,000 instead of $21,000,000 as estimated by them on the 1930 proposal which the Congress r[illegible]ected.

The CHAIRMAN. Ambassador Culbertson.

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[4] Represents factory consumption. Taken from U.S. Department of Agriculture, Bureau of Agricultural Economics, Foreign Crops and Markets, July 25, 1392, p. 125.

[5] See Wright, P. G., op. cit., p. 87, or U.S. Tariff Commission, Summary of Tariff Information, 1929, schedule I, Chemicals, Oils, and Paints, p. 277.

[6] Based on 1931 prices of crude coconut oil at New York of 5.3 cents per pound.

STATEMENT OF HON. WILLIAM S. CULBERTSON ON BEHALF OF THE NATIONAL FOREIGN TRADE COUNCIL

Mr. CULBERTSON. Mr. Chairman, my name is William S. Culbertson. I appear in opposition to the tax in section 602 of this bill, in behalf of the National Foreign Trade Council, an agency interested in the broad aspects of international trade, made up of leaders in finance and commerce and production and shipping all over the United States.

Senator GORE. What is its address?

Mr. CULBERTSON. At the India House, New York City. Its president is Mr. E. P. Thomas, who appeared yesterday before the committee on foreign tax credits.

A number of years ago I was vice chairman of the Tariff Commission, for a period of 7 years. At that time I began the study of animal and vegetable oils and fats. I came here today prepared to discuss this subject in considerable detail, but, Mr. Chairman, I have some reluctance to continue at any length, if the committee does not care to have me do so, and I would like to have some indication of the time I should take, before I proceed further with the question.

The CHAIRMAN. Well, they have given you 10 minutes here, I notice. Do you think that is sufficient?

Mr. CULBERTSON. I am willing, Mr. Chairman, to confine myself to that time.

Senator GORE. Have you prepared a statement?

Mr. CULBERTSON. I have. I prepared a statement. I could prepare more.

Senator GORE. File that, and give us the salient points.

Mr. CULBERTSON. The subject is such a comprehensive one, and involves the question of analysis of so many subjects, that it seems rather futile to try to present a case in the short time of 10 minutes.

The CHAIRMAN. Mr. Ambassador, you can appreciate what the committee is up against on this.

Mr. CULBERTSON. Yes; I appreciate it, Mr. Chairman. I do.

The CHAIRMAN. I dislike to put any limitation on you, and they have held you back here to the last, but I hope that you will finish just as soon as you can, because this committee has a number of other witnesses here on other subjects.

Mr. CULBERTSON. I will do that, Mr. Chairman. May I say that if, as the subject develops in conference, there is any way in which I can be of assistance to the committee, I should be very glad to have you call upon me.

The witnesses have presented to the committee the various interests which will be injured by this tax, if it goes into effect. You have had the view presented to you of the consumer of coconut oil, of the crushers in the Philippines, who went there and invested their capital on the basis of the economic policy of the United States with reference to that possession. You have had the story of the crushers on the Pacific coast, who will have their raw material cut off by this tax. You have had presented the question of the injury to the general economic life of the Philippines, our policy toward which is established by section 301 of the Tariff Act of 1930, and you have

had indicated to you the injury which will result to our export trade, our trade moving out to the Philippine Islands, I believe it could be demonstrated, if we took the time to do so, that the farmer, the agriculturalist, will lose more in the cotton-cloth trade, the outgoing trade to the Philippines, than he could possibly gain by this tax.

Senator GORE. That is a point I would like to hear you elaborate.

Mr. CULBERTSON. I can put into the record, Senator, the exports of cotton cloth. In fact, they are all already in the record. If we take from the Philippine people their power to pay for the exports, the tendency will be for them to buy in other markets, the European markets particularly, which will take their coconut oil in case we do not.

Senator GORE. On that point it was stated awhile ago that we import from the Philippines about $1,600,000 worth of edible oils annually, and we ship to the Philippines about 2½ million dollars worth of dairy products.

Now, according to your theory, these incoming oils from the Philippines pay for the out-going dairy products?

Mr. CULBERTSON. That is particularly the case, because of the established free-trade relations between the United States and the Philippine Islands, which has established the channel of trade over a period of years, during which we have had this policy with reference to the Islands.

Senator GORE. And if we refuse to receive their products in exchange for ours, we cannot expect them to take our products?

Mr. CULBERTSON. That is the inevitable result in international trade. Of course, I should like, if I had time, to take up this case from the broader aspects of our international trade, in which the National Foreign Trade Council is interested, because it will affect not only the interests which have spoken here directly, but the dock workers, the commercial interests on the Pacific coast, and all the various factors which have a bearing upon our national trade. If I had time, also, I believe I could show to your satisfaction that this will not be of benefit to the American agricultural interests.

I am a Kansas man, and I yield to no one in my desire to do something for the American farmer. This question, however, came up in 1930. It was proposed in the tariff act at that time to put a duty on these oils. A special study was made by Dr. Philip G. Wright, who, during my day on the Tariff Commission, was our specialist on animal and vegetable oils and foods. He made later a study for the Brookings Institution, on this whole subject, and I commend that volume to you, as well as the report of the Tariff Commission, no. 41.

Senator GORE. What is the title of the book?

Mr. CULBERTSON. It is Animal and Vegetable Oils and Fats, published by the Brookings Institution, but I read a later pamphlet, in which Dr. Wright analyzed that particular tax. With particular reference to the duty on coconut oil from the Philippines, he says this:

The reasons for the demand for the duty on Philippine coconut oil. Advocates of such a duty claim first it would benefit, dairymen by increasing the price of margarine and hence of butter. Second, it would benefit agriculture

by giving farmers the opportunity to produce more oil-bearing seeds, especially soybean, the oil from which would replace the excluded coconut oil.
Coconut oil is a competitor with domestic oils.

He continues:

The duty could attain the first end only to the extent to which it would increase the price of margarine, and the second end only to the extent that domestic oils may be substituted in uses now occupied by coconut oil.

Then, proceeding with his analysis, he comes to this conclusion:

Studied, oil by oil, it would appear that there is little to justify the proponents of a duty on Philippine coconut oil in either of their contentions; it would not appreciably aid the dairymen by improving the price of butter, nor agriculture in general, by affording a greater diversity of crops to the farmer.

If the committee is particularly interested in that article I should be glad to include it in the record. It represents an unbiased study over a long period of years, beginning in the Tariff Commission and extending under that impartial institution, the Brookings Institute. I submit it as a conclusion, which time does not permit me to defend in detail.

Senator CONNALLY. This pamphlet was prepared after Dr. Wright left the Brookings Institute, for it says, "Formerly with the Brookings Institute."

At whose instance did he prepare this pamphlet?

Mr. CULBERTSON. I do not believe I can answer that, Senator Connally.

Senator CONNALLY. Somebody paid for printing it and getting it up?

Mr. CULBERTSON. It was handed to me as a part of the——

Senator CONNALLY. It says, "Formerly with the Brookings Institute."

Mr. CULBERTSON. Yes.

Senator CONNALLY. So this is what he compiled after he left the Brookings Institute?

Mr. CULBERTSON. I believe it is correct that it was written after he left the Brookings Institute.

Senator CONNALLY. And somebody paid for it, and somebody paid his time, and all that. I wonder who it was.

Mr. CULBERTSON. Mr. Gordon is standing——

Mr. GORDON. It is reprinted from the Journal of Farm Economics.

Senator CONNALLY. It did not say so.

Senator GORE. What are his initials?

Mr. CULBERTSON. Philip G.

Senator CONNALLY. Philip G. Wright, LL.D.

Mr. CULBERTSON. Mr. Chairman, it seems to me, in considering this subject, we need to lift up our eyes for a moment to the broader aspects of the case, and visualize it as a paradox of unity, on the one side, and diversity, on the other. There is a certain relationship among all the various vegetable and animal oils and fats, but, on the other hand, there is a great variety and diversity among them—a diversity of origin, diversity of trade status, diversity of price, a diversity of chemical content; and all of these factors present such a complex question that it seems to me that before acting on any phase of it, that it is relevant to suggest that the entire subject be analyzed, analyzed as a whole, and that the tariff legislation, if we are to have

tariff legislation, or, if not, some legislation, be sought, to solve this problem, which will take into account all the factors in the question. In my opinion, from my experience and study of this subject, you will come to the conclusion that there is not before you a tariff question at all; that the fact that our domestic oils and fats are on an export basis, the fact that many of our industries need the imports of many of these important tropical oils; that, and the interrelationship and complications of international trade, will lead you to the conclusion that tariff legislation will not solve this question.

And if that is true on the general question, it is, in a very particular sense, true of any legislation which proposes to select one or two articles from this whole field of animal and vegetable oils and fats, and legislate upon those 2 or 3 articles.

You would do it without consideration of the relationship of these two or three articles to the whole field in general. You would do it without reference to the problem of compensatory duties on the important industries which use those products as raw materials. So that, if you, as a committee, wish to, you could dispose of the proposition as it stands in section 602 by merely holding that it is an unscientific way of dealing with the problem, deferring it for some other later consideration.

Senator GORE. Now, doctor, as I see it, there is only one argument in favor of this scheme, and that is the fact that we have expended millions to turn under cotton and destroy cottonseed and cottonseed oil, and a good many soyabeans, that would produce fats, largely for the future. That costs us a great many millions of dollars.

Now, without commenting on the wisdom of that, which a good many people think is folly, is there any sense in destroying all these domestic fats and oils and then allowing these oils to come in from abroad?

Now, that is the only point that has any weight with me at all. I do not favor the domestic policy at all, but it is involved.

Mr. CULBERTSON. That involves this question of interchangeability, which is a very technical one. I am not a chemist, but in the case of metallurgy, for example, you can see the difference between the different metals; you can see the difference between iron and copper and tin and lead. Now, the diversity is just as great, and even greater, in the field of chemistry. These oils are not the same. They are not interchangeable. The consumers buy their chemical content, the glycerides of fatty acids; for example, take tallow. Tallow is a companion product of coconut oil, rather than a competitor. If we had time, I believe it could be demonstrated that coconut oil actually carries a large amount of tallow into the soap kettle.

Senator CONNALLY. Or maybe the tallow takes the coconut oil in with it.

Mr. CULBERTSON. Well, certainly, it is a combination, Senator, that is required in the soap-making industry.

Senator CONNALLY. They go in together, possibly.

Mr. CULBERTSON. There were many questions raised here yesterday, among them the question of interchangeability, the old threadbare argument of the competition of the American farmer with tropical labor, the question of the status of the rendering industry, the question of the menhaden oil industry.

Senator GORE. The what?

Mr. CULBERTSON. The menhaden oil.

Senator CONNALLY. Fish oil.

Mr. CULBERTSON. Fish oil; the question of why that industry is in the condition it is today.

Senator GORE. What about the displacement of cottonseed oil in oleomargarine by coconut oil?

Mr. CULBERTSON. The American public apparently prefers nut margarine. I am not an expert on it, but apparently there has been an increased demand for the so-called "nut" or vegetable oil margarines.

If they can purchase coconut oil at all over the high tax, it will result in an increase of price of margarine to the American public, or it may shift the production to the animal-fat margarines, and that would, probably to a small extent, increase the demand for cottonseed oil, but the only way in which cottonseed oil can have a large increased market is for it to descend to the price level of the soap kettle, and at the present time, apparently, the difference of 4 cents a pound between the edible uses of animal oils and fats, and the inedible uses, makes the soap kettle an unattractive market to the cottonseed-oil growers.

Senator CONNALLY. If you will allow cottonseed oil to be driven out of the edible field of margarine by coconut oil, it will have to descend to the soap kettle, won't it?

Mr. CULBERTSON. It might be better for them to sell in the international market, where they do today, and where cottonseed oil is now sold on the basis of an edible oil.

Senator GORE. On an export basis?

Mr. CULBERTSON. Export basis is also on the basis of edible oils, and is the price which determines the price level in this country of lard and cottonseed oil; and another point, there, Senator, is that if you shut out from the American market coconut oil, it will go to Europe and there compete with out exports of lard and cottonseed oil.

Senator CONNALLY. It would not hurt the Philippines any, then, at all? I say, that would not hurt the Philippines, if they could still sell it in Europe, the same as they do here?

Mr. CULBERTSON. There are established lines of trade, Senator, which would be destroyed, and which have, of course, been presented to you in great detail today.

Senator GORE. Do you happen to know the amount of cottonseed oil that is exported annually?

Mr. CULBERTSON. No. That will be in my statement, Senator, the exact amount.

Mr. Chairman, in conclusion, let me say that a tax is no solution of this question.

A tax on these few oils is certainly no solution of it. It is another case of fooling the farmer with the tariff.

Senator GORE. What would you recommend as a substitute? You talk about interchangeability.

Mr. CULBERTSON. You are dealing, Senator, in this problem with the same problem that you are dealing within all of our great agricultural problems—the problem of wheat, and the problem of sugar, and the problem of cotton.

Senator GORE. Yes, I know.

Mr. CULBERTSON. It is a question of a great surplus, and in this case it is complicated further by the fact of the great diversity of products, and by the fact that we are on an international basis, as it were, both ways.

Senator GORE. And yet we go on the theory that trade is a curse.

Mr. CULBERTSON. Yes. So I would suggest that the committee strike this section 602 from the bill and turn to the experts of the Government, and survey this question as a whole, accepting the corroboration of both sides of this controversy, in presenting the facts, and then reach your conclusion; but analyze the problem first, and then solve that.

Senator CONNALLY. Mr. Culbertson, the Foreign Trade Council only concerns itself with large questions of international trade; it does not espouse any particular tariff item, or thing of that kind, does it?

Mr. CULBERTSON. Well, it has appeared——

Senator CONNALLY. You are representing the Foreign Trade Council?

Mr. CULBERTSON. Yes; I represent them as general counsel in Washington, Senator.

Senator CONNALLY. Yes, I know; but, today, whom do you represent?

Mr. CULBERTSON. I am, of course, interested so far as their members are interested in this particular problem.

Senator CONNALLY. Well, now, as I understand, that council only deals with large questions, but evidently you are interested here in some particular industry, or some particular concern. That is what I am trying to find out, who that is.

Mr. CULBERTSON. Mr. Thomas, the president of the council, to take another case, appeared yesterday before the committee on the question of the foreign-tax credit.

Senator CONNALLY. I am not asking about that. I would like to know now whom you are representing here today. I mean this whole thing.

Mr. CULBERTSON. The members of the council that are particularly interested in this case are the ones who are crushers in the Philippines.

Senator CONNALLY. Well, exactly. That is what I wanted to get, whom you are representing.

Mr. CULBERTSON. They also have plants in the United States.

Senator CONNALLY. Yes. You are here, though, representing American investments in the Philippines whose owners do not want to pay any tax on the products they bring in, and yet you say you are representing the National Foreign Trade Council, this highbrow organization that is only concerned with large questions of building up our foreign commerce and trade, but today you are interested particularly in this because you are representing these crushers in the Philippines; now, isn't that so?

Mr. CULBERTSON. I am representing them, Senator, but——

Senator CONNALLY. Well, you did not say that when you started out. You told us you were representing the National Foreign Trade Council.

Mr. CULBERTSON. My authorization is from the National Foreign Trade Council, and its members are entitled to the support of that council.

Senator CONNALLY. Certainly, but we would like for you to say that, when you start out. But the National Foreign Trade Council is only the window-dressing for your appearance here, and your real appearance is for the Philippine crushers, isn't it?

Mr. CULBERTSON. Those Philippine crushers are, in my opinion, entitled as American citizens to protections.

Senator CONNALLY. Certainly they are, but I just wanted to know whom you are representing.

Mr. CULBERTSON. But they are also interested in plants in the United States.

Senator CONNALLY. Yes.

The CHAIRMAN. They are members of this organization, are they?

Mr. CULBERTSON. They are members of this organization, and are entitled to the use of the organization, for the object which I came here to speak to you about.

(Later in the day, Mr. Culbertson requested that the following additional statement be placed on record:)

Let me make my position entirely clear in respect to my position before this committee. I am general counsel in Washington for the National Foreign Trade Council, who is opposing this tax as a matter of general policy. The membership of the council includes not only American citizens interested in the Philippines, but also others engaged in shipping, commerce, and general economic relations between the Philippines and the United States. Affiliated with the National Foreign Trade Council is the National Federation of Foreign Trade Associations, which is made up of local associations all over the United States. These local associations at Los Angeles and San Francisco and New Orleans requested specifically that the council take action against the tax, and the council did take such action.

The CHAIRMAN. Have you finished the matter here?

Mr. CULBERTSON. May I present this brief?

The CHAIRMAN. Thank you very much.

STATEMENT OF HON. WILLIAM S. CULBERTSON ON SECTION 602, TAX ON CERTAIN OILS, H.R. 7835, MARCH 14, 1934

I appear in behalf of the National Foreign Trade Council. The council is national in scope and includes in its membership a large number of representative leaders in production, distribution, shipping, and finance—men who are interested in a sound constructive development of our foreign as well as our domestic trade. As a matter of general policy, the council is opposed to excessive tariffs and other unnecessary obstructions to the movement of goods in international commerce. It believes that American citizens engaged in business in foreign countries and interested in commerce which passes to and fro across our national frontiers are as patriotic and useful citizens as those who confine their activities within the Territorial limits of the United States. It advocates as a part of the recovery policy a liberal attitude toward both imports and exports. It believes that both foreign and domestic trade must revive and expand if we are to achieve real national prosperity.

The council is opposed on broad grounds of policy to the tax on certain vegetable oils proposed in section 602 of H.R. 7835. The proposed tax is in the form of an excise tax. It is, however, in effect, a tariff duty. Neither copra, the raw material for coconut oil, nor sesame seed are produced in the United States. They are imported either in their original state or in the form of expressed oils. To impose, therefore, an excise tax of 5 cents a pound on coconut oil and sesame oil at the time of their first domestic processing is, in fact, whatever it may be in form, a tax on importation. The unit value per pound of coconut oil imported from the Philippines was 2.71 cents in 1933. The ad valorem equivalent, therefore, of the 5-cent tax is only a little under 200 percent.

These products, thus singled out for special taxation, are not, however, products which can be treated alone; they are closely related to the numerous other products in the general classification of animal and vegetable oils and fats, and, moreover, they are raw materials consumed by important industries whose tariff status was fixed on the basis that their raw materials were free of duty. If we are to consider adequately and equitably the issue raised by the proposed excise tax, we must review the entire tariff question of animal and vegetable oils and fats. Your honorable committee might therefore dispose of this proposed tax without going into its merits by merely holding unscientific an effort to legislate on a few products selected arbitrarily from a broad related group. Your alternative would seem to be the reopening of the tariff question on the entire range of animal and vegetable oils and fats and on the varied industries using them as raw materials. I am sure that this conclusion is obvious to the members of this committee accustomed to deal with tariff questions. It is supported by extensive studies, in particular by the Report of the Tariff Commission, No. 41, and by the volume written by Dr. Philip G. Wright and published by the Brookings Institute. Dr. Wright, who was with the Tariff Commission in my day as expert on this subject, refers to the animal and vegetable oils and fats in these words:

"The commodities concerned in the present discussion are important and the tariff problems complex. The bare enumeration of the oils and the industries dependent on them is sufficient to indicate the importance in our domestic economy of the articles treated in this study. They include, directly or indirectly, butter, lard, tallow, oleo and nut margarin, lard substitutes, salad oil, peanut butter, soap, paint, varnish, oil cloths, printers' ink, important lubricants and illuminants, and articles contributing more or less remotely to the prosperity of many important industries not included in the above. It has also been made apparent that the tariff problem is far from simple. Both of these considerations suggest the danger of injudicious tariff action and the need of careful, comprehensive study.

Furthermore, the comprehensive character of the problem before us is indicated by a survey of the statistics. At this point I shall incorporate for the convenience of the committee 3 statistical tables prepared by the Tariff Commission. They show the range of products within the group which we are considering, the quantities of production, the imports, and the rates of duty in the Tariff Act. Although these statistics in themselves reflect both variety and complexity, they even do not tell the entire story, since the products listed are the raw materials which enter into the production of a wide range of finished and semifinshed products. A little later I shall, therefore, refer to the subject of consumption.

The 3 tables to which I have referred are as follows:

Production of principal domestic oils and fats 1929 to 1933

[Thousands of pounds]

	1929	1930	1931	1932	1933 [1]
Cottonseed:					
Crude	1,584,361	1,616,102	1,416,800	1,571,049	1,397,956
Refined, foots	1,450,772	1,457,564	1,295,483	1,382,991	1,233,480
50 percent basis	224,761	245,945	181,146	221,717	201,150
Corn:					
Crude	133,680	120,747	113,145	[illegible]	128,296
Refined	121,451	101,148	104,014	102,449	116,113
Lard:					
Neutral	43,508	26,957	22,762	17,732	17,707
Other edible	1,813,354	1,575,548	1,658,330	1,672,141	1,756,891
Tallow:					
Edible	43,727	41,676	70,100	52,605	58,517
Inedible	425,638	448,458	490,740	479,960	566,096
Grease:					
White	76,390	64,799	68,452	66,238	76,897
Yellow	81,554	82,710	83,051	70,071	77,248
Brown	48,636	45,427	53,243	48,667	49,401
Bone	24,636	26,365	28,116	18,477	21,009
Tankage	53,213	52,479	48,936	44,506	44,207
Garbage	91,416	78,653	70,632	58,476	53,593
Menhaden	24,557	24,700	15,339	23,198	17,876
Herring (including sardine)	74,427	70,997	46,222	60,476	84,962

[1] Preliminary.

Source: Bureau of the Census, U.S. Department of Commerce.

Imports for consumption in the United States of principal imported oils (and oil equivalent of oil-bearing materials), used mainly for soap and edible purposes [1]

[In thousands of pounds]

	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933 [1]
Used principally for soap:										
Free:										
Coconut oil (from Philippine Islands)	224,635	232,499	245,129	293,370	290,637	411,936	317,920	325,175	249,117	316,078
Copra, in terms of oil	183,371	229,368	288,287	284,127	316,254	359,687	375,063	289,136	285,672	416,349
Palm-kernel oil	4,739	52,624	74,980	43,128	53,812	69,909	29,104	12,928	464	12,898
Palm kernels, in terms of oil	-	-	-	-	-	-	6,940	15,667	12,915	6,713
Palm oil	101,780	139,179	130,747	159,911	169,228	261,816	287,492	258,145	217,167	287,483
Olive oil, inedible	33,024	52,431	50,703	50,131	49,358	57,386	71,875	50,199	58,756	56,977
Sunflower seed oil, denatured	-	-	-	-	-	-	1	199	7,634	12,429
Sesame oil denatured	7,843	4,295	8,862	1,704	6,264	21,585	10,695	1	(2)	2
Dutiable:										
Coconut oil	135	453	327	38	60	43	32	5	26	25
Whale oil	37,528	53,558	39,247	53,130	48,427	56,550	52,702	81,197	42,136	43,017
Herring oil [3]	4,511	4,253	14,571	39,216	38,375	34,713	28,983	32,512	16,148	5,846
Total	597,566	768,660	852,853	924,755	972,415	1,273,625	1,180,807	1,065,164	890,035	1,157,817
Used principally for edible purposes:										
Dutiable:										
Olive oil, edible	76,900	87,683	80,760	71,848	83,394	92,050	92,017	71,484	72,564	66,410
Palm-kernal oil	-	-	-	-	-	-	9,867	10,065	2,474	58
Peanut oil	5,076	2,540	5,930	2,809	2,219	1,906	1,828	3,923	1,511	1,323
Sesame oil	-	-	-	-	-	-	88	63	71	58
Corn oil	-	-	-	-	-	-	-	[4] 11,719	[4] 4,505	9,160
Sunflower seed oil	-	-	-	-	-	-	4	27,535	4,763	15,404
Free:										
Sesame seed, in terms of oil	6,378	1,794	1,326	1,356	4,598	8,436	25,607	62,840	8,824	19,610
Total	88,354	92,017	88,016	76,013	90,211	102,392	129,411	187,629	94,712	112,023

[1] Preliminary figures.
[2] Less than 500 pounds.
[3] Includes sardine and pilchard oils and the small quantities of sod and menhaden.
[4] Expressed or extracted oils, n.s.p.f. shown by invoice analysis to be corn oil.

Source: Foreign Commerce and Navigation of the United States.

Rates of duty, import value, and quoted prices of principal imported oils and fats, 1933

Oil	Rate of duty	Unit value of imports	New York market (except as specified) [1]
		Cents per pound	*Cents per pound*
Coconut	2 cents per pound.	6.21	
Coconut (from Philippine Islands)	Free	2.71	2¾ (tanks).
Palm	do	2.44	3¾ (casks, Niger).
Palm kernel, denatured	do	2.94	4¼ (drums).
Palm kernel, edible	1 cent per pound	3.65	
Olive foots	Free	3.83	6¼ (barrels).
Olive, other inedible	do	6.51	10.8 (barrels, denatured).
Whale	0.8 cent per pound.	5.58	4 (tanks, no. 1 coast).
Herring	0.7 cent per pound.	.81	2 (tanks, coast).
Corn	20 percent	3.48	3¾ at works—tanks, crude.
Peanut	4 cents per pound.	6.14	4 at mill—tanks, crude.
Sesame	3 cents per pound.	9.02	8½ (drums, refined yellow).
Sesame, denatured	Free	5.84	
Sunflower seed	20 percent	2.99	4¼ (tanks).
Sunflower seed, denatured	Free	3.33	

[1] Oil, Paint and Drug Reporter, Jan. 22, 1934.

Although animal and vegetable oils and fats constitute a group of products to be considered as a unit for tariff legislation, they nevertheless vary widely among themselves in origin in trade status, in use, in price, and in chemical content.

From the standpoint of origin they classify as:

(*a*) Butter, lard, tallow, and animal greases.

(*b*) Fish and whale oil.

(*c*) The wide range of vegetable oils, including not only sesame and coconut oils but also palm oil, palm-kernel oil, olive oil, soybean oil, corn oil, peanut oil, cottonseed oil, and others.

From the standpoint of international trade this group of products may be classified:

(*a*) Those produced in the United States for which we have exportable surplus and whose price therefore is determined in the world market, as, for example, oleo oil, white grease, and lard.

(*b*) Those which are imported entirely from abroad, as, for example, coconut oil and palm oil, China wood oil.

(*c*) Others produced to some extent in the United States, but our needs of which must be supplemented by some importation, as, for example, linseed oil and tallow.

From the standpoint of use the group classified into:

(*a*) Oils and fats used for food, as, for example, cottonseed oil, butter, peanut and corn oils.

(*b*) Used for industrial purposes, as, for example, inedible tallow and grease.

(*c*) Oils and fats used to some extent for food and to some extent for industrial purposes, as, for example, coconut oil and fish oils.

From the standpoint of price they classify as:

(*a*) Oils and fats used for edible purposes. Practically all American oils and fats, except those produced by the rendering plants from refuse, fall within this class and are sold at prices materially higher than

(*b*) Oils and fats used for nonedible purposes, including a wide range of industrial uses.

Contrasts and variations in chemical content within the group of animal and vegetable oils and fats are the most striking. They are decisive in determining the use of these products, but since they are not obvious they are the most difficult to explain.

I make no claim to have an expert knowledge of chemistry. My long study of this problem, which began during my membership on the Tariff Commission, convinces me, however, that intelligent legislation is not possible without taking into account the varying chemical content of the animal and vegetable oils and fats. The detailed chemical analyses of all of these products is available to the committee from competent experts, together with an explanation of the industrial significance of each. I shall merely sum the matter up in general language.

In metallurgy we experience no difficulty in distinguishing between different metals. We can see the difference between iron, copper, lead, and similar products. We know from everyday experience the limits which are placed upon their interchangeability.

In chemistry, however, the contrasts, although greater, are not obvious to the eye. Oils and fats are made up of chemical compounds known as "glycerides of fatty acids." One oil may contain a glyceride wholly absent in others. Each oil and each fat has on account of its content a peculiar adaptability for this or that use or for the accomplishment of this or that purpose. In spite of the possibilities of hydrogenation, the varying chemical content of oils and fats is a distinct and measurable limitation on their interchangeability, and I may add that the practical interchangeability in the laboratory. I will develop this subject in more detail when I speak specifically on coconut oil. In anticipation, however, it should be said that the soap maker, when he buys coconut oil, buys lauric acid, a glyceride not found in any of the domestic fats and oils. If he is to make the types of soap which the American public is now demanding, he must have coconut oil.

My analysis of the problem before us suggests the paradox of unity on the one hand and diversity on the other. It is this very paradox which makes this problem the most baffling within the range of tariff legislation. A relationship exists which some have concluded through ignorance or other through design to be synonymous with interchangeability.

Scientific legislation, therefore, is not possible without a full consideration of this paradox in all its phases. Nor can you legislate equitably without weighing the effect of this tax on the consuming industries, on the Philippine Islands, and on our foreign trade.

I will now turn to the more detailed consideration of the immediate issue before the committee. The first question which will concern you will be:

What interests will this tax injure?

It will injure (without compensating benefits to other interests):

(*a*) The industrial consumers of coconut and sesame oil and the ultimate consumers of products made therefrom;

(*b*) American crushing interests in the Philippines and in continental United States;

(*c*) The Philippine Islands; and

(*d*) The foreign commerce of the United States.

First, consumption: For a long time it has seemed to me that the subject of industry as a consumer has not received its proportionate share of attention. At the present time in public discussion this interest, as well as the other interests of industry, appear to have been given a second place; at least they are greatly underemphasized in any discussion of recovery. It may, therefore, be proper to emphasize that many large industries are the consumers of oils and fats; that they are the market for domestic products as well as for foreign products; that they produce necessities purchased widely by the ultimate consumer who is vitally interested in low costs of production and in the resulting lower prices.

Coconut oil (and the discussion for clarity may be narrowed to this product) is consumed as a raw material by industries producing nonedible products and by industries producing edible products.

The former include the rubber, the tanning, and the soap industries.

Lauric acid is indispensable in the rubber industry, particularly in the production of automobile tires. This ingredient cannot be supplied by cottonseed oil or other domestic oils. The rubber industry, therefore, must have a substantial amount of coconut oil and a tax on this raw material becomes merely a burden to it and to the ultimate consumer without any corresponding benefit to any other industry. The tanning industry also required coconut oil, particularly in the preparation of white leather. No other oil or fat is an adequate substitute.

The demand of the American public at this time for a freely lathering soap makes lauric acid an indispensable raw material for the soap maker. No American oil or fat contains lauric acid. If a complete embargo were placed on oils containing lauric acid, e.g., coconut oil, the soap maker in the United States would be forced to change his technique and to produce soaps with which the last generation was familiar but which are less adapted to modern needs.

The proposed tax is virtually an embargo.

The big soap manufacturers are in a position to help themselves; they can produce soap in their foreign plants where they have free raw materials and import soap into the United States over the 15 percent duty. The small manufacturer, if he stays in business, has the choice of substantially higher costs

of production or a change to a type of soap without lauric acid, which probably cannot compete successfully with the products of the big soap producers.

In the discussion of another section of this bill (i.e., foreign tax credit) disapproval has been expressed against the establishment of American factories in foreign countries. If this proposed tax on coconut oil becoes effective, it will stimulate production in American factories abroad.

Another important American industrial interest which would be adversely affected by this proposed tax is the American plant which crushes copra, which plants are located both in the Philippine Islands and in continental United States.

Coconut oil is also used as a raw material in several important food industries. On account of the outstanding characteristics of coconut oil, it is peculiarly adapted to the production of fillings and icings for products which are consumed some day and even some weeks after they are made. No matter how high a duty is put on coconut oil, the confectionary and fancy-biscuit industry will have to import it, and the only result will be the burdening of the industry with higher costs and the ultimate consumer with higher prices. Coconut oil has also become an important raw material in the production of vegetable or nut oleomargarine. A heavy tax on coconut oil would either be passed on to the ultimate consumer or it would lead the producer of vegetable or nut oleomargarine to shift to the production of margarine made from animal fats. Such a shift in technique might increase in maximum the consumption of cottonseed oil a fraction of 1 percent, but it could have no appreciable effect on the price of butter.

In weighing the arguments which urge the competition of coconut oil in edible uses it is relevant to emphasize that in the distribution of oils and fats among their major uses in the United States it constitutes less than 4 percent, whereas cottonseed oil constitutes about 20 percent, lard more than 30 percent, and butter almost 40 percent.

It requires no argument to prove that this tax will be extremely burdensome to the Philippine Islands generally and ruinous to millions of people who, relying upon our long-established policy, have developed the copra industry. The principle of free commercial exchange between the United States and the Philippines has now been in effect for many years and is embodied in section 301 of the Tariff Act of 1930. The general questions of the political and economic relationships between the United States and the Philippine Islands are now under consideration. It seems to be the intention of both the executive and legislative branches of our Government to consider this problem broadly, to discuss it with the representatives of the Philippine people, and to arrive at a solution of the problem satisfactory to both parties. In view of this pending situation I respectfully submit that it is unjust to single out one phase of the relationship between the United States and the archipelago and act upon it in a way injurious to millions of Filipinos and to the economic relations between the two countries, especially when we would retain at the same time the reciprocal advantage of free entry of our products into the Philippine market.

Our export trade to the Philippine Islands has a very substantial monetary value, particularly to our agriculturalists. In values running into millions of dollars the Philippine people buy from us cotton goods, fruit, vegetables, meat products, tobacco, flour, and even milk and butter. We cannot expect to sell to the archipelago if we deprive them of our market and make it impossible for them to pay. I believe that it could be shown that the cotton grower will lose more from diminished sales of cotton goods than he will benefit from the tax on coconut oil; that the dairy farmer will lose more from diminished sales of his products in the Philippines than he will benefit from the tax.

But we should look at the problem from a broader point of view than this. A sudden interruption in the trade of copra and coconut oil will seriously dislocate the commercial relations between the United States and the Philippines and injure not only consumers of oils, but crushers, shipowners, commercial and financial interests. Large and substantial businesses rest on the free entry of Philippine copra and coconut oil into the United States. They are entitled to your consideration and protection.

Americans have invested their capital and skill in crushing plants in the Philippine Islands. It was once considered highly commendable to develop industrial enterprises in the archipelago and thus to diversify the economic life of a people under our sovereignty. I believe that the majority of Americans still consider it commendable. We should not at least destroy this enterprise.

On the Pacific coast also the crushing industry has been nurtured by free trade in copra and has become an important factor not only in the industrial but also in the agricultural life of the region.

Moreover, a prohibitive tax on copra and coconut oil would lay a heavy hand on shipping, on railroads, and on commercial agencies.

I make a special plea for a consideration of the interests of foreign trade indirectly endangered by this tax. You hear usually that this particular producer or consumer will be injured or benefited. Lift up your eyes on the general scene and look at the place which foreign trade holds and must continue to hold in our recovery program. Our political frontiers are no longer our economic frontiers. We must participate as a people in international commerce. Importing and exporting contribute wealth and prosperity. No class has as great an interest in foreign trade as has the agricultural class. Indeed, the remedy for the ills which this tax is mistakingly designed to correct begins with the acceptance of the fact that the oils and fats present not a national but a world problem.

We are living in a time in our national history when special attention is being shown to American agricultural interests, and I yield to no one in my desire to help these interests and to see legislation which will restore the farmer and the stock grower to prosperity. The producers of fats and oils in the United States are suffering, as are the producers of other agricultural products, from overproduction and underconsumption. Relief will not come from a measure applied to a minor phase of the problem; it will only come from a comprehensive policy which controls all phases of the economic situation.

At this point I desire to include in my survey the statistics of the Tariff Commission on the consumption and exportation of animal and vegetable oils and fats. The statistics permit an analysis of imports entering domestic consumption, domestic production entering domestic consumption, and domestic production sold in the world market at world market prices. The four tables are as follows:

United States Tariff Commission, Washington—factory consumption of oils and fats in soap (exclusive of foots resulting from refining)

	Thousands of pounds		Percent of total quantity	
	1931	1932	1931	1932
Domestic materials:				
Tallow, inedible	523,714	549,186	37.67	39.93
Grease	129,403	143,724	9.31	10.45
Soybean oil	3,816	5,571	.27	.41
Cottonseed oil	1,970	3,583	.14	.26
Corn oil	4,104	2,532	.30	.18
Tallow, edible	1,494	1,969	.11	.14
Edible animal stearin	53	374	.01	.03
Oleo oil	446	260	.03	.02
Neat's-foot oil	33	27		
Total	665,033	707,226	47.84	51.42
Imported materials:				
Coconut oil	340,503	353,527	24.49	25.70
Palm oil	172,228	168,009	12.39	12.22
Sulphur oil or olive foots	38,970	30,877	2.80	2.24
Palm-kernel oil	28,035	3,565	2.02	.26
Castor oil	2,829	2,408	.20	.17
Sesame oil	8,197	1,871	.59	.14
Olive oil, inedible	2,106	1,912	.15	.14
Vegetable tallow	3,256	511	.24	.04
Olive oil, edible	14	52		
Rapeseed oil		89		.01
Total	596,138	562,821	42.88	40.92
Domestic and imported materials:				
Marine animal oils	68,669	48,944	4.94	3.56
Fish oils	58,426	49,091	4.20	3.57
Other vegetable oils	233	6,059	.01	.44
Linseed oil	1,488	985	.11	.07
Peanut oil	244	290	.02	.02
Total	129,060	105,369	9.28	7.66
Grand total	1,390,231	1,375,416	100.00	100.00
Production of soaps	3,095,369			

Source: Bureau of the Census, U.S. Department of Commerce.

Domestic exports of principal oils, fats, and oil products

	1929	1930	1931	1932	1933 [1]
Quantity (thousands of pounds):					
Lard	829,328	642,486	568,708	546,202	579,072
Lard, neutral	18,539	13,531	9,588	5,951	5,107
Oleo oil	68,209	56,483	47,323	42,409	33,783
Oleo stock	8,099	7,779	7,924	7,075	8,633
Oleo stearin	3,931	5,133	6,842	7,534	6,273
Other animal greases and fats, inedible [2]	59,934	63,561	75,286	56,940	70,025
Cottonseed oil:					
Crude	19,292	16,394	9,733	44,855	26,143
Refined	6,783	11,903	12,845	10,913	9,292
Soaps	74,540	62,806	47,253	34,917	25,828
Value (thousands of dollars):					
Lard	105,530	73,434	51,009	31,885	34,095
Lard, neutral	2,447	1,631	929	386	334
Oleo oil	7,501	5,871	3,309	2,491	1,887
Oleo stock	860	766	539	394	482
Oleo stearin	440	478	540	364	306
Other animal greases and fats, inedible [2]	5,310	4,146	3,199	1,783	2,475
Cottonseed oil:					
Crude	1,551	1,228	582	1,445	778
Refined	837	1,168	1,162	650	561
Soaps	7,277	5,993	4,301	2,847	2,086

[1] Preliminary figures.
[2] Other than neat's-foot oil, other inedible animal oils, fish oils, grease stearin, oleic acid, and stearic acid.

Source: Foreign Commerce and Navigation of the United States.

Oils and fats consumed in the manufacture of oleomargarine, 1928–33 (fiscal years), including butter but excluding milk

[From reports of Commissioner of Internal Revenue]

[In thousands of pounds]

	1928	1929	1930	1931	1932	1933
Imported vegetable oils:						
Coconut oil	141,000	171,411	185,066	155,954	127,967	134,430
Palm-kernel oil	129	15	3			
Palm oil	955	1,349	1,101	2,773	314	383
Sesame oil	40			99	203	
Soybean oil			619	2,262	13	7
Total	142,124	172,775	186,789	161,088	128,497	134,820
Domestic vegetable oils:						
Cottonseed oil	24,801	28,173	30,213	22,037	14,874	16,031
Peanut oil	5,459	6,617	5,714	5,291	3,780	2,338
Corn oil	38		1	159	74	102
All other vegetable oils	56	12	48	48	1	
Total	30,354	34,802	35,976	27,535	18,729	18,471
Domestic animal oils and fats:						
Oleo oil	45,477	47,185	45,322	28,040	15,314	12,457
Oleo stearin	5,532	5,834	6,269	5,484	4,337	3,283
Oleo stock	1,738	1,294	1,189	1,025	641	573
Neutral lard	25,036	24,189	19,632	10,180	10,557	9,130
Butter	2,484	2,611	2,616	1,013	39	16
Miscellaneous	198	26	16		1	
Total	80,465	81,139	75,044	45,742	30,889	25,459
Total domestic animal and vegetable oils and fats	110,819	115,941	111,020	73,277	49,618	43,930
Total imported vegetable oils	142,124	172,775	186,789	161,088	128,497	134,820
Grand total, all oils and fats	252,943	288,716	297,809	234,365	178,115	178,750
Percent domestic	43.8	50.7	37.3	31.3	27.9	24.6
Percent foreign	56.2	49.3	62.7	68.7	72.1	75.4

Oleomargarine production (colored and uncolored)

Fiscal year ended June 30	Production (1,000 pounds)	Fiscal year ended June 30	Production (1,000 pounds)
1928	294,699	1931	277,773
1929	333,122	1932	215,342
1930	349,124	1933	219,044

Factory consumption of oils and fats in lard compounds and vegetable shortenings

	Thousands of pounds		Percent of total quantity	
	1931	1932	1931	1932
Domestic materials:				
Cottonseed oil	928,489	834,367	76.85	86.14
Tallow, edible	69,548	45,708	5.76	4.72
Edible animal stearin	27,220	17,357	2.25	1.79
Lard	8,860	5,636	.73	.58
Soybean oil	10,869	4,889	.90	.50
Corn oil	6,616	3,067	.55	.32
Oleo oil	10,004	1,134	.83	.12
Total	1,061,606	912,158	87.87	94.17
Imported materials:				
Palm oil	34,536	22,126	2.86	2.28
Coconut oil	34,132	8,332	2.83	.86
Sesame oil	33,817	7,797	2.80	.81
Palm-kernel oil	158		.01	
Total	102,643	38,255	8.50	3.95
Domestic and imported:				
Fish oils	16,676	11,520	1.38	1.19
Marine animal oils	2,708	2,185	.22	.23
Peanut oil	5,960	3,502	.49	.36
Other vegetable oils	18,549	957	1.54	.10
Total	43,893	18,164	3.63	1.88
Grand total	1,208,142	968,577	100.00	100.00
Production of lard compounds and other lard substitutes	1,171,559	945,441		

Source: Bureau of Census, U.S. Department of Commerce.

What interests will the proposed tax benefit?

It may help to overcome the general presumption that agriculture should be helped at all costs to show that the proposed excise tax will not help the producers of American oils and fats.

Dr. Wright, the expert to whom I have already referred, offers the following conclusion after years of unbiased study:

REASONS FOR DEMAND FOR A DUTY OF PHILIPPINE COCONUT OIL

"Advocates of such a duty claim: (1) It would benefit dairymen by increasing the price of margarine and hence of butter. (2) It would benefit agriculture generally by giving farmers the opportunity to produce more oil-bearing seeds, especially soybeans, the oil from which would replace the excluded coconut oil.

"COCONUT OIL AS A COMPETITOR WITH DOMESTIC OILS

"The duty could attain the first end only to the extent that it would increase the price of margarine, and the second end only to the extent that domestic oils may be substituted in uses now occupied by coconut oil.

"Studied oil by oil it would appear that there was little to justify the proponents of a duty on Philippine coconut oil in either of their contentions;

it would not appreciably aid the dairymen by improving the price of butter, nor agriculture in general by affording a greater diversity of crops to the farmer."

In a publication entitled "The Tariff on Dairy Products", edited by well-known professors of the University of Wisconsin, will be found a discussion of the tax proposed in 1930 on imported oils and fats. In this publication it is stated:

"POSSIBLE BENEFITS AND BURDENS OF EFFECTIVE DUTIES

"Possible benefits: The possible benefits accruing to Americans from effective duties on oils and fats may be grouped under two heads—(1) benefits to dairymen and (2) benefits to producers of domestic oils or their raw materials.

"It seems evident from the preceding pages that the proposed duties would not secure the results dairymen hope for. A comparison of figures 12 and 13 indicates the small possible reduction of the present spread between butter and oleomargarine prices as a result of a tariff on Philippine coconut oil or its elimination from oleomargarine manufacture. These figures also show clearly the relative importance of the tariff and oleomargarine substitution as butter-price factors. It is obvious that the proposed duties on oils, which would reduce by but about 10 percent the present large spread between butter and oleomargarine prices, would be of comparatively insignificant benefit to American dairymen.

"If the proposed duties raised the cost of coconut oil high enough to eliminate it from oleomargarine manufacture, or if its use were prohibited, the benefit to American producers of cottonseed, soybeans, and peanuts, or beef and pork is doubtful. Our exportable surplus of lard alone is more than twice the amount of coconut oil now used in oleomargarine. Cottonseed oil and oleo oil show exportable surpluses. Also, the use of cottonseed oil in oleomargarine is limited because its characteristic flavor cannot be neutralized. In the United States soybean oil is a relatively unimportant byproduct, and the great bulk of the domestic peanut crop is grown for purposes other than oil production. Any attempt to raise the price level of all domestic oils and fats by increasing the price of the 128,000,000 pounds of oleomargarine ingredients represented by coconut oil will be futile if for no other reason than the existence of large exportable surpluses in the United States of such prime oleomargarine ingredients as oleo oil and lard.

"Possible burdens: The proposed duties on coconut oil and copra would result in burdens to the American public greatly in excess of any possible benefits derived from them. In 1931, 867,911,000 pounds of coconut oil were used in the United States. Since more than 60 percent of our consumption is in the manufacture of soap, at least 520,747,000 pounds of this oil were used in the United States. Since more than 60 percent of our consumption duty would be fully effective and increase the price of coconut oil by about 2.4 cents per pound, the burdens to consumers from the increased cost of soap would amount to approximately $12,500,000. Since the proposed duties would not materially check oleomargarine consumption nor benefit dairymen or producers of domestic oils and their raw materials, there is no benefit to any home group sufficient to offset this burden."

XII. These authoritative statements would seem to be sufficient to dispose of the immediate question before the committee. In view, however, of the insistence of certain agricultural interests upon this tax, it is relevant to emphasize not only that the tax will be without benefit to our agriculture but that it will in fact tend to reduce the price level of domestic oils and fats. I believe that it can be demonstrated that this will be the result, for two reasons: In the first place, the price level of American oils and fats, particularly cottonseed oil and lard, is determined by edible uses. The price level of coconut oil, however, is determined by industrial uses. The principal market made available by the exclusion of coconut oil from the domestic market would be the soap kettle which takes about 70 percent of all the coconut oil consumed in the United States. American agriculture does not produce oils and fats for the soap kettle. The companion oil or fat of coconut oil in the soap-kettle is inedible tallow, the product of the rendering plants. The duty on foreign tallow is one-half cent a pound. From this combination of facts it must be evident that if American edible oils and fats are to find an increased market as a result of the exclusion of coconut oil, they must

descend to the price level of the inedible tallow and other products which enter into the making of soaps and various other industrial products.

In the second place, this tendency to lower the prices of domestic oils and fats will be encouraged by the international situation created by the exclusion of coconut oil from the American market. Coconut oil excluded from the United States will seek a market in Europe; that is, in the export market of American oils and fats. This foreign market today determines the price of American oils and fats and determines it on the basis of edible uses. If coconut oils seeks a market in Europe it will inevitably depress the price of all oils and fats and this depression will be reflected generally in the prices of domestic oils and fats in the United States.

XIII. This analysis only emphasizes the broad truth that the question of animal and vegetable oils and fats is an international question. It cannot be solved by domestic tariff legislation—certainly not tariff legislation applicable to two or three products. The approach of this bill to the question is, therefore, wrong. It will not accomplish the purpose desired; it will actually injure American agriculture. The scientific approach is from the standpoint of the world surplus which some call overproduction, others call underconsumption. We are interested in two different ways. On the one hand, our cottonseed oil and edible fats are on an export basis—we produce too much for domestic needs. On the other hand inedible oils, essential to industries, must come largely from abroad. In short, the movement of trade—exports and imports—is the key to the problem before you. We begin to find a solution with the acceptance of this fact.

The CHAIRMAN. Now, I understood that Mr. Lavery wanted to put into the record a brief on behalf of the Curtiss Candy Co.

Mr. LAVERY. I wish to submit my brief in protest to this tax.

STATEMENT OF W. J. LAVERY, CURTISS CANDY CO.

WASHINGTON, D. C., *March 13, 1934*.

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

GENTLEMEN: As a protest against the proposed tax on coconut oils, I draw your attention to the attached letter directed to the president of the Curtiss Candy Co. of Chicago.

We feel that such a tax would be most unjust for the reason that it would not attain the end for which it is proposed, namely, to increase the domestic consumption of substitutes.

You will see from this attached letter that there are no substitutes that can be used in place of coconut oils. Therefore, the proposed tax would be simply an additional burden upon a processing section of the agricultural industry.

Such a tax, if imposed, can only lead to the reduction of the size of candy products, which in turn will lead to a reduction in the consumption of agricultural products to the intense detriment of the farmer for whom this tax is supposed to be of great benefit.

Please bear in mind that the Curtiss Candy Co. consumes and converts in excess of 175,000,000 pounds of agricultural and forestry products. Our protest is offered in the desire to bring to your attention from our knowledge of the situation a fundamental condition as we know it to be.

We have the honor to be,

Yours very respectfully,

CURTISS CANDY CO.
By W. J. LAVERY.

MARCH 10, 1934.

Mr. OTTO SCHNERING, *President*.

DEAR MR. SCHNERING. Present animal fats and vegetable oils cannot be used as substitutes for highly refined coconut oils for the following reasons:

(1) We have not found fats which are entirely void of tastes peculiar to their origin. They either have this taste as purchased or develop it during the heating process necessary in candy manufacture or undergo a much greater deterioration after a period of time from date of manufacture with consequent

development of off flavors than refined hydrogenated coconut oils under similar conditions.

(2) Certain chocolate-coated candies require a higher percentage of fat. That fat in these candies must have definite softening point limits. No individual constituent of the fat must soften below the softening point of the chocolate, otherwise, the fat of the candy will affect the chocolate coating and ruin the salability of the chocolate-coated confection.

(3) Fats vary in percentage composition of the various glycendes of which they are composed. No two fats are identical.

(4) Changes in consistency and the possibility of a slight foreign fatty taste by the use of a different fat than is used now can ruin the sale of a nationally distributed candy.

Refined hydrogenated coconut oils have the qualities above mentioned to the greatest degree.

GEORGE HUSS, *Chief Chemist.*
A. F. HAUSSKE, *Purchasing Agent.*

Mr. LAVERY. Mr. Chairman, my name is W. J. Lavery. I am assistant to the president of the Curtiss Candy Co., and may I say just one word?

The CHAIRMAN. Yes.

Mr. LAVERY. In general, I am representing the National Confectioners' Association, specifically, the specialty group, and, in particular, my own company, one of the large parts of the industry. I just want to call to your attention——

Senator McADOO. What is your company? I did not hear it.

Mr. LAVERY. The Curtiss Candy Co., of Chicago. I just wish to call your committee's attention to this one fact, that from our own chemistry report, we cannot use a substitute for coconut oil in pure candy.

Now, I presume that you gentlemen are interested in pure food, in proper sanitation, in agricultural consumption. I wish to call to your attention the fact that our industry in 1933 consumed approximately 1,250,000,000 pounds of agricultural and forestry products, that we have no alternative except to pay the tax which you propose to put into the bill for coconut oil.

The large bulk of the industry sell a product which has an established price which cannot be changed. It is 1 cent or 5 cents or 10 cents. Therefore, we must take up the extra cost of any specific tax you put into our product by elimination from size or by the lowering of quality. Now, one particular illustration, I believe will be sufficient. My own company in 1933 consumed 45,000,000 pounds of peanuts. I presume that you gentlemen would laugh if I told you that by taking three or four peanuts from each bar of our candy we reduce our purchasing power approximately 7,000,000 pounds. Now, that is the only way that we can take up any slack caused by the further expense of such a tax, and I could go through the whole gamut of the agricultural products that go into making pure candy, and the percentage would go right straight down the lot.

Senator McADOO. What would 7,000,000 pounds of peanuts represent in dollars?

Mr. LAVERY. Roughly, $400,000, Senator. And if we went on the line, agriculturally, the corn interests of Wisconsin and the Middle States would get their percentage of decrease. Then we would run up against the purchasing element, that the consumer would resent the smaller piece of candy, and we are liable to start a vicious circle.

Senator WALSH. How many candy producers are in your association?

Mr. LAVERY. There are, I believe, sir, about 400.

Senator WALSH. Are they, to your knowledge, behind this petition which you are making for them?

Mr. LAVERY. Yes, sir.

Senator GORE. You say your business used 1,250,000,000 of farm products in a year?

Mr. LAVERY. No.

Senator GORE. Farm and forestry products?

Mr. LAVERY. Right, sir.

Senator GORE. What are the different items?

Mr. LAVERY. Sugar, corn sirup, molasses, peanuts.

Senator CONNALLY. Glucose?

Mr. LAVERY. Glucose is corn sirup, sir. Dairy products, of course; milk.

Senator WALSH. Nuts?

Mr. LAVERY. Nuts; peanuts and other nuts.

Senator WALSH. Other nuts?

Mr. LAVERY. Yes.

Senator WALSH. English walnuts, almonds?

Mr. LAVERY. A small percentage. A great percentage is in domestic peanuts.

The CHAIRMAN. Well, thank you very much, Mr. Lavery.

Mr. LAVERY. Yes, indeed, sir.

The CHAIRMAN. Your brief will be put into the record.

Mr. JAMES H. BAKER. Mr. Chairman, we desire to submit a brief for the record.

The CHAIRMAN. Very well. It will be placed in the record.

STATEMENT OF JAMES H. BAKER, PRESIDENT FRANKLIN BAKER CO., HOBOKEN, N.J., RE SECTION 602

We are makers of coconut oil in our copra-crushing plant located in Hoboken, N.J.

We protest this 5 cents per pound tax on coconut oil on the ground that it is discriminatory and that it will undoubtedly prove to be an embargo on the importation of copra, thereby putting the copra crushers in this country out of business, causing untold losses to an American industry that had its inception 40 years ago.

Oils and fats are world-wide commodities. The equalization of production and consumption in any country and a managed control of price or value is not a thing which can be readily adjusted by taxation. This problem has international complications, and we urge a careful and complete study of all factors rather than make a hasty decision which might bring disastrous repercussions.

There are many oils and fats produced in undreamed of quantities in various parts of the world, yet some are little known in the United States today. There are certain of these oils that are excellent substitutes for cottonseed oil and for tallow. But coconut oil holds an unique position of its own and cannot be considered as a substitute oil for any domestic oil or fat. Coconut oil is used in various manufactured products, notably soap and margarine, on its own merits because of certain inherent qualities not to be found in any domestic oil or fat.

I would, therefore, term coconut oil an essential ingredient for the production of present-day soaps and margarine. But despite this fact, competition will force manufacturers to use substitute oils and fats rather than pay the 5 cents per pound duty on coconut oil. I agree that it may be unsound practice to give up a fine product for an inferior one, yet I am convinced this will

be the outcome. Incidentally, the best substitutes for coconut oil, such as palm-kernel oil, are not produced in this country.

I will not attempt in this brief to discuss the technological reasons why coconut oil is essential in the manufacture of present soaps and margarine; the soap and edible-oil manufacturers will present this in detail. I will just emphasize two facts—one, the high saponification value of coconut oil permits adding to the soap kettle a larger quantity of low-grade refuse oils and fats of domestic origin than could otherwise be used. It is because of coconut oil that the refuse oil recovery industry has grown to tremendous proportions in recent years. Two, margarine is a substitute for butter, but is purchased only by those who cannot afford the price of butter and who would otherwise be compelled to do without a spread for their bread. It has been definitely established that a coconut-oil margarine is the only margarine that retains satisfactorily its sweetness and butter-like flavor. If we eliminate its use, we have thrown away 20 years of progress in perfecting margarine and force an unpalatable article on the poor of our country. Margarine does not compete with dairy butter nor has it any effect on the price of butter. The over- and underproduction of butter in the United States and the price of foreign butter, plus the duty, are the only factors which control the price of butter.

The above are merely two of the many considerations which are overlooked by those setting up the coconut oil "scarecrow." I use this term advisedly because a tax on coconut oil has been agitated for some years.

I am satisfied that none of the problems of the agricultural interests can be solved by this proposed tax; that this tax will not have the desired effect they anticipate nor hope for. It will, on the contrary, I believe, have quite the reverse and perhaps a disastrous effect for the following reasons:

First. The Philippines will be obliged to look to Europe as an outlet for their copra and/or coconut oil. This would bring about lower prices for all oils and fats in Europe as the palm oil, palm-kernel, peanut, and whale-oil interests would not relinquish this market without a struggle. These low-priced oils would at the same time be offered in this country. By the same reasoning the European market for our higher grade domestic fats, viz, lard, would be lower.

Second. The Philippines are now one of our best customers and very fertile territory for the expansion of our trade. If the Philippines in retaliation do not actually boycott American products, the business will die a natural death anyhow because they will be obliged to buy from the countries that buy from them.

Third. Unquestionably it would destroy the copra crushing industry in this country and would have a grave effect upon the soap and margarine industries, thus increasing the unemployment situation.

Fourth. Our country does not produce sufficient oils and fats for our requirements. True, there is at present an oversupply, not only of domestic but also of the imported oils of all kinds. But the fact remains that we must import large quantities yearly and there is not sufficient coconut oil and/or copra produced in the Philippines to supply this demand. In the hunt for substitutes for coconut oil, other oils and fats, such as sunflower-seed oil, which is produced in enormous quantities in Russia, may be brought into this country. I do not imply that sunflower-seed oil is a suitable substitute for coconut oil, but it is an excellent substitute for cottonseed oil.

Finally, I am convinced that this processing tax placed on coconut oil, call it by whatever name you will, is to all intent and purpose a duty on coconut oil, and is therefore in direct violation of our reciprocal free-trade relations with the Philippine Islands. It seems to me there is already sufficient controversy on the Philippine independence question without adding this additional firebrand.

I reiterate my initial statement that this proposed tax is discriminatory in that it applies to only one oil—coconut oil (the injection of sesame oil is merely a gesture). I firmly believe that this problem cannot be solved so readily by taxation, but if we must tax, why confine it to coconut oil alone and why make it confiscatory? If a tax is placed on oils of foreign origin, we ask that the American copra crushing industry be given adequate protection.

Respectfully submitted.

JAMES H. BAKER.

STATEMENT ON BEHALF OF THE SPECIALTY CONFECTIONERS' ASSOCIATION

This is an association of 22 members engaged in the manufacture of candy specialties. We produce an annual tonnage of approximately 400,000,000 pounds of candy. This quantity is mentioned because we are heavy users of agricultural products, as shown by the following annual figures:

	Pounds
Sugar (17 members)	111,268,613
Corn sirup (17 members)	103,808,913
Domestic peanuts (11 members)	69,590,565
Milk (14 members)	23,994,145

We also use other processed products, such as chocolate coating, in which agricultural products are included.

We are particularly interested in the proposed tax because coconut oil is an indispensable ingredient in many of our products. Coconut oil is neutral in flavor and does not become rancid. Every possible domestic substitute is subject to one or both of these objections. That we employ all of the domestic agricultural products possible is shown by the following typical 1933 statistics of one of our members:

	Pounds
Sugar	2,000,000
Chocolate coating	1,750,000
Condensed milk	1,250,000
Domestic peanuts	500,000
Corn sirup	2,000,000
Coconut oil and butter	300,000

Substantial quantities of other domestic products were also used, such as powdered milk, domestic egg albumen, shelled almonds, shelled pecans, honey, molasses, starch, etc.

Ours is a large volume business on a fairly close margin of profit. The proposed tax would make it a practical impossibility to manufacture a number of items in which a more substantial portion of coconut oil is used.

The comparatively small amount of coconut oil used in our business would make it inconsequential as a revenue producer under the proposed tax. The above statistics show, however, that for the loss of consumption every pound of coconut oil by reason of the propsed tax, there would be a potential loss of 25 times as much consumption of domestic agricultural products.

The largest use of coconut oil in the confectionery industry is in salting peanuts. Costly and disastrous experiments have proved that the only satisfactory substitute for this purpose is cocoa butter—a much more expensive product.

Salted peanuts have been selling in the 10-cents per pound retail class. About 480,000,000 pounds of domestic peanuts are grown and shipped each year, of which about 180,000,000 pounds are used for salting.

A tax of 5 cents per pound on coconut oil would force the retail price of salted peanuts into the 15-cents-per-pound class. This would mean a loss of about 60,000,000 pounds in peanut consumption.

If this tax is proposed to increase the use of domestic agricultural products, so as the candy industry is concerned, it will do a great deal more harm than good.

Respectfully submitted.

SPECIALTY CONFECTIONERS' ASSOCIATION,
By F. FOSTER.

Mr. F. B. WILLIAMS. Mr. Chairman, I desire to submit a brief on behalf of the Fair Play Caramels, Incorporated, of Johnson City, New York.

The CHAIRMAN. It will be received and inserted in the record.

STATEMENT ON BEHALF OF THE FAIR PLAY CARAMELS, INC., JOHNSON CITY, N.Y., RE REVENUE BILL, SECTION 602

Due to the proposed tax of 5 cents per pound on coconut oil, the company of which I am president, Fair Play Caramels, Inc., is confronted with a serious problem involving not only the best interests of the company itself but also that of several hundred employees. This tax on coconut oil used in our candy

we feel is unjustified and unless defeated could easily be the means of ruining a successful business. Our company is willing and ready to pay any reasonable tax on income and profits but does object to paying an excise tax which entirely eliminates a reasonable profit.

Fair Play Caramels, Inc., employs 270 people and is one of the largest users of coconut oil and corn products in the manufacture of confectionery. We manufacture a specialty piece of candy largely purchased by children at 1 cent each, and if we were to attempt a price increase on a penny piece of candy, it would mean advancing the price 100 percent. On the other hand, we know the piece as it is now made is evidently very attractive to a discriminating trade, the child, and to make any change in its size and appearance would be very unwise and could be the means of quickly reducing our sales to a point where the piece would not be profitably manufactured.

In the attached brief the problem that has been created in our plant by the proposed tax, and the great economic loss that would result from our closing, are described in detail.

We sincerely and respectfully request that the Finance Committee will report unfavorably on this proposed tax.

Fair Play Caramels, Inc., of Johnson City, N.Y., has been engaged in the manufacture of candy since April 1, 1920. From a small beginning we gradually increased our business, reaching a maximum output during the years 1927 and 1928. Like practically all other industrial activities we suffered from the depression to the extent that our output gradually decreased for several years to about 50 percent in 1932. During March 1933 we added to our line a new specialty piece of candy wrapped in attractively printed wax paper, which is sold largely to children at 1 cent per piece.

With the advent of the "new deal" and the introduction of the new specialty piece of candy our sales immediately began to increase so that today we are producing double our previous maximum output.

Our whole-hearted support has been given to the N.R.A. from the start and since the first of May 1933, our factory has been operating with two shifts and the number of employees has increased from 68 to 270 people. We have ample orders at present to keep our two shifts working for 60 days and could unquestionably keep our employees busy with steady employment on two shifts for an indefinite period.

We specialize in the manufacture of chewing taffies, in which coconut oil is a very important ingredient. The chemical analysis of coconut oil makes it especially adapted to this class of candy, and there is no other fat that we know of at this time which could be substituted and meet all trade conditions in the same dependable and satisfactory manner. Coconut oil is not interchangeable with any of the fats and oils of American agriculture. No domestic produced fat or oil possesses the indispensable properties of coconut oil necessary in the manufacture of taffies. They do not become unpalatable from the development of objectionable rancid tastes which come with age. In other words, candy must be made so that it will be wholesome and palatable when it reaches the ultimate consumer. As our candy is shipped all over the United States, from coast to coast, it is usually weeks before it is eaten, and for this reason could not be so successfully manufactured and widely distributed were it not for edible coconut oil and its resultant derivative, commonly described as pressed vegetable stearine.

It is our understanding that the proposed tax on coconut oil is designed to help the American farmer. We desire to help the farmer in any reasonable way, and for this reason give you herewith some important facts as to how the proposed tax, when applied to our own business, instead of helping the farmer would do him serious harm.

Being one of the largest consumers of corn products in the East we are using corn sirup and refined corn starch at the rate of approximately 700 000 bushels of corn per year, which, figured at the loan value of 45 cents per bushel, would return to the farmer $315,000 per year from our business alone. Added to this is the processing tax of 5 cents per bushel, amounting to $35,000, making a total sum of $350,000 returned to the farmer on the corn products which our company uses.

Our company is using approximately 20,000 pounds of coconut oil per week and the proposed tax of 5 cents per pound would place upon us an additional tax burden of $40,000 annually on coconut oil which would ruin a profitable business and destroy the use of farm products which now return to the farmer $350,000 annually. Suspending operations would also cause dismissal of our 270 employees who are largely the chief support of their families.

The confectionery industry uses only about 4 percent of the coconut oil consumed and any revenue from this industry to aid the farmer would be a small sum at best and could result in many times greater loss to him through the loss in consumption of corn products, refined sugar, and other supplies.

In order that you may obtain a better idea of the far-reaching effects of a shut-down of our plant due to the proposed tax on coconut oil, I offer for your consideration the following facts:

Besides the large quantities of corn products stated above, we use daily approximately 30,000 pounds refined sugar, 4,000 pounds coconut oil, 4,200 pounds cocoa powder, 3,500 pounds high-grade printed wax paper, 11,000 fiber packing cases, 2,000 to 3,000 cardboard boxes, 1,500,000 skewers, 8,000 pounds coal; also large quantities of flavorings and miscellaneous supplies.

One hundred fifty thousand pounds of freight are received daily, largely farm products from the Middle West, and a like amount of freight moves out daily in carload and less-than-carload lots consigned to points as far west as the Pacific coast.

As I have stated above, the big increase in our business during the past year is due almost wholly to the new specialty piece of candy which is meeting popular favor with the child. This piece is sold for a penny and you will readily understand that if we were to attempt a price increase on a penny piece of goods, it would mean advancing the price 100 percent. On the other hand, we know the piece as it is now made is evidently very attractive to the child and to make any change in its size or appearance would be very unwise and could be the means of quickly reducing sales and ruining what is now a successful business.

We sincerely hope the Finance Committee will give the arguments we have presented careful consideration and cause defeat of this unreasonable demand for a tax which would practically double the present price of coconut oil.

Respectfully submitted,

F. B. WILLIAMS, *President*,
FAIR PLAY CARAMELS, INC.,
Johnson City, N.Y.

The CHAIRMAN. Mr. Gray, who has been in charge of the presentation of one side of this question, has very kindly consented that they will not take up further time, because they feel that this matter has been quite fully discussed. They will, however, reserve the right to offer a brief for the purposes of the record, in addition to what has already been presented on their behalf.

Senator CONNALLY. Mr. Chairman, I urged Mr. Gray to do that. There is one witness that we want to have in executive session, and I should like at this time to have the understanding that he will be permitted to appear.

The CHAIRMAN. Who is that?

Senator CONNALLY. That is Dr. Manning.

The CHAIRMAN. He has been asked, already, to come before the committee.

Senator CONNALLY. He is a Government man.

The CHAIRMAN. He will be before the committee.

We should hear him as soon as convenience permits, because I understand he must leave on the 15th.

Mr. GRAY. Mr. Chairman, may I, in behalf of those who are advocates of these excise taxes, thank the committee for its patience and attention to the arguments of our matter that have been presented here, and to say that we are perfectly willing to leave it in your hands. We know that if we asked for the additional time, which is almost 60 minutes, which is ours, if we desired to do so, we could; but it would extend this hearing unduly and would crowd out some other gentlemen who are here on other projects, which you are now ready to hear, and which projects are of very great importance. We will just rest the case in your hands.

The CHAIRMAN. The committee thanks you, Mr. Gray, and thanks all of you for the consideration you have shown the committee.

Senator REED. I ask that the following brief of Mr. E. R. Crawford, president of the McKeesport Tin Plate Company, be inserted in the record.

BRIEF OF E. R. CRAWFORD, PRESIDENT OF McKEESPORT TIN PLATE CO.

Reference is made to bill H.R. 7835, passed by the House of Representatives on February 21, 1934, and now before the Senate Finance Committee for consideration and report (or H.R. 8304, Knutson bill).

Under the present tariff law, palm oil is admitted free of duty under paragraph 1732. On behalf of the tin-plate manufacturers of the United States, I wish to submit for your consideration the following:

It would be to the considerable advantage of the tin-plate industry to continue the admission of palm oil free of duty, and without the imposition of a processing tax, where it is used exclusively in the manufacture of tin plate, and we so request for several reasons:

First.—In the manufacture of tin plate, palm oil is a prime necessity, because it is the only material obtainable in commercial quantities which will satisfactorily fulfill, without further expensive treatment, the requirements of modern tinning practice. The present process of the tin-plate manufacturers is predicated upon the use of palm oil.

Second.—The palm oil used in the manufacture of tin plate is subjected to a relatively high temperature during the process, so that its physical and chemical characteristics are changed. The small fraction of used oil recoverable as a byproduct, which is not more than 10 percent in any case, cannot be utilized successfully in the place of new oils and fats. Most of this "refuse palm oil" is either burned or discarded as waste.

There are used in the manufacture of tin plate in the United States, in round figures, approximately 7,000 to 9,000 tons of palm oil per year, and while this is a comparatively small amount of the total quantity of palm oil imported, it would be a hardship on the tin-plate manufacturers if they were obliged to pay a duty on this amount of oil, particularly since there is no equivalent substitute for it, and it in no way comes into competition with any of the fats or oils, vegetable or animal, produced in the United States. In other words, its use in our industry does not displace, directly or indirectly, any domestic oil or fat.

As this oil is largely imported from the west coast of Africa, the Dutch East Indies and the Federated Malay States, the price is controlled in London, and if a duty be placed on it, the amount of such duty will simply be added to the London price, which would increase the cost of making tin plates in exactly the amount of the duty imposed.

Palm oil—United States imports approximate proportion used by tin-plate and other industries

Year	Production of tin plate and terneplate	Consumption of palm oil used in manufacture of tin-plate and terneplate	United States imports	Consumption of palm oil by other than tin-plate industry	Percentages of palm oil used by other than tin-plate industry
	Gross tons	*Gross tons*	*Gross tons*	*Gross tons*	
1920	1,445,545	6,213	18,727	12,514	67
1921	794,274	3,414	10,337	6,923	67
1922	1,287,895	5,535	25,677	20,142	78
1923	1,506,862	6,476	57,364	50,888	89
1924	1,418,654	6,097	45,437	39,340	87
1925	1,657,795	7,125	62,133	55,008	89
1926	1,782,306	7,660	58,369	50,709	87
1927	1,673,591	7,193	71,389	64,196	90
1928	1,839,205	7,920	75,548	67,628	90
1929	1,968,280	8,460	116,882	108,422	93
1930	1,763,443	7,570	128,345	120,775	94
1931	1,525,000	6,540	115,243	108,703	94
1932	1,100,000	4,725	99,036	94,311	95
1933	1,750,000	7,525	128,340	120,815	94

It seems to us, therefore, in the face of these conditions, that there would be absolutely nothing compensatory in the placing of a duty, or the imposition of a processing tax on palm oil where it is used in the manufacture of tin plate, but instead would increase the cost of containers for fruits, vegetables, milk, meats, and many other food products, and which we would naturally wish to avoid.

In the event that the committee deems it wise to put a processing tax on palm oil, it is suggested that an exemption be granted to the tin-plate industry by inserting at the end of the paragraph imposing the tax the following clause:

"No tax shall be imposed under this section on the use of palm oil in the manufacture or production of tin plate."

BRIEF OF CHARLES W. HOLMAN, SECRETARY OF THE NATIONAL COOPERATIVE MILK PRODUCERS FEDERATION

I am secretary of the National Cooperative Milk Producers Federation, the largest and oldest national agricultural-commodity organization in the United States. The federation is an incorporated body, incorporated in 1917 in Illinois as a nontrading organization. The federation is composed of 51 member associations all of which are farmer-owned and farmer-controlled cooperative marketing associations with a membership totaling approximately 360,000 dairy farmers residing in 41 of the 48 States. I am filing herewith a list of the member associations:

Berrien County Milk Producers Association, Benton Harbor, Mich.
California Milk Producers Association, Los Angeles, Calif.
Cedar Rapids Cooperative Dairy Co., Cedar Rapids, Iowa.
Challenge Cream & Butter Association, Los Angeles, Calif.
Champaign County Milk Producers, Champaign, Ill.
Colorado Dairymen's Cooperative, Inc., Denver, Colo.
Connecticut Milk Producers Association, Hartford, Conn.
Cooperative Milk Producers Association for San Francisco, Inc., San Francisco, Calif.
Cooperative Pure Milk Association of Cincinnati, Cincinnati, Ohio.
Coos Bay Mutual Creamery Co., Marshfield, Ill.
Dairy & Poultry Cooperatives, Inc., Chicago, Ill.
Dairymen's Cooperative Sales Association, Pittsburgh, Pa.
Dairymen's League Cooperative Association, Inc., New York, N.Y.
Des Moines Cooperative Dairy Marketing Association, Inc., Des Moines, Iowa.
Dubuque Cooperative Dairy Marketing Association, Inc., Dubuque, Iowa.
Evansville Milk Producers Association, Evansville, Ind.
Falls Cities Cooperative Milk Producers Association, Louisville, Ky.
Illinois-Iowa Milk Producers Association, Davenport, Iowa.
Illinois Milk Producers Association, Peoria, Ill.
Indiana Dairy Marketing Association, Muncie, Ind.
Interstate Associated Creamieries, Portland, Oreg.
Inter-State Milk Producers Association, Inc., Philadelphia, Pa.
Land O'Lakes Creameries, Inc., Minneapolis, Minn.
McLean County Milk Producers Association, Bloomington, Ill.
Maryland & Virginia Milk Producers Association, Washington, D.C.
Maryland State Dairymen's Association, Baltimore, Md.
Miami Valley Cooperative Milk Producers Association, Dayton, Ohio.
Michigan Milk Producers Association, Detroit, Mich.
Mid-West Producers Creameries, Inc., Indianapolis, Ind.
Milk Producers Association of San Diego County, San Diego, Calif.
Milk Producers Association of Summit County and Vicinity, Akron, Ohio.
Milwaukee Cooperative Milk Producers, Milwaukee, Wis.
National Cheese Producers Federation, Plymouth, Wis.
Nebraska-Iowa Non-Stock Cooperative Milk Association, Omaha, Nebr.
New England Milk Producers Association, Boston, Mass.
Northwestern Cooperative Sales Company, Toledo, Ohio.
O.K. Cooperative Milk Association, Oklahoma City, Okla.
Pure Milk Association, Chicago, Ill.
Pure Milk Producers Association, Kansas City, Mo.
Richmond Cooperative Milk Producers Association, Richmond, Va.
St. Joseph (Mo.) Milk Producers Association, St. Joseph, Mo.

Sanitary Milk Producers, St. Louis, Mo.
Scioto Valley Cooperative Milk Producers Association, Columbus, Ohio.
Shelby County Milk Producers Association, Memphis, Tenn.
Stark County Milk Producers Association, Canton, Ohio.
Tillamook County Creamery Association, Tillamook, Oreg.
Tulsa Milk Producers Cooperative Association, Tulsa, Okla.
Twin City Milk Producers Association, St. Paul, Minn.
Twin Ports Cooperative Dairy Association, Superior, Wis.
United Dairymen's Association, Seattle, Wash.
Valley of Virginia Cooperative Milk Producers Association, Harrisonburg, Va.

The federation fully endorses section 602 of the Revenue bill of 1934 (H.R. 7835) as it passed the House of Representatives, and further endorses the amendment to this section which has been proposed on the floor of the Senate by Senator Connally, levying a similar excise tax of 5 cents per pound on palm oil, palm-kernel oil, sunflower oil imported fish oils and imported marine animal oils.

This position is predicated upon principles which the federation has advocated continuously since its inception:

1. The dairy farmers of the United States should not be forced to compete on the domestic market with an inferior substitute product made almost entirely of cheap foreign ingredients, and especially they should not be asked to reduce and limit production to domestic requirements unless they are assured of the domestic market.

2. Such a high degree of interchangeability exists as between different oils and fats in practically all uses that competition between them is almost entirely on the basis of price. Therefore the price level of all oils and fats is determined by the prices paid for those oils used in the cheapest way, which in most cases is in soap manufacture.

3. Dairy farmers are vitally interested in the profits and welfare of cotton farmers, hog and lard producers, beef-cattle farmers, and other producer groups because all of these producers are pottntial dairymen, and when dairy prices are high relative to prices for other agricultural products there is a considerable shift of other farmers into dairying and a consequent lowering of dairy-products prices.

THE OILS AND FATS SITUATION IN THE UNITED STATES

A summary of the general situation of all oils and fats in the United States is presented in tabular form in table I attached hereto. We consume in the United States every year a little less than 8,000,000,000 pounds of oils and fats, including lard and butter. We produce in this country from domestic raw materials approximately 7,000,000,000 pounds of oils and fats per year. Of this amount, however, between three fourths and one billion pounds are exported.

Since 1924 we have been on a deficit basis with respect to oils and fats; in other words, since that time domestic production has fallen below apparent consumption. This deficit has reached almost a billion pounds in the last few years. In fairness to domestic producers, however, it must be said that at the present time there are relatively heavy storage stocks of all domestic oils and fats in the warehouses and factories of the country. Total stocks of all oils and fats on December 31, 1933, totaled almost two and a half billion pounds.

During the last few years imports of oils and fats into this country have been between one and one half and two billion pounds per year. Practically all of the imported oils are used in industrial or factory consumption; that is, they are not consumed by the public in their original form. (See table II.)

The imports of the oils on which we are supporting an excise tax are shown in table III attached hereto. Imports of coconut oil have increased from 94,000,000 pounds in 1913, to 732,000,000 pounds in 1933. Palm oil imports increased from 54,000,000 pounds in 1913, to 287,000,000 pounds in 1932. Sesame oil imports, which were negligible prior to 1933, totaled 21,000,000 pounds in 1933.

TABLE I.—*Competitive oils and fats situation in the United States*

[All data in millions of pounds]

	1914	1919	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933 [1]
Production from domestic and imported raw material:															
Vegetable oils	2,455	2,315	2,018	1,747	2,025	2,222	2,651	2,924	3,048	2,736	2,941	2,698	2,539	2,381	2,350
Animal and fish oils, fats, and greases	1,712	1,979	2,508	2,743	3,176	3,151	2,667	2,808	2,775	2,952	3,029	2,751	2,827	2,752	2,984
Butter	1,706	1,559	1,650	1,779	1,862	1,956	1,952	1,925	2,096	2,077	2,177	2,093	2,197	2,260	2,300
Total	5,873	5,853	6,176	6,269	7,063	7,329	7,270	7,657	7,919	7,765	8,147	7,542	7,563	7,393	347,6
Production from domestic raw materials:															
Production from domestic and imported materials	5,873	5,853	6,176	6,269	7,063	7,329	7,270	7,657	7,919	7,765	8,147	7,542	7,563	7,393	7,634
Less oils content of imported raw materials [2]	146	496	421	507	774	589	647	809	789	711	884	683	682	478	742
Total production from domestic materials	5,727	5,357	5,755	5,762	6,289	6,740	6,623	6,848	7,130	7,054	7,263	6,859	6,881	6,915	6,892
Imports oils as such:															
Vegetable oils	289	871	400	651	659	600	740	773	771	806	1,101	1,064	891	732	937
Animal and fish oils, fats and greases	[3] 52	68	48	78	76	84	98	120	159	155	177	145	161	108	59
Butter	--------	4	18	7	21	19	7	11	8	4	3	2	2	1	1
Total	341	943	466	736	756	703	845	904	938	965	1,281	1,211	1,054	841	997
Oil contained in raw materials: Vegetable oils	146	496	421	507	774	589	647	809	789	711	884	683	682	478	742
Total imports, oil and oil equivalent	487	1,439	887	1,243	1,530	1,292	1,492	1,713	1,727	1,676	2,165	1,894	1,736	1,319	1,739
Exports: [3]															
Vegetable oils	235	361	272	100	75	70	87	62	97	86	66	61	47	84	88
Animal and fish fats, oils, and greases	622	1,052	1,116	1,027	1,279	1,218	938	932	907	941	1,005	806	729	677	723
Butter	4	35	8	11	6	8	5	5	4	4	4	3	2	2	1
Total exports	861	1,448	1,396	1,138	1,360	1,296	1,030	999	1,008	1,031	1,075	870	778	763	812
Potential consumption:															
Supply (total imports plus domestic production)	6,214	6,796	6,642	7,005	7,819	8,032	8,115	8,561	8,857	8,730	9,428	8,753	8,617	8,234	8,631
Less exports	861	1,448	1,396	1,138	1,360	1,296	1,030	999	1,008	1,031	1,075	870	778	763	812
Total potential consumption	5,353	5,348	5,246	5,867	6,459	6,736	7,085	7,562	7,849	7,699	8,353	7,883	7,839	7,471	7,819

[1] Preliminary, subject to revision. [2] Does not include oil from castor beans. [3] Includes butter.

Source: Compiled from official reports issued by the U.S. Department of Commerce: Foreign Commerce and Navigation of the United States and Statistics on Animal and Vegetable Fats and Oils.

NOTE.—No account is taken in this table of stocks either at the beginning or at the end of the year. Potential consumption as given here therefore indicates the trend over a period of years rather than the net use in any 1 year. The data on imports include all cocoanut oil and copra coming into the United States from the Philippine Islands.

MORE THAN TWO THIRDS OF THE IMPORTED OILS AND FATS BEAR NO FORM OF TAXATION

The large amounts of oils and fats and oil-bearing materials imported into this country every year constitute a rich source of revenue for the Government which up to the present time has not been utilized to any appreciable extent. Approximately 68.6 percent, or over two thirds of the oil imported in 1932, came in duty free. The total duties collected on the remaining 31.4 percent were $11,942,000, an average of less than 3 cents per pound. This excise tax, we feel, has a definite place in the revenue bill which is to be enacted by Congress at this time because it will provide revenue for the Government and at the same time will serve to help domestic producers who are now suffering through the competition of these foreign oils, which oils are placed in an advantageous economic position by virtue of their freedom from taxation and their unrestricted access to markets in the United States.

DIRECT COMPETITION EXISTS BETWEEN FOREIGN AND DOMESTIC OILS AND FATS IN EVERY IMPORTANT OIL- AND FAT-USING INDUSTRY

In the lard compounds and shortenings industry cottonseed oil and edible tallow compete with imported coconut, palm oil, sesame oil, and fish oils. All lard compounds incidentally compete directly with lard. Oleomargarines compete with butter. In the manufacture of oleomargarine, oleo oil, neutral lard, cottonseed oil, peanut oil, and corn oil compete with coconut oil, palm-kernel oil, sesame oil, etc. In the soap industry tallow, greases, cottonseed oil, soy-bean oil, and domestically produced fish and marine animal oils compete with imported coconut oil, palm-kernel oil, palm oil, olive-oil foots, and imported fish and marine animal oils.

TABLE II.—*Factory consumption of fats and oils in the United States, 1932*

	Total consumed	Thousands of pounds consumed in—				Other inedible uses	Percentage of total consumed in—				Other inedible products
		Oleomargarine	Lard compounds and shortenings	Other edible products	Soap		Oleomargarine	Lard compounds and shortenings	Other edible products	Soap	
Selected foreign oils:											
Coconut oil	549,515	123,219	8,332	40,853	353,527	23,584	22.4	1.5	7.4	64.3	4.4
Sesame oil	10,514	----------	7,797	132	1,871	714	----------	74.2	1.3	17.8	6.7
Palm-kernel oil	16,615	----------	----------	11,310	3,565	1,740	----------	----------	68.1	21.5	10.4
Palm oil	208,547	262	22,126	415	168,009	17,735	0.1	10.6	0.2	80.6	8.5
Other vegetable oils	9,205	----------	957	172	6,059	2,017	----------	10.4	1.9	65.8	21.9
Largely foreign oils: Marine animal oils	51,974	----------	2,185	----------	48,944	845	----------	4.2	----------	94.2	1.6
Domestic oils and fats:											
Cottonseed oil	1,083,959	15,096	834,367	100,129	3,583	130,784	1.4	77.0	9.2	0.3	12.1
Corn oil	42,414	54	3,067	27,330	2,532	9,431	0.1	7.2	64.4	6.0	22.3
Soybean oil	25,269	3	4,889	180	5,571	14,626	----------	19.3	0.7	22.[illegible]	57.9
Peanut oil	8,608	2,512	3,502	1,180	290	1,124	29.2	40.7	13.7	3.4	13.0
Lard	19,340	9,413	5,636	3,951	----------	340	48.7	29.1	20.4	----------	1.8
Animal stearin	24,251	3,684	17,357	2,243	374	593	15.2	71.6	9.2	1.5	2.5
Oleo oil	15,765	12,455	1,134	80	260	1,836	79.0	7.2	0.5	1.6	11.7
Tallow, edible	48,555	----------	45,708	574	1,969	304	----------	94.1	1.2	4.1	0.6
Tallow, inedible	585,896	----------	----------	----------	549,186	36,710	----------	----------	----------	93.7	6.3
Greases	202,860	----------	----------	----------	143,724	59,136	----------	----------	----------	70.8	29.2
Largely domestic oils: Fish oils	93,685	----------	11,520	----------	49,091	33,074	----------	12.3	----------	52.4	35.3
All oils and fats	3,355,555	166,698	968,577	190,065	1,375,416	654,799	5.0	28.9	5.7	41.0	19.4

Source: Based on data released by U.S. Department of Commerce, Bureau of the Census.

TABLE III.—*Imports for consumption of selected oils and fats* [1]

[All data in thousands of pounds]

	1913	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933 [2]
Coconut oil	93,795	443,550	351,895	308,989	396,762	391,662	408,133	461,867	533,416	577,497	606,951	771,666	693,016	619,312	534,815	732,427
As oil	72,196	281,063	216,327	189,717	227,320	181,882	224,763	232,499	245,129	293,370	290,697	411,979	317,952	330,175	249,143	316,078
As copra	21,599	162,487	135,568	119,272	169,442	209,780	183,370	229,368	288,287	284,127	316,254	359,687	375,064	289,137	285,672	416,349
Sesame oil	------	4,722	807	89	64	8,702	7,843	4,295	8,862	1,704	6,264	21,585	10,783	68,368	9,663	21,318
As oil	------	4,722	807	89	64	8,702	7,843	4,295	8,862	1,704	6,264	21,585	10,783	64	72	2
As seed	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	68,304	9,591	21,316
Palm-kernel oil	27,746	4,439	5,421	2,486	1,802	332	4,755	52,650	75,159	43,169	53,886	69,957	45,893	38,573	15,781	19,632
As oil	27,746	1,929	1,694	2,383	1,715	------	4,748	52,624	74,980	43,115	53,812	69,909	38,991	22,993	2,938	12,956
All nuts	------	2,510	3,727	103	87	332	7	26	179	54	74	48	6,902	15,580	12,843	6,676
Palm oil	54,072	41,818	41,948	23,155	57,515	128,495	101,780	139,179	130,747	159,911	169,228	261,816	287,492	258,145	217,167	287,483
Sunflower-seed oil	(3)	(3)	(3)	8,492	6	2,697	518	205	118	469	1,093	770	118	25,928	93,221	23,849
As oil	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	25,734	12,937	23,849
As seed	(3)	(3)	(3)	8,492	6	2,697	518	205	118	469	1,093	770	118	194	284	(3)
Marine animal oils	1,981	4,844	1,399	2,771	32,594	29,813	38,057	55,495	40,279	55,126	51,591	59,112	55,712	83,996	43,946	5,228
Fish oil [4]	5,133	4,239	4,417	4,358	4,912	8,130	8,141	6,991	19,452	43,935	42,210	42,938	34,386	34,748	17,367	1,635

Source: U.S. Department of Commerce, Foreign Commerce and Navigation of the United States.

[1] "Total imports" minus "entry for warehouse" plus "withdrawals from warehouse."
[2] Preliminary, general import figure, not strictly comparable, Monthly Summary of Foreign Commerce, U.S. Department of Commerce.
[3] Not separately reported.
[4] Excludes cod oil and cod-liver oil.

The reason for this competition lies in the fact that all of these oils have similar characteristics and in practically all cases are interchangeable for each other. In many cases the interchangeability is not direct, but involves the competition between two types of grades of a given product. Coconut oil, for example, does not compete directly with oleo oil and neutral lard in the making of certain types of oleomargarine, but the two types of oleomargarine compete and are interchangeable; therefore, the oils may be said to be interchangeable in the manufacture of this product. The same thing is true in the case of soap, particularly between white and yellow laundry soaps.

Manufacturers of products in which certain oils—coconut oil, for example—are important ingredients declare that there is a consumer preference for the product which they manufacture from that particular oil. As a matter of fact, undoubtedly a large portion of this consumer preference has been built up through advertising campaigns which they have been able to carry on at considerable expense because they have been able to get that oil at a cheaper price. Oleomargarine, for example, which is made out of coconut oil, sells at a price from 1 to 3 cents lower than oleomargarine made of animal oil. It cannot be definitely said, therefore, that the increased use of vegetable oleomagarine is due to a taste preference rather than to the difference in price.

The fact that oils and fats are so interchangeable places the competition between them almost solely on the basis of relative prices. This means that when one of two oils which may be used for practically the same purpose is relatively high in price very little of this oil will be used. Coconut oil and palm-kernel oil are the classic example of almost perfect interchangeability, yet coconut oil because of its lower price is consumed in much larger quantities. The increased use of coconut oil in soap and in margarine, its two principal uses, is closely related to the changes in coconut-oil prices as compared with prices of oleo oil, neutral lard, cottonseed oil, tallow, etc., which have taken place during the last few years.

The following comparative prices and relative consumption of selected oils show clearly what changing price relationships mean to the use of domestic oils and fats:

	Price (cents per pound)		Percentage of total consumption of oils used	
	1914	1930	1914	1929
SOAPMAKING				
Coconut oil, crude, Pacific coast	12.2	5.9	13.4	21.3
Cottonseed oil, prime summer yellow, New York	6.6	8.1	14.6	.5
OLEOMARGARINE				
Coconut oil, crude, Pacific coast	12.2	5.9	.3	66.8
Oleo oil	10.9	10.5	49.7	12.0
Neutral lard	11.4	12.1	15.0	3.3

U.S. Tariff Commission Report to Congress, March 1932.

Excerpts from the report of the United States Tariff Commission pursuant to Senate Resolution No. 323, Seventy-first Congress, March 1932, revealed the extent to which many of the oils included in section 602 of the Revenue Act of 1934 and in the amendment proposed thereto are interchangeable with domestically produced oils and fats.

"Sesame oil is used in the United States as a salad oil and cooking oil and in lard compounds. In all these uses it makes products substantially similar in characteristics to those made with domestic cottonseed, peanut, and corn oils. Most of the 25,215,000 pounds of sesame which were used for food purposes in 1929 may be considered as technically interchangeable with the 3 domestic oils named" (p. I–26).

"Both palm oil and whale oil are used in the United States mainly in soaps. In that use both of them have characteristics similar to inedible tallow with which they are technically interchangeable in making certain types of soaps. * * * Practically the whole of the 253,000,000 pounds of these

oils used in the soap industry in 1929 may be taken as technically interchangeable with domestic inedible tallow" (p. I-26).

"Coconut oil is used in the margarine industry as a principal ingredient for vegetable-oil margarines, and no other oil which has been tried on a commercial scale has proved as satisfactory in making this type of margarine. But vegetable-oil margarine is to a large degree interchangeable with animal-oil margarine and therefore coconut oil may be said to be interchangeable with the principal ingredients of such margarines; that is, with oleo oil, neutral lard, cottonseed, or peanut oil" (p. I-28).

"Although coconut oil (or palm kernel) is an important ingredient in most types and grades of soaps now on the market, it is used in somewhat varying proportions by different manufacturers and in different types and grades by the same manufacturers. By varying, within limits, the other ingredients, approximately the same results may be obtained by somewhat more or less coconut oil. The tendency is for him to increase or decrease the amount of coconut oil used according to the price position of coconut oil with relation to other oils. The proportions of coconut oils used in the last decade perhaps do not represent the minimum for soaps of the grades and character now being made. If for any reason it should come to occupy a less advantageous price position, it seems likely that domestic soap manufacturers to some extent would economize in its use. * * * Before the war the industry as a whole used about 12 percent of coconut and palm-kernel oils; in recent years it has used about 24 percent. This increase has been due partly to changes in the kinds of soap demanded by consumers and partly to the economic factors which have given to coconut oil a favorable price position with reference to oils which might be partially substituted for it" (p. IV-50).

"Cottonseed oil * * * makes a somewhat softer soap * * * but one with greater solidarity and better lathering qualities than any oil except coconut and palm kernel. Its lather is quick, abundant, thick, and fairly lasting, much more lasting than that of coconut-oil soap. * * * Cottonseed oil, however, has a tendency towards rancidity which even with the utmost care cannot be entirely overcome. This has prevented its use to any considerable extent in toilet soaps, but is no bar to its use in laundry soaps in which the larger admixture of sodium silicate acts as a preservative. * * * Tallow and cottonseed oil together in about equal proportions make a satisfactory white laundry soap without the admixture of any other oil, but with the usual admixture of sodium silicate. * * * Changes in its economic position rather than any lack of suitability for soapmaking is the cause of the decline in its (cottonseed oil) use in the unhydrogenated condition in the soap kettle" (p. IV-54).

The price relationships which are referred to in the above analysis are fairly illustrated in table IV and charts 1, 2, and 3, of which copies are attached. Table IV shows the prices of selected oils from 1922-33, inclusive, illustrating the extent to which all oils and fat prices move together. Chart 1 shows the close relationship between prices for 88-score butter and for the different types of oleomargarine and also the very close relationships which exist between the ingredients which are used more or less interchangeably in the manufacture of oleomargarine. Chart 2 shows the same thing for lard and lard compound and the principal oils and fats used in the manufacture of lard compound. Chart 3 shows the prices of some of the oils used in the manufacture of soap. Prices of the various oils and fats show a common trend in all cases. Whenever the price of one becomes unduly high, others which are cheaper are substituted. The price of no one ingredient can depart from the general trend for any great period. Interchangeability keeps the price of each of them closely related to the general price trend of all of them.

TABLE IV.—*Prices of oils and fats*

[Prices in cents per pound]

Product		1933 [1]	1932 [2]	1931	1930	1929	1928	1927	1926	1925	1924	1923	1922
Coconut oil:													
Edible, f.o.b. chicago	in bbls	5.9	[1] 5.9	[1] 6.9	[1] 8.6	[1] 10.1	[1] 11.0	[1] 10.9	[3] 12.5	[3] 12.9	[3] 11.3	[3] 10.7	[3] 10.3
Crude, Manila, f.o.b. New York	do	4.2	4.5	5.3	7.3	8.5	9.5	9.7	10.7	11.5	10.1	9.5	8.6
Crude, Manila, f.o.b. Pacific Coast	in tanks	3.0	3.3	3.9	5.9	7.1	8.1	8.3	9.4	9.8	8.6	8.2	8.4
Sesame oil, refined, yellow, f.o.b. New York	in bbls	9.5	8.5	10.0	11.5	12.5	13.8	13.0	13.7	14.8	12.4	13.3	15.3
Palm kernel oil, denatured, f.o.b. New York	do	4.3	4.8	5.5	6.8	8.4	9.1	9.1	10.0	10.3	9.3	8.7	8.6
Palm oil:													
Lagos, f.o.b. New York	in casks	3.8	3.7	4.7	6.5	8.2	8.1	8.0	8.6	9.3	8.2	7.6	7.4
Niger, f.o.b. New York	do	3.2	2.9	3.9	5.7	7.4	7.3	7.1	8.0	8.6	7.5	7.3	6.3
Herring oil, f.o.b. Pacific Coast	in tanks	2.2	2.1	2.9	3.1	5.3	5.3	5.6	6.3	5.9	5.9	5.6	4.6
Menhaden oil:													
Southern crude, f.o.b. Baltimore	do	1.8	1.9	2.6	3.3	6.2	5.5	6.0	6.4	7.1	6.6	6.4	5.4
Light pressed refined, f.o.b. New York	in bbls	4.9	4.2	4.5	7.0	9.2	8.1	8.0	8.6	9.9	8.3	9.4	7.6
Sperm oil, bleached, f.o.b. New York	do	------	8.5	10.8	11.2	11.2	11.2	11.2	11.2	11.2	10.7	12.1	20.2
Whale oil:													
Crude No. 1, f.o.b. Pacific Coast	in tanks	4.0	4.0	4.0	5.8	7.1	7.3	7.6	7.7	7.2	7.2	6.6	5.5
Bleached, winter, f.o.b. New York	in bbls	7.1	7.4	9.1	10.6	10.7	10.7	10.7	10.7	10.5	10.3	10.3	9.9
Cottonseed oil:													
Refined, prime summer yellow, f.o.b. New York	do	4.5	3.8	6.2	8.2	9.6	9.8	9.5	11.6	10.7	11.2	11.9	10.2
Prime crude, f.o.b. Atlanta	do	3.5	3.1	5.4	6.8	8.1	8.3	8.2	9.9	9.3	9.2	9.8	8.6
Corn oil:													
Refined, f.o.b. New York	do	6.9	6.1	9.0	------	------	------	11.6	13.5	13.2	13.1	12.5	11.7
Crude, f.o.b. New York	do	5.9	5.1	7.5	9.5	10.3	10.5	10.8	12.1	12.1	12.0	11.6	10.0
Peanut oil:													
Domestic, refined, f.o.b. New York	do	9.6	[1] 10.0	[1] 12.3	[1] 12.5	[1] 13.3	[1] 13.5	[1] 14.4	15.7	15.5	15.1	16.3	12.5
Crude, f.o.b. mills	in tanks	4.0	3.7	6.2	7.2	9.0	9.6	11.2	12.2	10.7	11.8	14.6	11.2
Soybean oil:													
Domestic refined, f.o.b. New York	in bbls	6.5	[1] 4.9	[1] 7.6	[1] 11.0	[4] 13.4	[4] 13.3	[4] 13.7	[4] 14.3	[4] 14.4	[4] 13.5	[4] 12.4	[4] 11.6
Crude, f.o.b. New York	do	5.9	4.4	5.9	9.5	11.9	12.2	12.0	13.5	13.2	12.4	11.7	10.1
Lard, neutral, f.o.b. New York	in tierces	6.8	6.5	9.8	12.3	13.5	13.7	14.3	17.1	19.1	15.6	14.4	13.1
Stearin, f.o.b. New York	in bbls	5.0	5.2	7.4	8.8	10.5	10.7	10.5	12.2	13.1	11.6	10.5	9.6
Tallow:													
Edible, f.o.b. New York	in drums	4.1	3.8	------	------	------	------	8.8	9.9	11.0	9.6	9.0	8.3
Special loose, f.o.b. New York	in bbls	3.0	2.7	3.3	5.5	7.9	8.5	7.8	8.4	9.4	8.1	7.7	6.7
Oleo oil:													
No. 1, f.o.b. New York	do	6.4	[1] 6.3	7.3	11.0	11.2	13.9	14.1	12.7	14.2	15.9	13.4	11.5
No. 2, f.o.b. New York	do	5.7	5.6	6.7	10.0	10.4	12.7	12.8	11.7	13.2	13.0	10.6	10.1

Source: Oil, Paint and Drug Reporter; average of monthly high and low prices as reported in Annual Issues, simple average of monthly prices.

[1] No annual issue available, average of weekly prices for each month.

[2] No annual issue available, average of price on Monday nearest 15th of month.

[3] F.o.b. New York.

[4] Imported refined, domestic not available.

The inevitable conclusion of the analysis given above is that so long as coconut oil, palm oil, palm-kernel oil, sesame oil, etc., are allowed to come into the United States in unlimited quantities and to sell for prices unbelievably low, it will be impossible to raise the price which the domestic producer gets for his oils and fats without practically excluding the use of domestic oils in American industry. Immediately as the price of the domestic oil goes up it will be replaced by a cheap foreign counterpart. It is impossible to raise the price of a particular oil or fat unless all other oil or fat prices are raised at the same time. Therefore, until prices of foreign oils and fats are raised the domestic producer must accept a price far below his cost of production.

DAIRY FARMERS HAVE A VITAL INTEREST IN THE QUESTION OF OILS

The Division of Statistical and Historical Research of the Bureau of Agricultural Economics of the United States Department of Agriculture in a recent study of the oils and fats problem released a table which shows the cash income from farm production of selected products used in the manufacture of fats and oils. A copy of this table is shown below:

Commodity	1929	1932	Commodity	1929	1932
	1,000 dollars	*1,000 dollars*		*1,000 dollars*	*1,000 dollars*
Flaxseed	38,311	9,153	Hogs, 10 percent	128,635	42,834
Cottonseed	143,695	34,155	Butterfat and farm butter	630,852	263,470
Soybeans	5,582	1,866			
Peanuts	30,400	11,522	Total	988,235	367,862
Cattle and calves, 1 percent	10,860	4,862			

Division of Statistical and Historical Research.

OLEOMARGARINE, LARGELY THE PRODUCT OF FOREIGN FATS, UNDERMINES BUTTER CONSUMPTION AND PRICES

Undoubtedly the most direct way in which the oils and fats situation concerns the dairy farmer is through the competition between butter and oleomargarine.

Oleomargarine is the product of inferior quality manufactured to sell as a substitute for butter at a price considerably lower than that of butter. Among the oils and fats users there are a number of consumers who may be considered as on the border line between consuming butter and consuming oleomargarine, the inferior product. When butter prices are high relatively to oleomargarine prices, these people will consume oleomargarine, and when the reverse is true, the purchasing power is reverted to butter. During the last few years, and particularly during the last year, this competition between oleomargarine and butter has reached a stage where it has been disastrous to the dairy farmer.

Under the Agricultural Adjustment Act, which was passed by a special session of this Congress in May 1933, it is the declared policy of Congress to raise the prices of dairy products to a level which will give the d iry farmers of the Nation the same purchasing power as in 1909–14. Since the passage of this act there have been two instances where butter prices have been raised, not to that level but in that direction. The first of these began in May and continued until the middle of July, when the market broke because consumption had decreased and the price-depressing surplus rapidly piled up. The second price-raising effort began about the middle of August and continued until the middle of December, when the Secretary of Agriculture, who was controlling an operation to remove surplus stocks, suddenly terminated the operations and the market broke again. While both of these price-raising efforts were in operation, oleomargarine prices were maintained at the same level, except during November and December, when they dropped around 2.4 cents per pound. During the year as a whole oleomargarine prices averaged 42 percent of butter prices. This is one of the lowest, if not the lowest, ratio in history, the average relationship being about 50 percent. Butter consumption during 1933 was approximately 51,000,000 pounds below that of 1932. Approximately 45,000,000 pounds of this decrease may be accounted for in increased oleomargarine sales encouraged by the wider spread in the prices of the two products.

Oleomargarine is essentially a foreign product. During the fiscal year 1932-33 over 75 percent of the oils and fats used in the manufacture of oleomargarine were imported. Coconut oil alone represented 75.01 of the total. This condition represents a radical change from conditions before and during the war, when oleomargarine was almost entirely a domestic product. The change in ingredients and the accompanying change in the type of oleomargarine manufactured are shown in tables V and VI, which are attached.

TABLE V.—*Trend of perentage to total fats and oils of various fats and oils used in oleoargarine production* [1]

INGREDIENTS OF DOMESTIC ORIGIN

Year	Oleo oil	Cotton-seed oil	Peanut oil	Oleo stearin	Neutral lard	Oleo stock	Butter	Corn oil	Edible tallow	Total domestic fats and oils
1917-18	34.73	13.14	7.78	1.24	16.47	2.71	1.64	0.02	--------	77.73
1918-19	32.06	12.45	12.75	.81	15.05	2.09	1.87	.01	--------	77.09
1919-20	28.82	12.66	15.51	.68	12.34	1.86	2.20	.01	--------	74.08
1920-21	20.97	7.82	6.90	2.05	12.36	.87	.63	.39	0.100	52.10
1921-22	25.03	9.42	7.10	2.79	16.53	1.31	.68	--------	--------	62.86
1922-23	26.03	10.47	3.86	2.69	16.50	1.30	.88	--------	--------	61.73
1923-24	25.53	10.08	2.76	2.60	15.73	1.85	.93	.22	.010	59.21
1924-25	23.77	11.30	2.37	2.83	13.84	1.72	.81	.11	.060	56.80
1925-26	22.14	11.96	2.45	2.48	11.75	1.44	1.09	.08	.040	53.44
1926-27	22.10	10.60	2.22	2.33	11.28	1.16	.94	.08	.100	50.80
1927-28	17.99	9.82	2.17	2.19	9.91	.69	.98	.02	.030	43.78
1928-29	16.35	9.76	2.29	2.03	8.38	.45	.90	--------	.010	40.18
1929-30	15.22	10.15	1.92	2.11	6.60	.40	.88	--------	.005	37.28
1930-31	11.96	9.40	2.25	2.35	4.35	.44	.43	.07	--------	31.25
1931-32	8.59	8.35	2.12	2.44	5.93	.36	.02	.04	--------	27.84
1932-33	6.96	8.95	1.30	1.84	5.10	.32	.01	.06	--------	24.55

INGREDIENTS OF FOREIGN ORIGIN

Year	Coconut oil	Soybean oil	Mustard seed oil	Palm oil	Palm-kernel oil	Sesame oil	Sunflower-seed oil	Derivative of glycerin	Miscellaneous	Total foreign fats and oils
1917-18	22.26	--------	--------	--------	--------	--------	--------	--------	0.01	22.27
1918-19	22.91	--------	--------	--------	--------	--------	--------	--------	.004	22.91
1919-20	25.92	--------	--------	--------	--------	--------	--------	--------	.005	25.92
1920-21	43.53	0.19	0.05	--------	--------	--------	--------	--------	4.13	47.90
1921-22	35.06	--------	--------	--------	--------	--------	--------	--------	2.09	37.14
1922-23	36.64	--------	--------	--------	--------	--------	--------	--------	1.63	38.27
1923-24	40.57	--------	.02	--------	--------	--------	--------	--------	.21	40.79
1924-25	42.82	--------	.01	--------	--------	--------	--------	--------	.37	43.20
1925-26	45.90	--------	.02	--------	--------	--------	--------	--------	.64	46.56
1926-27	48.78	.01	.02	0.27	0.02	0.06	0.03	--------	--------	49.20
1927-28	55.75	--------	.02	.38	.05	.02	--------	--------	--------	56.22
1928-29	59.35	--------	.004	.47	.005	--------	--------	--------	--------	59.82
1929-30	62.11	.21	.02	.37	.001	--------	--------	0.02	--------	62.72
1930-31	66.46	.96	.02	1.18	--------	.04	--------	.08	.004	68.75
1931-32	71.71	.01	.001	.18	--------	.11	--------	.14	.004	72.16
1932-33	75.01	.004	--------	.21	--------	--------	--------	.20	.02	75.45

[1] Excludes milk, salt, coloring, and soda.

Source: Calculation based on reports of the Commissioner of Internal Revenue. This data is for the fiscal year ending June 30.

TABLE VI.—*Oleomargarine production in the United States*

[Source: Bureau of Agricultural Economics, U.S.D.A.]

[Date in pounds]

Calendar year	Oleomargarine (uncolored)			Oleomargarine (colored)			Total
	Combined animal and vegetable oil	Exclusive vegetable oil	Exclusive animal oil	Combination animal and vegetable oil	Exclusive vegetable oil	Exclusive animal oil	
1916	177,264,474	1,941,932	15,479,588	7,198,937	----------	558,130	202,444,061
1917	254,440,884	21,803,432	7,562,741	6,958,211	725	136,389	290,902,932
1918	255,196,572	88,861,472	3,306,671	7,056,442	112,494	1,002,804	355,536,515
1919	214,759,089	132,906,154	3,391,206	9,302,681	9,792,694	1,165,303	371,317,187
1920	161,635,651	190,280,496	3,842,743	8,950,553	5,359,139	94,343	370,162,925
1921	103,962,485	99,264,562	624,209	5,959,743	2,020,280	29,744	211,867,023
1922	104,234,528	74,126,515	303,048	4,975,851	1,383,847	1,391	185,075,180
1923	121,270,524	93,970,999	450,266	7,077,811	2,808,156	----------	225,577,756
1924	119,641,039	97,871,018	412,579	7,847,031	3,259,408	----------	229,031,075
1925	109,588,467	108,490,357	74,174	8,243,061	4,215,277	----------	230,611,336
1926	108,869,882	116,214,944	----------	8,575,278	4,933,735	----------	238,593,839
1927	109,470,913	148,575,922	----------	9,507,959	5,047,054	----------	272,601,848
1928	101,731,908	190,788,586	----------	9,888,586	5,524,604	----------	307,933,684
1929	109,502,486	215,460,393	----------	11,095,796	6,171,691	----------	342,230,366
1930	87,016,756	211,130,176	----------	8,859,055	4,748,908	----------	311,754,895
1931	52,876,380	162,931,150	----------	3,995,651	2,150,227	----------	221,953,408
1932	38,603,566	155,674,544	----------	2,467,070	970,868	----------	197,716,048
1933	40,719,206	199,008,664	----------	1,800,690	702,813	----------	242,231,373

The reason for this shift and the reason that oleomargarine manufacturers have been able to cut prices and to undermine butter consumption lies almost solely in the extremely low prices at which unlimited supplies of coconut oil have been available in the United States. The approximate cost of making a pound of oleomargarine with oils at their present level of prices is 4.4 cents (see table VII). The parity price for butterfat with the cost of living at its present level is approximately 31 cents per pound. In view of the fact that the normal price relationship between oleomargarine and butter is 2 to 1, this comparison illustrates vividly how impossible it will be to raise butter prices to this level unless some action is taken whereby oils and fats prices are also raised or whereby oleomargarine production may be restricted.

TABLE VII

OLEOMARGARINE FORMULA CONTAINING VEGETABLE OILS [1]

Coconut oil, Manila, in barrels, 800 pounds, at 4.2 cents	$33.60
Peanut oil, domestic refined, in barrels, 100 pounds at 9.6 cents	9.60
Palm oil, Lagos, in casks, 100 pounds at 4 cents	4.00
Milk, 300 pounds at 1 cent	3.00
Salt, 35 pounds at 1 cent	.35
Total cost	50.55

DAIRY FARMERS ARE DIRECTLY INTERESTED IN THE WELFARE AND PROFITS OF COTTON, BEEF CATTLE, PEANUT, CORN, HOG, AND OTHER FARMERS IN THE UNITED STATES

Any measure which increases the price of cottonseed, lard, peanuts, tallow, or any other farm product will work to the direct benefit of the dairy farmer, because it will retard a shift of these farmers into dairying, a shift that has been going on at an alarming rate in recent years. The number of dairy cows

[1] Formula taken from hearings before Committee on Agriculture, House of Representatives, Seventy-first Congress, third session, serial T, part 1, 1931. All prices are average for the year 1933. Prices of oils from Oil, Paint and Drug Reporter, average of monthly prices 1933. Price of milk from U.S. Department of Agriculture, price paid by condensaries. Price of salt from U.S. Department of Labor Wholesale Price Bulletin.

NOTE.—When churned this will produce about 1,150 pounds of finished product. Therefore, the cost of raw material going into 1 pound of oleomargarine is 4.4 cents.

on farms reached an all-time record on January 1, 1934, when there wer slightly over 26,000,000 dairy cows. This represents an increase of abo 4,000,000 since January 1, 1928. As between different sections of the count. the increases were relatively greater in the South Central States, where cotto is the principal farm enterprise and where dairying is normally rather unim portant on a commercial scale. There were also notable increases in the We North Central States, particularly Iowa and Illinois, the heaviest producers corn and hogs and lard. Over this 6-year period the number of dairy cow increased 26.5 percent i the South Central States and 21.6 percent in the Wes North Central States. The increase for the Nation as a whole was 17.8 pe cent (see table VIII).

There is no question but that this increase in cow numbers is responsible fo a large part of the increase in the production of dairy products in the last fe years, which has combined with a lowered rate of consumption to force ex tremely low prices to dairy farmers. A comparison of the production of cream ery butter bears out this point. In the South Central States, for exampl butter production in 1933 was 53.1 percent greater than the average fo the 5 years from 1925 to 1929. For the United States the increase in cream ery-butter production for this period was only 17.4 percent, almost the same the increase in cow numbers. This indicates also that not only have thes cotton farmers been buying more cows but that they have been turning an increasing quantity of the milk produced into commercial channels.

TABLE VIII

(a) Cows and heifers two years old and over kept for milk

Region	Jan. 1, 1928 [1] (number)	Jan. 1, 1934 [2] (number)	Increase	
			Number	Percen
North Atlantic	2,992,000	3,274,000	282,000	9.
East North Central	5,263,000	6,084,000	821,000	15.
West North Central	6,216,000	7,556,000	1,340,000	21.
South Atlantic	1,623,000	1,832,000	209,000	12.
South Central	4,022,000	5,087,000	1,065,000	26.
Western	2,013,000	2,229,000	216,000	10.
United States	22,129,000	26,062,000	3,933,000	17.

(b) Factory production of creamery butter

Region	Average [1] 1925-29	1933 [3]	Change	Percentage change
	Pounds	*Pounds*	*Pounds*	
New England	9,933,000	3,889,000	6,044,000	60.
Middle Atlantic	24,502,000	27,295,000	2,793,000	11.
East North Central	422,212,000	467,523,000	45,311,000	10.
West North Central	731,913,000	874,504,000	142,591,000	19.5
South Atlantic	10,641,000	12,807,000	2,116,000	20.4
South Central	84,111,000	128,747,000	44,636,000	53.1
Mountain	71,766,000	86,131,000	14,365,000	20.0
Pacific	123,695,000	135,245,000	11,550,000	9.3
United States	1,478,773,000	1,736,141,000	257,368,000	17.4

[1] United States Department of Agriculture, Yearbook 1933.
[2] United States Department of Agriculture, Crops and Markets, February 1934.
[3] U.S.D.A. Market News Service, Monthly Summary of Creamery Butter and American Chees Production, January 1934.

The reason for this shift lies in the fact that dairy prices up until the last two or three years, and to some extent even then, were high relatively to prices for cotton and other farm products. This shift will be retarded when prices for these other farm products are raised. Not only will this be true but in addition the increased purchasing power of these farmers will also retard the shift even among farmers themselves away from butter consumption.

THE STATUS OF THE PHILIPPINES AND OTHER COUNTRIES FROM WHICH THESE OILS ARE IMPORTED

In view of the fact that considerable time has been devoted by those in opposition to this tax to the fact that the Philippine Islands, from which around 75 percent of the coconut oil (as oil and as copra) imported into this country comes, is flying an American flag and is legally not a foreign country, it should be called to the attention of the committee that for purposes of national recovery the Philippines have been treated by Congress as a foreign country. The agriculture of the islands does not come under the Agricultural Adjustment Act, nor are its industries subject to codes, etc., under the National Industrial Recovery Act. The continental United States must, for many purposes, be considered as distinctly apart from its protectorates, and presumably economic recovery for agriculture and industry is one of such purposes.

As representatives of the dairy farmers of the United States the federation cannot feel that it is just and proper for them to continue to receive prices far below parity and below cost of production in order that labor and agriculture in the Philippine Islands may continue to prosper and to enjoy profitable expansion year after year. The cost of farm labor in the United States has risen appreciably under the influence of the wages paid by the Civil Works Administration. Prices of feeds have risen through price-raising measures promulgated by the Agricultural Adjustment Administration. Prices of food and clothing and other manufactured products have risen through the efforts of the National Recovery Administration. [illegible] price levels have risen through revaluation of the American dollar. None of these changed conditions obtain in the Philippine Islands, and they are able to grow, ship, and sell coconut oil on the American market at the same low price which has allowed oleomargarine to hold down the price of butter and with it the prices for all milk except that used for fluid purposes; which has held down the price of many other domestically produced oils and fats which are also direct products of the American farm.

The same conditions prevail with respect to palm oil, palm-kernel oil, and the other oils on which we are asking this tax as a means of aiding agricultural recovery and of increasing Government revenue at a time when there are such heavy drains on the Federal Treasury. Beef-cattle producers who produce tallow and cotton farmers with their cottonseed are being forced to compete with labor in the East Indies, Nigeria, and Belgian Congo.

THE PROPOSED EXCISE TAX PROVIDES AN EFFECTIVE AND SURE METHOD OF RAISING THE GENERAL LEVEL OF OILS AND FATS PRICES

An excise tax levied on imported oils and fats will protect and allow an increase of a corresponding amount in the prices of domestic oils and fats. It is probable that a part of the increase may be postponed until a part of the large storage stocks of domestic oils have been reduced. The tax is not prohibitive in any sense of the word. The oil- and fat-using industries in this country are in such shape that revisions in their formulas necessary to entirely eliminate foreign fats and oils would take some little time and they will continue to use foreign oils and fats. The domestic oils and fats, however, will be in the advantageous economic position which the foreign fats and oils have enjoyed, particularly since about 1924, and within reasonable limits perference will be given to the cheaper domestic product.

When the full effects of the campaigns now under way to reduce production in practically every agricultural industry which produces oils and fats are manifest in the supply of these products, however, and as soon as the present storage stocks are reduced to normal proportions domestic oils may be expected to increase by almost the full amount of the tax. Importation of oils and fats will continue but the domestic oil will be on a basis on which it can compete in price to prevent a recurrence of a situation such as now exists, where American producers find themselves without a market for their products even when those products are selling at prices barely sufficient to cover costs of processing, marketing, and transportation.

Butter prices in December 1933 were the lowest for that time of the year in over 35 years. Cottonseed-oil prices in December 1933 were only 29.4 percent of the 1926 level; peanut-oil prices, 27.5 percent; soybean-oil prices, 32.5 percent; tallow prices, only 32.8 percent; lard prices, 30.5 percent. As com-

pared with this, the prices of all commodities in December 1933 were 62.6 percent of the 1926 level and the prices of all farm products 44.1 percent of that level (Wholesale Price Bulletin, Bureau of Labor Statistics). These data show without question that an emergency exists—that some type of action is necessary now. We are not asking tariff legislation. As a matter of fact, a tariff cannot be applied to a product of the Philippines. Instead we are asking an excise tax, a surer form of revenue, a quicker and a more effective means of assisting a price increase in products of the American farmer.

It has been estimated that in direct benefits to five producers' groups the tax will mean in increase of between $150,000,000 and $200,000,000 per year in the cash income of farmers. This benefit assumes an increase of approximately 3 cents in the price of cottonseed oil, corn oil, tallow, and lard, and an increase of from 2 to 2½ cents in the price of butter and butterfat (estimates by the National Dairy Union).

DOMESTIC USERS OF OILS AND FATS CAN EASILY ABSORB THE TAX

The manufacture of most oils and fats products is so concentrated among a few large companies that price and production may be regulated almost at will, regardless of the cost of raw materials. Wholesale prices of oleomargarine dropped 2½ cents per pound, or more than 25 percent, between September and December 1933, whereas during this time coconut-oil prices remained the same, oleo-oil prices were unchanged, and cottonseed-oil prices increased. The drop, therefore, was obviously nothing but a cut in the manufacturer's margin, and was brought about solely by them in their attempt to keep oleomargarine consumption at a high level in the face of a break in the butter market.

The soap manufacturers are not forced in this way to enter into competition with and to thrive off the price changes of another product; consequently they have been able to hold up prices even in the depression years. Not until 1932 were the wholesale prices of certain toilet and laundry soaps changed from the prices which prevailed in 1926, despite the fact that prices of all raw materials used in soap had declined over 50 percent and many over 60 percent since that time. (See table IX.)

TABLE IX.—*Wholesale prices of selected oils and fats and manufactured products*

[Prices in cents per pound]

Product	1926	1931	1932	1933	Percentage 1933 price is of 1926 price
Oils and fats:					
Coconut oil, crude, manila, at New York	10.6	5.3	4.5	4.2	39.6
Palm oil, niger, in casks, at New York	8.0	3.9	2.9	3.2	40.0
Palm kernel oil, denatured, at New York	10.0	5.5	4.8	4.3	43.0
Sesame oil, refined yellow, at New York [1]	13.7	10.0	8.5	9.5	69.3
Olive oil, prime foots, at New York [1]	8.8	5.5	4.6	5.5	62.5
Herring oil, Pacific coast [1]	6.3	3.0	2.1	2.2	34.9
Menhaden oil, crude, at Baltimore [1]	6.4	2.6	1.9	1.8	28.1
Whale oil, crude no. 1, Pacific coast [1]	7.7	4.0	4.0	4.0	51.9
Cottonseed oil, prime summer yellow, at New York	11.8	6.0	3.8	4.5	38.1
Corn oil, refined, at New York [1]	13.4	9.0	6.1	6.9	51.5
Peanut oil, refined, at New York [1]	15.7	12.3	10.0	9.6	61.1
Soybean oil, refined, at New York [1]	14.3	7.6	4.9	6.5	45.4
Neutral lard, in tierces, at New York [1]	17.1	9.8	6.5	6.8	39.8
Oleo oil, No. 1, at New York [1]	12.7	7.2	6.3	6.4	50.4
Tallow, special, loose, at New York [1]	8.4	3.3	2.7	3.0	35.7
Manufactured products:					
Soap:					
Chips, at New York	10.5	6.7	5.4	5.4	51.4
Powder, laundry, at New York	10.5	6.7	5.4	5.4	51.4
Toilet, at New York ... per cake	4.75	4.75	4.456	3.575	75.3
Laundry, at Cincinnati ... do	4.465	3.491	2.727	2.744	61.5
Laundry, at Philadelphia ... do	4.851	4.851	4.528	4.449	91.7
Oleomargarine, standard, uncolored, at Chicago	22.8	13.3	9.7	8.7	38.0
Lard, compound, in tierces [1]	13.8	9.1	6.2	7.0	50.7

[1] Prices compiled from Oil, Paint, and Drug Reporter. Other prices from Wholesale Price Bulletin, Bureau of Labor Statistics.

Those in opposition to this tax have declared that the increase in the price of coconut oil alone will add considerable to their costs and force them to charge higher prices, working hardship on all soap users, particularly laundries and hospitals. It is a matter of record that hospitals use soap which contains very small amount of coconut oil since it is irritating to the skin. Instead they use a soft oil soap which does not have this irritating effect. Translating this tax into a bar of soap shows how infinitely small the price increase will be even if we assume that it must all be manifest in the selling price. The average bar of toilet soap weighs 8 ounces, of which 45 percent is other oils and fats and 15 percent coconut oil. This means that there are 1.2 ounces of coconut oil in the average bar of toilet soap. This tax of 5 cents per pound is about 3 mills per ounce; therefore, the increase in cost will be three times 1.2, or 3.6 mills—less than one half cent per bar. Laundry soaps weigh about 11 ounces and contain 1.65 ounces of coconut oil. The increase in cost for laundry soaps, therefore, will be 4.95 mills, or less than one-half cent. During 1933 selected brands of toilet soap on which the Bureau of Labor Statistics reports prices averaged 2.74 cents per bar and laundry soaps 4.45 cents per bar. These increases in cost, therefore, are 13.6 percent for the toilet soap and 11.2 percent for the laundry soap. We contend that the soap manufacturers can easily absorb the tax and that they probably would do this rather than raise the price and cause a small decline in consumption.

Opposition was registered in the lower house by the tin-plate manufacturers to the tax on palm oil which enters into the manufacture of tin plate. This industry furnishes another example where this tax is so infinitely small that it can be easily absorbed. In 1929 there were 4,409,000,000 pounds of tin plate produced in the United States, and in that same year 15,512,000 pounds of palm oil were used in that industry. (Statistical Abstract, U.S. Department of Commerce, 1930, p. 778; and U.S. Tariff Commission, op. cit., p. III-58). In other words, 1 pound of palm oil was consumd for every 280 pounds of tin plate produced. With a tax of 5 cents per pound on palm oil this would mean that the manufacturing cost would be raised 1.6 cents per hundred pounds. With the wholesale price of tin-plate at $4.427 per hundred pounds of tin plate produced. With a tax of 5 cents per pound on palm oil this tenths of 1 percent, so small as to be unquestionably insignificant.

At any rate, the increase in costs cannot be more than the amount of the tax. This amount in turn must be balanced against the benefits which accrue to the American farmers as a result of the tax and also against the fact that all the tax revenue goes into the United States Treasury to help defray the costs of fighting an economic depression. The economy upon which this tax is based is much more sound than that adopted by this Congress in passing the Agricultural Adjustment Act with its processing taxes which do not even remain as Government revenue. The production of these domestic oils and fats is already reduced through reductions in major crops of which these are joint byproducts, therefore there is no need for benefit payments. The benefits will come through higher prices.

GENERAL SUMMARY

1. More than two thirds of the imported oils and fats used in the United States bear no form of taxation and yield no Government revenue.
2. Almost universal interchangeability forces direct competition between foreign and domestic oils and fats in every important oil- and fat-using industry, a competition which rests almost entirely on prices.
3. Dairy farmers have a most vital interest in the oils and fats problem.
4. Oleomargarine, made largely from foreign oils and fats, undermines the consumption of butter and prevents price recovery for all dairy products.
5. In creased prices for domestic oils and fats will retard a definite shift of cotton, cattle, and other farmers into dairying.
6. For purpose of economic recovery the continental United States is now considered by Congress as separate and distinct from its insular possessions and protectorates.
7. The proposed excise tax will raise revenue and will effectively raise the general level of oils and fats prices.
8. Domestic users of oils and fats can easily absorb the tax.
9. The tax is economically sound and is in line with other measures for the economic recovery of American agriculture.

The National Cooperative Milk Producers Federation considers this tax as economically sound by all of the criteria of taxation, and urges that it be enacted into law on the grounds that it is a rich and unused source of revenue and that it is a further step toward economic recovery for American agriculture.

BRIEF ON BEHALF OF THE LAUNDRY OWNERS NATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA

The laundry industry annually consumes great quantities of soap. The laundry is in fact an ultimate consumer of soap and as such is seriously concerned over the proposed excise tax of 5 cents per pound on coconut oil.

Coconut oil soaps are indispensable to the laundry establishment. This arises from the fact that experience in the laundry industry has shown conclusively that proper laundering practices require the use of a white and free lathering soap if commercial laundries are to satisfactorily serve the exacting demands of the public who are able and willing to purchase laundry service instead of having the laundry job done in the home.

The lauric acids contained in coconut oil account for the free lathering qualities which coconut oil soaps possess. Neither tallow, cotton oil, or any other domestic oil available to the soap kettle possesses lauric acids. For this reason coconut oil cannot be satisfactorily supplanted by anything else for soap usage in modern laundry practice.

The hard-water areas of this country are numerous and wide-spread. With the exception of the Atlantic coast States and a few other spotted sections hard-water supplies are predominant. Laundries located outside of these comparatively few soft-water areas will be subjected to an unbearable increase in soap costs if this tax should result in the displacement of coconut oil soaps by soaps made from a substitute product not possessing adequate or no lauric acid content.

Tallow and similar or substitute fats function in the washing process to separate soils from fabrics. Their action is primarily detergent in nature. whereas the coconut-oil content of laundry soap through its free lathering and sudzing qualities serves to hold these soils in suspension until they are drained from the wash wheels. This explains why coconut oil is of tremendous importance in the washing formula. As has been stated before, no other known soap-making material sufficiently supplies this absolutely essential function.

Although the proponents of this tax contend that cottonseed-oil soaps can satisfactorily replace coconut-oil soaps, practical experience in the laundry has definitely proved such to be untrue. During enactment of the Smoot-Hawley tariff act an abundance of evidence was produced by the laundry owners in the cotton States to show they repeatedly had tried to use cottonseed-oil soaps in their washing formula but without success. It was found that laundry soaps made from cottonseed oil after use in the power laundry over a period of time imparted a yellowish tint to their customers' fabrics. Because of the high-water temperatures employed in the washing formula, the fatty acids of cottonseed oil break down, with the result that soap specks are deposited on the article being washed and are practically impossible to rinse out. Rancidity also develops in cottonseed-oil soaps and impregnates fabrics with an offensive odor which is decidedly objectionable to laundry customers. These reasons account for the fact that cottonseed-oil soaps have not and cannot be used in the modern laundry practices of the power laundry industry.

Should a 5-cent-per-pound tax on coconut oil not operate to prohibit its use in laundry soap, it nevertheless will cause an increase in the price of soap to the laundry owner which h[illegible]n neither absorb nor pass on to his customers.

For the past 3 years the [illegible]dry industry has been a deficit industry. Its sales volume has decreased approximately 50 percent and, with very few exceptions, the individual establishment is operating at a serious loss and has been for some time. Former customers have invested in home-washing equipment and are doing the laundry job themselves, or are having it done by low-paid domestic servants with whom the laundry cannot compete. This competition from the home itself is a serious factor to the welfare of the laundry industry. Today the laundry cannot raise its prices because of the ready and easy alternative of having the laundry job done in the home at a cost lower than the prices which laundries must charge. The unemployment situation has further aggravated this condition, because innumerable women who are out of jobs are taking in laundry work. It has been demonstrated time and again

that this form of competition positively prohibits the raising of commercial laundry prices in order to absorb such an increase in operating expenses as this tax would effect.

At present prices the annual soap bill of the laundry industry is estimated to be $10,000,000. Inasmuch as laundries use the pure soaps containing as high as 90 percent coconut oil, this tax would effect an increase of approximately $5,000,000 annually in the cost of this necessary product to the laundry industry.

From the standpoint of sanitation and cleanliness the commercial laundry is an important adjunct to any community. No tax should be levied or other legislative action taken which would work an intolerable hardship upon the laundry establishment or otherwise imperil its existence. This point should receive much consideration in behalf of the public interest and welfare. It is a recognized fact that the modern laundry, through its scientific practices, is a helpful agency in the prevention of a spread of disease and epidemics.

In conclusion, it is submitted that the proposed tax on coconut oil cannot benefit the producers of domestic oils at least insofar as coconut oil is used for laundry soap-making purposes. This product is absolutely essential to the laundry industry and cannot be satisfactorily supplanted by any other oil or fat. Therefore, why needlessly penalize an industry which can neither absorb the increased costs involved nor can pass same on to its customers.

Therefore it is urged that the committee delete from section 602 of the 1934 revenue bill the proposed tax on coconut oil.

Respectfully submitted,

DELBERT W. CORBIN,
Eastern Representative Laundry Owners National Association of the United States and Canada, Joliet, Ill.

APPENDIX TO BRIEF OF THE LAUNDRY OWNERS NATIONAL ASSOCIATION, ANIMAL AND VEGETABLE OILS [PARS. 53–58]

The COMMITTEE ON WAYS AND MEANS:

Supplementing my testimony given to your committee on January 9, 1929, this evidence is herewith submitted to further substantiate the position of opposition that has been taken by the laundry owners of America against the proposed levying of a 45 percent ad valorem duty on the imported vegetable oils and fats that go into the laundry soap kettle.

It is erroneously contended that the laundry soaps most generally used today—and which are largely made up from the imported tropical vegetable oils and fats—can be satisfactorily replaced with soaps made from cottonseed oil.

The experiences of laundry owners, particularly in the southwestern section of our country—as in Texas—do not support this belief, but tend to disprove it. While laundry owners may have once found cottonseed oil usable in the commercial power laundry, they have in recent years found it unsuitable for laundry purposes for the following reasons:

1. During hot weather, or in the case when the water used in the laundry wash room is kept at ordinary temperatures, rancidity develops in cottonseed oil soap to such extent as to give a decidedly objectionable odor to the customers' laundry bundle. In any instance where the laundry owner does not return a sweet-smelling package of clothes there is immediate complaint from the customer and a consequent danger of losing his patronage. Naturally, this is something that the laundry owner, as a good business man, wants to avoid.

2. Secondly, cottonseed-oil soap possesses poor rinsing qualities, due mainly to the difficulty of obtaining complete emulsification. Especially is this true in regions which have hard water. In western Texas, for instance, there is as much as 81 grains of hardness in the natural water supply. The laundry owner is by necessity compelled to use the most free-lathering soap available. Soaps made from the imported tropical oils in question have proved the most satisfactory of any under such conditions as these, and largely accounts for their universal use.

3. The coconut- and other tropical-oil soaps are of white color, whereas the cottonseed-oil soaps possess an objectionable yellow cast. For obvious reasons the laundry owner cannot use washing supplies which make it difficult for him

to turn out the whitest kind of laundry work. Power laundry customers without exception the country over demand that their clothes appear as white as possible when delivered back to them, and, needless to say, all progressive laundry owners are doing their utmost to meet this demand. There is nothing more humiliating or disastrous to the average laundry owner than the guilt of turning out yellow work.

4. Experience has shown that cottonseed soap breaks down more readily under steam and the high temperatures used in a suds bath than do soaps made from the tropical oils. This breaking down liberates the fatty acids which, in turn, cause soap specks to adhere to the fabrics, and it is nearly impossible to rinse these specks out.

5. In order to prevent the so-called "breaking down" of cottonseed soap when used in the power laundry, the water temperatures must be reduced to and below 120° F. In certain classes of laundry work it is scientifically undersirable to wash in temperatures that low, because dirt and soil cannot be washed out or rinsed out as effectively when lower temperatures are used. Also, from the viewpoint of sanitation and better sterilization it is desirable to use water temperatures as high as 180° and 190° F., which are sufficiently high to destroy most all harmful bacteria. But, as has already been explained, these temperatures have proved impractical when cottonseed-oil soaps are used.

The following is indicative of the general unwillingness that exists in the minds of many laundry owners to use cottonseed-oil soaps: To attempt to sell a cottonseed-oil-base soap, as such, is an impossibility, because laundrymen do not want it, and a soap is always a failure in the power-laundry industry when a competitor succeeds in convincing the trade that it contains cottonseed oil.

The above five reasons, added to the fact that 99 percent of the cottonseed oil produced in the United States is consumed for edible purposes at edible prices, explains why cottonseed oil is no longer used to any appreciable extent in the manufacture of laundry soap.

Respectfully submitted in the name of the Laundry Owners National Association.

D. W. CORBIN, *La Salle, Ill.*
G. H. CORBIN, *Dallas, Tex.*

APPENDIX

DALLAS, TEX., *March 20, 1929.*

D. W. CORBIN,
Eastern Representative,
Laundry Owners National Association, Washington, D.C.:

Account living big cotton-growing district, also being cotton planters, we have conscientiously tried use laundry soap made from cottonseed oil. We used this soap before the war, during the war, and since. The soap breaks down under high temperature. It is impossible to rinse the clothes, and a terrible disagreeable odor remains in the goods. Impossible to use cottonseed-oil soap with fugitive colors, as will not lather freely in cold water. After linens have been delivered to their homes and stored in closets for several weeks customers have telephoned us complaining of unbearable odor throughout their house, claiming we had washed their linens with acids and chemicals. Impossible to promote modern power laundry business under this condition.

LEACHMAN'S LAUNDRY & DYE WORKS,
By TOM G. LEACHMAN.

GRIFFIN, GA., *March 21, 1929.*

D. W. CORBIN,
Eastern Representative Laundry Owners National Association,
Washington, D.C.:

Our laundry superintendent is man of 25 years' experience in laundry work, has tried cottonseed-oil soap, and has not been successful with it. Cottonseed-oil soap leaves a yellowish cast on linens. It cannot be removed or covered. Science has found no practical way to use cottonseed-oil soap in the modern laundry.

GRIFFIN LAUNDRY DRY CLEANING CO.

JACKSON, MISS., *March 21, 1929.*

D. W. CORBIN,
Eastern Representative Laundry Owners National Association, Washington, D.C.:

Soap made from cottonseed oil not practical for laundry use, due to high-pressure steam used, as well as the yellow spots that appear after ironing. It does not lather freely nor rinse well. Have not used it in my plant for several years and will not consider using it again under any conditions. Would be a shame to try and force such an unsatisfactory product on the laundry industry, as it will not protect the farmer, as it will not be used.

ISIDORE LEHMAN,
President Mississippi Power Laundry and Dry Cleaners Association,
Owner Jackson Steam Laundry, Jackson, Miss.

ASHEVILLE, N.C., *March 21, 1929.*

D. W. CORBIN,
Eastern Representative Laundry Owners National Association, Washington, D.C.:

Note suggestions in event higher tariff placed on imports vegetable oils that cottonseed oil could be used as a satisfactory substitute in the manufacturing of soap. Years of experience in the laundry business with experiments along this line prompts me to protest. Do not think it practical make soap from cottonseed oil that would be satisfactory in laundry formulas. Higher tariff on soap products will work hardship not only on laundry industry but on public who depend on laundry service.

SWANNANOA LAUNDRY,
CANINE N. BROWN.

HOT SPRINGS, ARK., *March 21, 1929.*

D. W. CORBIN,
Washington, D.C.:

Cottonseed-oil soap is a hard proposition and very unsatisfactory for general laundry use. Leaves a bad odor, turns white yellow unless the cloth is seriously injured by use of chlorine and acids, and if any of either of these are left in an undergarment it is liable to cause skin disease.

CRAIGHEAD LAUNDRY,
J. H. KLYMAN.

NEW ORLEANS, LA., *March 22, 1929.*

D. W. CORBIN,
Eastern Representative Laundry Owners National Association, Washington, D.C.:

We do not at all consider cottonseed-oil soap serviceable in our laundries. We would not use it at any price.

LAUNDRY & DRY CLEANING SERVICE (INC.),
B. C. MCCLELLAN.

BRIEF OF RUSSELL COLGATE, REPRESENTING COLGATE-PALMOLIVE-PEET CO., JERSEY CITY, N.J.; BROOKLYN, N.Y.; CHICAGO, ILL.; MILWAUKEE, WIS; KANSAS CITY, KANS.; BERKELEY, CALIF., IN OPPOSITION TO EXCISE TAX OF 5 CENTS PER POUND ON COCONUT OIL

Dairymen are the largest domestic group in favor of the tax.—Oleomargarine, in which is used 150,000,000 pounds of coconut oil annually, competes with and undersells butter by from 8 to 15 cents per pound. Dairymen contend the tax will result in increased butter prices.

Oleomargarine manufacturers could still pay the tax and undersell butter by from 5 to 12 cents per pound.—Expectation of higher butter prices would increase butter production. Butter stocks would increase and butter prices would decline accordingly.

Seventy percent of our coconut-oil supply is used in soap, rubber, and tanners' oils.—A tax on this oil would not benefit the dairyman. The dairyman produces nothing that is used in the manufacture of soap. A tax on refined edible coconut oil only, which is the coconut oil used in oleomargarine, would afford the dairyman identically the same protection that he would receive from a tax on all coconut oil.

Livestock producers contend that beef cattle prices would increase through taxing coconut oil because tallow would be used in place of coconut oil in the manufacture of soap.

Tallow prices could not increase over the amount of the tariff protection.—The value of a 1,000-pound steer could increase only 2½ cents. The duty on tallow is ½ cent per pound and a 1,000-pound steer yields only 5.36 pounds of inedible tallow. (See attached tables from The Packers' Encyclopedia.) Therefore, the packer could profit by about 2½ cents for every 1,000-pound steer slaughtered. At the most, only a small fraction of this profit could ever get back to the farmer.

Seventy percent of our tallow is produced by local refuse-rendering plants.—These renderers secure their fats from garbage pails, butcher-shop scrap boxes, and restaurant dinner-plate leftovers. Any increase in the price of this refuse tallow would be shared in by the renderer, the garbage collector, the restaurant, the butcher shop, and the packer. No part of this added value would be left for the livestock producer. Tallow has no free-lathering qualities because it contains no lauric acid. For this reason it cannot be used to supplant coconut oil in soap. Rather than supplanting tallow, coconut oil carries it into the consumption of soap. The more coconut oil used the more tallow used.

The use of coconut oil increases the use of domestic fats and oils in soap.—Although the population of the United States increased only 31 percent between 1912 and 1932, domestic oils and fats consumed in soap increased 50 percent, due to increased use of coconut oil, which makes a better quality soap. The population increased from 95,000,000 to 125,000,000, and domestic fats and oils used in soap increased from 600,000,000 to 900,000,000. Cotton farmers believe cottonseed oil will supplant coconut oil in the manufacture of soap.

Cottonseed oil is a fine edible oil.—In 1932 only 3,500,000 pounds of cottonseed oil were used in soap, when it sold at one half cent per pound under the price of the 350,000,000 pounds of coconut oil used in soap. The use of cottonseed oil in soap would bring its price down to the level of the inedible tallow price with which it would have to compete.

Cotton production would have to be increased 30 percent, or approximately 3,900,000 bales more than were produced in 1933, to obtain sufficient cottonseed to entirely supplant coconut oil now being used. This would result in a complete disruption of the Government's cotton acreage reduction program.

Cottonseed oil makes an inferior soap.—Like tallow, it contains no lauric acid, and, therefore, will not lather freely. Unlike tallow, it contains linolic acid, which causes soap to become rancid.

Coconut oil is the only oil that can be used in the tanning of white leather. Also, it is very necessary in the manufacture of an accelerator which is used in manufacturing rubber and rubber substitutes.

The consuming public demands soap made from coconut oil.—Soap used in hard water regions and in all households gets its quick and abundant lathering qualities from coconut oil. Tallow and cottonseed oil lack this quality.

Our soap supply will be imported from Canada. American soap manufacturers' raw material costs will be increased 50 percent to 100 percent by this tax while imports will pay a duty of only 15 percent ad valorem.

Canada through preferential tariff arrangements with other British possessions, can secure its raw material supply of coconut oil and copra duty free.

Even our present market for domestic soap fats will be destroyed.—Canadian manufacturers will mix foreign soap fats with duty-free coconut oil and, with only a 15 percent ad valorem duty on soap, will undersell American soap manufacturers in the American markets.

Domestic soap oils will move into consumption only after they have dropped in price sufficiently to permit the American manufacturer to make up for the tax he would pay on coconut oil which he uses and thereby keeps his total raw material costs lower than that of Canadian competitors.

In the final analysis this tax bill will be a penalty on the American laborer, the American soap factories, the American consumers of soap, the American shipping interests and the American copra crushers.

No benefits will accrue to any American farmer.—The benefits will all accrue to the copra producers of British island possessions and the foreign soap manufacturers.

From the Packers' Encyclopedia

INEDIBLE TANKAGE YIELDS

The following tests on the yields of various products which may be obtained by rendering in the inedible tanks will be of interest to all superintendents and tankhouse men.

No. 1 white grease test.—Test on 5,600 hogs to find the yield of no. 1 white grease. In addition to the regular inedible offal, the following pieces were rendered: 1 dead hog, 28 condemned hogs, 30 condemned heads. The white grease recovered in this test amounted to 15,300 pounds, or 2.73 pound per hog.

Yellow grease test.—The following is a test on 3,432 hogs to find the yield of yellow grease:

Products to tank	Total pounds	Pounds per hog
Pig bags	6,243	1,819
Lungs	5,141	1,498
Catch basin skimmings	4,257	1.240
Floor scrap	662	.193
Total green product	16,303	4.750
Yield of yellow grease	1,320	.39

Tallow yields.—The following test is one which indicates in a general way the yield of tallows which are obtained from cattle:

	Pounds per head
Edible tallow	1.13
Prime tallow	4.41
No. 2 tallow	.95
Total inedible tallow yield	5.36
Brown grease	1.23
Total	7.72

The tallow from calves is indicated by the following test:

No. 1 tallow	.45
Brown grease	.65

The tallow yield from sheep is indicated by the following test:

No. 1 tallow	0.19
No. 2 tallow	.28
Brown grease	.19

Objections to the Levying of a Tax of Something Less than 5 Cents Per Pound on All Imported Oils and Fats

1. The levying of a tax upon other oils and fats would inevitably embroil us in tariff disputes with the various foreign nations producing the several oils and fats. These foreign nations would levy retaliatory duties upon American exports of lard, which would back the lard up into American markets and cause a decrease in domestic oils and fats prices.

2. It would mean the destruction of every pound of export business in products made from oils and fats, as the foreign competitors would secure their oils and fats at just so much lower prices.

3. It would be impossible, without general tariff revision, to levy compensatory taxes on imports of the many manufactured products containing oils and fats. Hence it would be possible for foreign manufacturers to dispossess

the American manufacturer of his domestic market for products containing oils and fats.

4. The inflation of the price of a single group of commodities, such as oils and fats, and the products made therefrom without the inflation of the dollar of the consumer, who must buy these commodities, would create a disastrous slump in the consumption of products made from oils and fats.

5. It would encourage the use of substitutes for products made from oils and fats, because the prices of these substitutes would not be inflated.

BRIEF FOR THE NATIONAL LIVESTOCK MARKETING ASSOCIATION, CHICAGO, ILL.

[By CHARLES A. EWING, *President*]

The National Livestock Marketing Association is a producer owned and controlled organization, national in its scope, with 24 marketing agency members on all the leading livestock markets of the United States from Baltimore to San Francisco, through which some 300,000 stockmen market their livestock annually.

The business of livestock production is the oldest, most basic, and extensive business in the United States; the value of livestock products is more than half of our whole agricultural output.

The markets for livestock are the lowest they have been in 40 years, and their long-continued depression has brought about a condition in this great industry that is most critical and acute.

Nothing has contributed more to the depression of livestock markets in this country than the rapidly increasing amount of the imports of foreign animal and vegetable oils and fats which in recent years have arisen to approximately $200,000,000 in value annually and not more than 25 percent of which bear any duty whatsoever. These imports directly invade and compete directly and indirectly in our domestic markets with our livestock products depressing the prices far below the cost of production and unless checked will entail ruin and bankruptcy on thousands of stockmen throughout the country.

The livestock dollar has today less than half of its pre-war parity and less than half of its normal tax-paying and debt-paying power. This situation needs the most prompt relief possible to avoid further disaster in this enterprise, and on behalf of the association which I have the honor to represent and on behalf of its members and, most of all, on behalf of our livestock men who patronize our agencies and are affiliated with us do we respectfully urge upon your favorable consideration the desirability and advisability at this time of amending this proposed act, H.R. 7835, in section 602 thereof, in manner and form as follows:

SECTION 602. TAX ON CERTAIN OILS

(a) There is hereby imposed a tax of 5 cents for each pound of coconut oil, sesame oil, sunflower seed oil, palm oil, palm-kernel oil, whale oil, marine oils, and all other vegetable and animal fats and oils now admitted duty free, or combinations or mixtures thereof, brought into the United States, processed or unprocessed, or in raw state, to be paid at the port of entry into this country, at the time of arrival, to the collector of customs duties at such port in such manner and form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribed.

(b) The collector of customs at the port of entry of any of the commodities designated in paragraph (a) shall make report of the amounts and value of such imports in such manner and form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations, prescribed.

Paragraph (c) omit.

(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value, to wit, 20 percent of which any of the foregoing oils have entered into the fabrication thereof, and on which a tax has been paid under paragraph (a) of this act, section 602, the exporter, on satisfactory proof of payment of tax shall be entitled to a credit or refund of the tax for the amount of the oils contained in the commodities or articles exported from the United States.

(e) No change.

(f) No change.

No other provision or legislation pending or proposed before Congress will so quickly, if enacted into law, bring a material and substantial upturn in our livestock markets as the foregoing legislation, imposing reasonable duties on the importations of these commodities, which are competing with our products here at home.

The provision as it now stands in the bill for imposing on processors of these oils, the tax, instead of imposing it on the importer, at the port of entry, at the time of entry, makes the collection of the tax far more difficult, complicated, and uncertain and requires an additional and unnecessary outlay for rendering the service of collecting.

Urging your careful and favorable consideration for amending the above act in the manner and form as we have herein indicated, we respectfully submit this brief for your consideration.

NATIONAL LIVE STOCK MARKETING ASSOCIATION.
CHARLES A. EWING, *President.*

BRIEF OF DUVAL MOORE, REPRESENTING EL DORADO OIL WORKS, SAN FRANCISCO, CALIF.

ARGUMENTS IN OPPOSITION TO PROPOSED EXCISE TAX OF FIVE CENTS PER POUND ON COCONUT OIL AND SESAME OIL

I. The proposed tax has no place in a revenue bill, because it will act as an embargo and not raise any revenue.

1. It is 200 percent on the present price (2½ cents per pound) of coconut oil.

2. It will foreclose the use of these oils almost entirely.

II. (*a*). It will not stimulate the price of domestic fats and oils (cottonseed oil, lard, tallow, and butter) as claimed by the proponents of the bill.

1. Except in margarine, where cottonseed oil has been satisfactorily used only in a small degree, coconut oil and cottonseed oil are not competitive.

2. Cottonseed oil is used 99 percent for edible purposes while 70 percent of coconut oil goes into soap.[1] Coconut oil is used in soap because of its large lauric acid content. Cottonseed oil contains none of this acid. In 1932, despite cottonseed oil being lower in price than coconut oil[2] (cottonseed oil average, 3.07 cents per pound—coconut oil average, 3.57 cents per pound), only three tenths of 1 percent of the oils and fats consumed in soap was cottonseed oil.[1]

3. A small quantity of coconut oil, less than 1 percent of the fats and oils used in lard compounds and vegetable shortenings, goes into lard substitutes[1] (vegetable oil compounds—almost entirely cottonseed oil). Coconut oil's inherent qualities make it unsuitable for shortening or frying purposes.

4. About 22 percent of the coconut oil produced or imported into this country goes into the manufacture of margarine, but even were this coconut oil legislated out of margarine, the dairy farmer would not be benefited.[1]

The United States Tariff Commission, in their findings on this question, stated in part:[3]

"However, if coconut oil is barred an inferior margarine will still be made from animal fats and the price of butter will not be benefited."

Many dairy authorities agree with us on this point. We quote from The Tariff on Dairy Products, by Roland R. Renne, Ph.D., assistant professor of agricultural economics, Montana State College, edited by J. R. Commons, B. H. Hibbard, and W. A. Morton of the University of Wisconsin, and published by the Tariff Research Committee, Madison, Wis., 1933.

"A comparison of figures 12 and 15 indicates the small possible reduction of the present spread between butter and oleomargarine prices as a result of a tariff on Philippine coconut oil or its elimination from oleomargarine manufacture. * * *

"If the proposed duties raised the cost of coconut oil high enough to eliminate it from oleomargarine manufacturing or if its use were prohibited, the

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[1] U.S. Bureau of Census.
[2] N.Y. Journal of Commerce.
[3] U.S. Tariff Com. Report, March 1932, p. 33.

benefit to American producers of cottonseed, soybeans, and peanuts or beef and pork is doubtful."

"* * * The proposed duties on coconut oil and copra would result in burdens to the American public greatly in excess of any possible benefits derived from them. * * * There is no benefit to any home group sufficient to offset this burden."

Our Secretary of Agriculture, the Hon. Henry A. Wallace, in an address given at the Farm and Home Week, Wisconsin College of Agriculture, Madison, Wis., January 31, 1934, stated, in part, on this same point:

"The administration asked the members of the dairy industry to face the facts and to realize how futile it was to depend for relief upon such things as tariff increases and the restraint of competition from substitute products. * * * Beyond a certain point, tariff increases do far more harm than good. The possibilities of doing something about the competition of dairy product substitutes are not nearly as great as you have been told by some dairy leaders. * * * Take the most liberal prospect possible for relief through action on tariff on oleomargarine, foreign fats and oils and the like, and you haven't approached the relief dairymen really need. * * * It should be recognized that such measures would have effects on dairy prices, the extent and duration of which are highly controversial questions. I would not be honest with myself or the dairy people if I did not state that I fear that the results would be much less substantial than some dairy interests believe."

5. The elimination of coconut oil would perhaps increase slightly the demand for oleo oil. Any benefits, however, will be entirely absorbed by the packer and not passed on to the cattle raiser, oleo oil being such a small part of the steer (24.55 pounds to a 1,000-pound steer).[4]

6. Coconut oil is not a competitor of tallow, both being used noncompetitively in soap.

Tallow, like cottonseed oil, contains no lauric acid, and coconut oil in place of competing with tallow in soap actually carries tallow into consumption in the soap kettle.

There is only 5.36 pounds of inedible tallow in a 1,000-pound steer;[5] so the tallow renderer would be the only gainer in any case. The cattle raiser would not be benefited.

7. Coconut oil in foodstuffs comprises only 8 percent of the oils and fats consumed edibly in the United States, while sesame is less than one half of 1 percent.[1] Their elimination entirely from this field would be of small value to the agriculturalist.[1]

(*b*) Coconut oil is an essential ingredient in present-day white laundry and toilet soaps.

1. Soap not containing sufficient coconut oil lacks the free lathering qualities so essential for use in the hard water districts of the United States.

2. Due to better quality of coconut oil soaps, the use of soap in the United States has increased 40 percent during the period from 1914 to 1930 as against an increase in population of only 27 percent.[1]

3. Without coconut oil we would have to revert to the old-fashioned soap of our fathers and the housewife to the washboard and boiler in place of the modern washing machine.

III. Effect on copra crushing and allied industries:

(*a*) If the proposed excise tax shall become effective the copra crushing industry in the United States will be wiped out.

1. There is about $30,000,000 invested in this crushing industry in the United States, the major portion of which would not be adaptable for other uses.

2. Much labor, both skilled and unskilled, is now employed which would be put out of employment.

3. The industry has been built up from a small beginning over a period of approximately 40 years.

4. It has contributed greatly to the advance in the methods of manufacture and grades of soap produced in this country. The value of this contribution would be largely destroyed.

(*b*) Many allied industries are greatly dependent upon the copra and coconut-oil trade.

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[1] U.S. Bureau of Census.
[4] The Packers Encyclopedia, p. 8.
[5] The Packers Encyclopedia, p. 131.

1. The increase in the cost of soap should this bill pass would be from 50 percent to 100 percent, according to the quantity of coconut oil used in the particular soap.

2. Every housewife, household, home, school, hospital, public and private institution, laundry, and any and all users of soap must pay the increased cost of soap.

3. Soap manufacturers could not compete with soap manufactured in part from coconut oil in other countries entering this market under present duties (15 percent on laundry and other types of soap constituting 91 percent of the total volume and 30 percent on toilet soaps).

4. Soap could be manufactured in the Philippine Islands from coconut oil, free of excise tax, and exported into the United States, free of duty, thereby throwing the great bulk of the business now enjoyed by the soap industry in the United States to soap factories in the Philippines.

5. The soap industry in the United States represents an investment in excess of $275,000,000, employing in excess of 25,000 people, many of whom would be thrown out of employment should the present bill carry.

IV. Effect on the Pacific commerce of the United States:

(*a*) Copra, raw material (dried meat of the coconut) constitutes the great bulk, in fact, the backbone of the return cargo of the American steamers crossing the Pacific. Many of the steamship lines already of necessity subsidized by the Government, could not exist if this cargo were taken from them.

1. By bulk, copra makes up 15 percent of the total import tonnage into San Francisco, 25 percent into Portland, and approximately the same percentage into Los Angeles.[6]

2. It pays the steamers an annual freight revenue of approximately $2,780,000.

3. It provides a satisfactory and profitable business for many freight terminals, stevedoring companies, drayage concerns, etc.

(*b*) The transcontinental railroads derive a freight revenue on coconut oil, moving into midwest consuming centers, after having been extracted from the copra at the mills on the Pacific coast, of approximately $4,100,000.

(*c*) The elimination of the copra and coconut-oil trade would very seriously affect the export business of the United States to the copra-producing countries of the South Seas, the Philippines, Dutch East Indies, Australia and Singapore.

1. Copra is the medium of exchange by which the people of those places are enabled to buy goods exported from the United States.

2. The exports to the Philippine Islands alone in 1932 were $48,500,000.[7] Included in these exports were farm products in the amount of $18,500,000.[7]

(NOTE.—The Philippine Islands are the best single export customer of the dairymen of the United States.)

3. Without question should the copra trade be killed by the passage of this bill, retaliatory measures will be put into effect by some of these countries. In fact, certain measures have already gone into force affecting our export business in pine lumber from the northwest.

V. It must be apparent to any fair-minded person that the proposed 5-cent per pound excise tax is clearly ill-advised:

(*a*) It is confiscatory.

(*b*) It singles out a single industry which it ruins without sufficient compensatory benefit to any of its proponents.

(*c*) It will be of inestimable harm to the soap industry of the United States and raise the price thereof, thereby carrying its burden on to every housewife and household in the country.

(*d*) It will, without compensation, turn over a great part of our soap business to foreign manufacturers, either in Canada, Japan, Mexico, or the Philippines, without any commensurate benefit to anyone in the United States.

(*e*) It will bring in little or no revenue under which guise it is proposed.

(*f*) It is eminently unfair to the people of the Philippines, 25 to 30 percent of whom are more or less dependent on copra for their livelihood. Can this United States Government in justice force such a radical change in their economic structure without allowing sufficient time for necessary political and economic adjustments? As our President said in his recent message: "To change at this time the economic provisos of the previous law would reflect discredit on this country."

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[6] U.S. Customs figures.
[7] U.S.Dept. of Commerce.

BRIEF OF ASSOCIATION OF AMERICAN PRODUCERS OF DOMESTIC INEDIBLE FATS

WASHINGTON, D.C., *March 15, 1934.*

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

DEAR SENATOR: Under the permission granted to file statements relative to section 203 of the pending revenue bill, I wish to have the following statement appear in the printed record:

"This association represents the rendering industry and produces domestic tallows and greases. Their plants are scattered throughout the entire country, in every State in the Union.

"The raw materials are collected from wholesale and retail markets and it is estimated there are at least 120,000 such markets in the United States; that is, about 1 such shop to each 1,000 of population. In the larger cities there are even more shops per 1,000 population. Chicago, for instance, has in the neighborhood of 5,000 wholesale and retail meat markets.

"An important part of the livelihood of these markets is derived from what they receive for their raw fats, bones, and meat trimmings, inasmuch as at least 15 to 20 percent of their product must be trimmed when sold.

"The income thus received helps to pay the butcher's rent, employ sufficient clerks, and pay adequate wages.

"Unfortunately, however, the renderer cannot collect this raw material profitably unless he in turn can get a satisfactory price from the soap manufacturer for tallow and grease.

"At present the market on domestic tallow and grease is about 3 cents per pound. In 1926 it was 8½ cents per pound. Prices in the past year declined to a historical low.

"Thousands of families are directly and indirectly dependent on our domestic fats and oils industry.

"We need a 5-cent tax on copra, coconut oil, palm oil, palm-kernel oil, sunflower oil, sesame oil, whale oil, and other imported fish oils. This tax is not excessive, for if it should raise domestic price levels the full amount, we would still be under the 1926 level.

"These foreign oils are all interchangeable and must be taxed whether used for edible or inedible purposes.

"For example, should coconut oil be taxed for edible use only, the margarine manufacturer will substitute domestic fats. So far, so good. But on the other hand, the soap manufacturer, to replace these domestic fats so taken away from him, will use just that much additional coconut oil, if coconut oil is not taxed for inedible purposes.

"As a result, no change will take place in the demand for our products. The same statements of facts apply to the other oils under consideration.

"Much stress was laid by our opponents on the alleged necessity for the use of coconut oil in the soap industry. Admittedly none of the other oils is necessary. As to coconut oil, we respectfully call to your attention the statement of Dr. P. B. Meerbott, the independent soap chemist, who appeared. He explained that the use of large amounts of coconut oil in toilet soaps produced a soap irritating to the skin, that the use of coconut oil was not necessary in laundry soap, and that the best toilet soaps used only a very limited amount of coconut oil."

ASSOCIATION OF AMERICAN PRODUCERS
OF DOMESTIC INEDIBLE FATS,
By A. L. BUXTON, *President.*

BRIEF OF J. S. ABBOTT, SECRETARY, INSTITUTE OF MARGARINE MANUFACTURERS, SUBMITTED TO THE FINANCE COMMITTEE OF THE SENATE

MARCH 14, 1934.

The members of the Institute of Margarine Manufacturers, and a few manufacturers who are not members of the institute, are in favor of any legislative program designed to put the oleomargarine industry on a domestic fats and oils basis; that is, the manufacture of margarine of fats and oils produced exclusively in the continental United States of America. By volume of production this group of manufacturers represents close to 53 percent of the industry.

During the first 40 years of the manufacture of margarine in this country, margarine was made almost exclusively of domestic fats and oils. At the end of this 40-year period, which was about 1914, imported or foreign oils came into the picture. During the fisc ' year ended June 30, 1915, the margarine industry used only 1,254,000 pounds of imported or foreign oils in the manufacture of the product. During the fiscal year ended June 30, 1933, 134,825,772 pounds of foreign oils were used for this purpose. During this period from 1915–33, cottonseed oil as an ingredient of margarine dropped from around 60,000,000 pounds to 16,000,000 pounds; beef fat from around 100,000,000 pounds to 16,000,000 pounds; neutral lard from around 40,000,000 pounds to 9,000,000 pounds per annum.

Our domestic fats and oils suitable for use and being used in the manufacture of margarine are beef fat, pork fat, milk fat, cottonseed oil, peanut oil, corn oil, and soybean oil. With this wide variety of fats and oils the margarine manufacturer can make a margarine of animal fats or of vegetable oils or of a mixture of animal fats and vegetable oils, to meet the demands of all kinds of consumer groups in this country. These three kinds of margarine are being manufactured and sold at the present time.

Prior to 1914 margarine manufacturers in this country had never made any serious attempt to make a margarine exclusively of vegetable oils. No attempt was made to market a margarine such as the one that is now made almost exclusively of coconut oil. No attempt was made to make a margarine out of domestic vegetable oils, such as cottonseed oil, corn oil, soybean oil, or peanut oil. The coconut-oil margarine came on the market during the early years of the World War. A margarine of just as fine quality and high-food value made principally of cottonseed oil and a small quantity of some one or more of our other common domestic vegetable oils did come on the market during the summer and fall months of 1933. Hence it is perfectly obvious that we have a sufficient variety of domestic fats and oils to satisfy the requirements of the margarine industry and the consumer groups in this country for a low-priced article of food in the form of margarine.

The margarine industry cannot be put on a domestic fats and oils basis simply by restricting or prohibiting the use of coconut oil and sesame oil. There are other imported or foreign edible vegetable oils suitable for use in the manufacture of margarine. The principal ones are palm oil, palm-kernel oil, and sunflower-seed oil upon which this tax of 5 cents per pound, or preferably a higher tax, should apply if we are to put the margarine industry on a domestic fats and oils basis.

Imported fats and oils have already practically driven our domestic fats and oils out of the market for food in the form of margarine. So it is just a matter of whether we want to give American farmers and ranchmen a market for some 200,000,000 pounds of fats and oils they produce, or whether we want to give this market to the producers of fats and oils in foreign countries.

J. S. ABBOTT.

BRIEF OF C. F. YOUNG, PRESIDENT THE DAVIES-YOUNG SOAP CO., REPRESENTING THE LIQUID SOAP MAKERS OF THE UNITED STATES

Gentlemen of the Committee:

I am the president of the Davies-Young Soap Co. of Dayton, Ohio. As a member of the code authority of the soap industry. I represent what are considered the small firms of the soap business, principally the manufacture of potash soaps of various types.

There are over 200 such small soap concerns in the country manufacturing oil soaps and liquid soaps. We make liquid toilet soaps for use in hotels, buildings, institutions, etc. Also liquid shampoos, scrubbing soaps, base soaps, paste soaps, silk and wool soaps, rug-cleaning soap, and various other industrial specialties.

In order that we may present our position with referenuce to the proposed 5 cents per pound excise tax to be levied on coconut oil, we first want to say that coconut oil occupies a unique place among the fats and oils which we use. There is no oil produced domestically which can take the place of coconut oil in the production of base soaps, liquid soaps, liquid shampoos, silk and wool soaps, rug-cleaning soaps, and for certain other very definite uses in liquid floor soaps which we shall point out later.

Coconut oil is the only oil of its type commercially available, domestic or imported, which will make up a clear liquid potash soap solution to contain as high as 40 percent anhydrous soap value. By "anhydrous soap value" we mean dry-soap value. Other fats have a tendency of producing a liquid which, in far less concentration, will congeal. Any fat having such an action could not be used in the production of a liquid shampoo or liquid toilet soap, or for the production of important emulsions, among which are agricultural insecticides, fungicides, and cattle sprays.

We are not ourselves manufacturers of agricultural insecticides, fungicides, and cattle sprays, but we sell thousands of gallons of our coconut-oil soaps to the firms which make these soaps. These products which are of such vital importance to the farmer depend upon their coconut-oil soap content for their efficiency. When sprayed over a plant which is insect infested or covered with scale, such as the San Jose scale, they close the breathing pores of the insect or scale. If it cannot breathe, it suffocates just as would a man with his mouth and nostrils plugged up. It dies. The next rain washes the plant free of insect or scale.

For use of cattle sprays, our coconut-oil soaps are mixed with crude oil and other materials and used to spray the animals. Here again the vermin on the animal are stopped from breathing by the action of the coconut-oil soap in stopping their breathing pores and they die.

In all of these agricultural uses they must have a soap which will not congeal but will remain liquid. We know that coconut-oil soaps surpass everything else for this work, otherwise makers of the agricultural sprays, insecticides, etc., would not continue to buy coconut-oil soaps, paying at times higher prices than they would be obliged to pay for some other liquid soap.

Further, a coconut-oil soap has the very necessary advantages of lathering abundantly, cleaning thoroughly, and rinsing easily even in hard water. These three characteristics are essential in the production of the soaps which we have already named.

Then, too, coconut oil when combined with other oils permits a solution of these soaps to remain liquid in higher anhydrous soap concentration than where a domestic oil, such as corn oil, is used. We refer to the liquid scrubbing soaps, which are increasing in use every year. The consumer demands a liquid scrubbing soap having a comparatively high anhydrous soap content—preferably higher than can be produced if corn oil alone is used. With the addition of a small percentage of corn oil, however, the anhydrous soap content of the finished liquid scrubbing soap can be increased considerably.

We would point out also that we are one of the many soap manufacturers in the country whose production is limited practically entirely to soap specialties. By this we mean that we do not produce cake toilet soap.

In addition to the coconut-oil soaps which we produce, we manufacture soft soaps which are chiefly made from corn oil or soybean oil. Both the corn oil and soybean oil are of domestic production, but these oils are not interchangeable with coconut oil in the production of base soaps, liquid soaps, liquid shampoos, silk and wool soaps, rug-cleaning soaps, etc. These products require coconut oil—and coconut oil alone—in their production. No other oil with the exception of the imported palm-kernal oil, whether produced domestically or imported, produce soaps having the characteristics necessary in these soaps.

Since 1926 coconut-oil soaps have assumed greater proportions in our business. In 1926 coconut-oil soaps formed approximately 26½ percent of our total production. In 1933 coconut-oil soaps were approximately 32½ percent of our total production—an increase of 6 percent of the total volume since 1926. Our section of the soap industry could not exist without the volume of the coconut-oil soaps which they produce.

The market price of coconut oil today is approximately 2¾ cents per pound f.o.b. the Pacific coast. That means a price of approximately 3½ cents per pound delivered to the Middle West soap companies.

With the addition of the excise tax of 5 cents per pound on coconut oil, the price of this product would be raised to 8½ cents per pound. Advancing the price of coconut oil two and one half times will necessitate an advance in coconut-oil soaps—and a drastic advance.

What will such an advance mean to this industry? It means that the coconut-oil soap business, without which this section of the industry cannot exist, will be driven to foreign soap manufactures.

Let us consider the position in which the Canadian soap makers will find themselves should this tax go into effect. They can purchase the coconut oil in Canada at approximately 3½ cents per pound delivered to their plant. They can make up this soap, ship it into this country—paying a 15 percent ad valorem duty—and sell soap in Dayton, Ohio, where we are located, at a lower price than we can make the soap right here; and they cannot only sell the soap in Dayton, Ohio, at a price lower than the cost of the soap at our plant, but they can sell all of the coconut-oil soap in this country at prices far below those at which an American soap maker can produce coconut-oil soaps.

The specialty soap manufacturers in this country, of which we represent only one, cannot exist without the tonnage possible through the production and sale of coconut-oil soaps.

It is true that during 1926 the average price of coconut-oil soap was 9¼ cents per pound on the coast. But, this price was regulated by the law of supply and demand, and the foreign soap manufacturers were paying comparable prices.

In 1926 with coconut oil at 9¼ cents per pound, base soaps were sold at 12 cents per pound in barrels f.o.b. Dayton. Today base soaps of the same anhydrous soap content are sold at 6½ cents per pound freight paid to customer, which—considering the average freight rate—means that they are being sold today at 6 cents per pound f.o.b. Dayton, Ohio.

In 1926, 60 percent coconut oil base soaps were selling at a price 100 percent higher than prices now in effect—in some cases more. The total volume of business on oil soaps was 30 percent greater in 1926 than in 1933. The costs of manufacturing have not decreased in proportion, and today, with the present prices of coconut oil, the percentage of the labor cost—which must be considered in the cost of any soap—is greater in proportion to the raw material cost than it was in 1926.

It is our opinion that few, if any, of the specialty soap manufacturers were table to show a profit in 1933. Take away from us 32½ percent of our volume and we cannot exist. That is exactly what the application of the 5-cents-per-pound tax on coconut oil will do. There is no domestic-produced oil to which we can turn to replace the coconut oil which we are now using in our kettles.

The consumer will continue to buy where he can get the best price—and with a 5-cents-per-pound tax on coconut oil, the lowest prices on coconut oil soaps will be offered by foreign manufacturers.

If the American specialty soap manufacturer is eliminated, there will be an immediate downward drop in the demand for corn oil, sobean oil, and tallow, domestically produced fats which go into 65 and 70 percent of the volume they produce. It is conceivable that the result of this tax will defeat the purpose for which it was intended.

The specialty soap manufacturers producing potash soaps represent a small part of the total soap business, but the greater part of the users of crude corn oil and soy bean oil particularly—and in a lesser degree, tallow. They represent businesses which are more or less individually operated—small units—but numerically there are many more of these soap specialty manufacturing plants than there are of those plants manufacturing bar soaps, which are concentrated in larger producing units.

In checking over our purchases of oils last year we note that less than one third of those purchases were coconut oil, the balance—more than two thirds—were domestically produced oils including corn oil, soybean oil, and animal fats and oils.

In conclusion, we would say that from the standpoint of the specialty soap manufacturer, the danger of the 5 cents per pound tax on coconut oil lies in the facts that:

First: Coconut oil soap business will be handed to foreign soap manufacturers who are able to purchase the raw material at the normal market.

Second: It is very doubtful if the specialty soap manufacturer could continue his business without the volume represented by the coconut oil soaps in which no domestic fats could be substituted.

Third: That without the specialty soap manufacturer, domestic producers will be deprived of the volume of corn oil, soybean oil, and animal fats now being consumed by the specialty soap manufacturers, which in our case, represents more than twice the volume of coconut oil which we use.

BRIEF OF DANIEL McIVER, REPRESENTING TEXTILE SOAP MANUFACTURERS OF THE UNITED STATES

Hon. Chairman and Senators: I am appearing before your honorable committee on behalf of the textile soap manufatcurers, with plants in nearly every State in the East, mostly small manufacturers taking care of the textile trade, each more or less in our own vicinity. There are quite a number of these plants which, if this proposed tax is placed on coconut oil, will be very hard hit, if not put out of business.

Take our own concern. In the old days we did not use coconut oil because in those days we catered mostly to the woolen and worsted industry, and soap made from red oil and olive oil was used for wool scouring, while the fulling of the cloth was done by the heavier soaps, palm and tallow. But, today the picture has changed. The textile mills are demanding soaps which will "sud" freely and readily and rinse out quickly, because of the lighter materials used in wearing apparel. And, of course, we have got to give them what they want and what will do their work. We found that by the use of lauric acid on coconut oil, added to our soaps, the required results were obtained so far as the woolen and worsted trade is concerned.

Now, turning to the cotton-finishing plants, which, of course, are many, they, too, demand a soap of free-sudding and quick-rinsing qualities, and again we turn to coconut or lauric acid, which give the desired results.

The textile world has, in the past few years, developed the rayon and celanese materials with which you are all familiar, and again we were confronted with producing a soap or oil which would finish this material in a proper manner. After trying several kinds of soaps, including olive oil and the finer soaps, and several other oil materials, we finally turned to lauric acid or coconut-oil soap to do the trick, and today we are making soaps and sulphonating lauric acid or coconut oil for the finishing of the products.

We, therefore, believe that said tax if imposed on coconut oil is far reaching and will not alone penalize the soap manufacturer, but will, in turn, create higher prices on all goods into which this material goes without giving any relief to anyone whatsoever.

Our trade, as a whole, feel that I am representing them, and rest their case with you.

Respectfully submitted.

COMMITTEE ON BANKING AND CURRENCY,
By DANIEL McIVER.

Senator LONERGAN. I ask that the following letter and brief sent me by Senator Bulkley be inserted in the record.

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
March 12, 1934.

Hon. AUGUSTINE LONERGAN,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR LONERGAN: Enclosed I am handing you brief which has been prepared by the Procter & Gamble Co., of Cincinnati, one of the largest soap manufacturers in the country, protesting against the proposed 5-cent excise tax on coconut oil, which is a part of the revenue bill.

A number of protests have also come to me from the rubber industry, in view of the amount of oil which is used in the manufacturing processes.

I shall appreciate your careful consideration of this item with reference to the possibility of exempting foreign oils which are used for industrial purposes.

Sincerely yours,

ROBERT J. BULKLEY.

On behalf of the soap industry of the United States, we desire to bring to your attention section 602 of the House revenue bill no. 7835 placing an excise tax of 5 cents per pound on coconut oil and sesame oil. This matter is now before the Senate Finance Committee.

The effect of such a measure will be far-reaching in the United States, affecting the welfare of our employees and the health of the country and for reasons covered in this statement, which explanation immediately follows, we ask for the elimination of this item from the revenue bill or its amendment in order that coconut oil may be imported into this country free of tax when used in soap or other inedible products.

First.—This excise tax of 5 cents per pound on coconut oil is in effect placing a 200-percent tariff, a discriminatory singling-out of coconut oil (sesame no factor).

Second.—The soap industry never asked for tariff protection on their manufactured products. The tariff on imported soap is: "Par. 80, soap; Castile, 15 per centum ad valorem; toilet, 30 per centum ad valorem; all other soap and soap powder, not specially provided for, 15 per centum ad valorem."

This excise tax on coconut oil is equivalent to three times the import tax on soap.

It will permit foreign-produced soaps made in Canada, England, and central Europe to come freely into the United States.

Third.—This tax will affect disastrously an industry in this country representing 248 plants, an investment of approximately $600,000,000, producing soap to the value of $300,000,000, employing approximately 25,000 people.

Fourth.—It will create higher prices for soap. Twenty-five percent of all the fats going into the soap kettle was coconut oil. The tax is 200 percent, so in effect, without any increases in the balance of the fats, it would represent a 50 percent increase in the cost of the total fat used.

Fifth.—Furthermore, paragraph 603 of the revenue act now carries an excise tax of 5 percent on toilet soaps which are largely produced from coconut oil. This in effect is doubling the taxation.

Sixth.—It is freely admitted by the health authorities, the medical profession, and the hospitals that the free use of soap and the frequent washing of the hands is the most important factor in preserving health of the country.

Seventh.—When the House committee passed this tax, I feel sure that sufficient consideration was not given to the effect it would have on the soap industry and the country. Soap enters into every phase of our American life—in the home, hotels, hospitals, offices, shops, stores, schools, factories, steam laundries, and various industries, particularly the silk and wollen industries, and is the outstanding element in preserving the health of our people.

Eighth.—The one real byproduct of soap making is glycerin recovered from the soap lyes. Through distillation we secure chemically pure glycerin used in the drug trade and in so many channels affecting the welfare of our people; also the dynamite grade which is necessary to the powder industry, not only in times of peace but in times of war. Coconut oil is the highest yielding glycerin factor of all the fats and oils and contains approximately 40 percent more glycerin than animal fats. A break-down in the production of glycerin, in our opinion, would be a very serious menace to the country. During the World War ships were provided to bring in copra and coconut oil in order to increase the output of glycerin.

Ninth.—As we understand it, this excise tax was not intended primarily as a revenue measure, but solely as a prohibitive tariff. Press dispatches talked of giving the money collected back to the Philippines. Therefore, the people of this country are being heavily penalized without any compensating benefits recurring to the agricultural or dairy communities.

Tenth.—The soap industry has contended repeatedly that inasmuch as our own production of oils and fats in this country was largely edible and consumed as such that tariff or tax action should be against these oils when used for edible purposes and permit the free entry of these oils when denatured for soap or technical usage, which is the proper solution of this matter and a solution that is to the best interests of the country. This excise tax makes no distinction between oil used for edible and the oil used for technical or inedible purposes.

Eleventh.—The soap industry the world over has always been given preferential treatment in connection with raw materials. This is true today in Canada, England, Germany, and other countries, and largely through the effect it has on the health of their people and the byproduct glycerin, which is so necessary in munitions and drug trade.

Twelfth.—Every fat and oil the soap industry buys in the United States is a byproduct of agriculture or animal production and of such minor importance that it has no bearing on the major production. We would not raise cattle for tallow; we would not raise hogs for grease; we would not raise cotton for cotton oil. Furthermore, every effort is being made by our Government to reduce these productions and plans are in effect to reduce the supply of hogs and cotton. Cattle has just been added to the list of controlled productions, the effect of which is to reduce the supply of animal and vegetable fats in the United States.

Coconut oil, on account of its peculiar qualities, permitting free sudsing and lathering in hard water (and a great deal of the country still has hard water) is necessary to the soap industry to blend with the animal fats and produces a soap that can be freely and satisfactorily used by the people of this country.

There are a great many facts to be considered and we are attempting in the following paragraphs to point out items of general interest in connection with the effect of this excise tax on the soap industries.

This tax is aimed primarily at the consumption of coconut oil in the edible industry. The 1933 census figures have not as yet been published by the Government Census Department. The figures for the calendar year 1932 show the consumption of coconut oil as follows:

	Pounds
Soap	376,056,000
Oleomargarine	123,219,000
Confectionery, other edible	49,185,000
Miscellaneous, inedible	1,055,000
Total	949,515,000

You will see from the above statement that 70 percent of the coconut oil consumed was in soap and other inedible usage and 30 percent was consumed in edible channels.

The use of soap and the character of soap has changed materially over some years ago. The development of home power-washing machines has made it necessary to have a quick sudsing soap product. In the same way a great many silk and wool articles of apparel are washed in the bathroom where quick sudsing soaps are required. The public today wants a good soap at a reasonable price.

Over a large part of the United tSates hard water is quite common and a quick-sudsing or free-lathering soap is absolutely essential to proper handling.

To make white soaps and soaps that have a free sudsing or lathering property and a soap that can be used in hard water, coconut oil is absolutely essential. Furthermore, to use the low grade animal fats and vegetable oil foots (refuse from refining vegetable oils) that are available to the soap maker in the United States, imported oils must be blended with them, as represented by the importation of coconut oil, palm oil, and sulphurated olive oil, to produce soaps that are satisfactory for the general use in the United States today.

The use of coconut oil in soap has not been at the expense of domestic fats and oils, but is necessary to carry these productions of recovered animals fats and oils and make a satisfactory soap as the increase in the production of fats and oils in the United States available to the soap kettle has been entirely recovered fats in which the farmer, dairyman, or cattleman has no interest.

The increase in the production of tallows and greases has come entirely from rendering establishments who collect the butcher shop, restaurant, and hotel scraps, and from rendered animals. Today 70 percent of all the tallow and grease produced in the United States comes from this source and only 30 percent of the production actually comes directly from the kill of livestock in the packing-house plants.

In the refining of cottonseed oil, depending on the quality of the seed, there is a loss of 8 to 9 percent in weight, which is referred to by the refining interests as cottonseed foots. These foots are taken by the soap manufacturer and distilled and used as a secondary fat.

Every pound of refined cottonseed oil produced is used edibly.

In the case of all of the above, the cattle, hog, and sheep raiser has been paid the meat price and the refiner has paid the cotton oil price, and the loss in refining becomes one of the items of cost in the conversion of the product, and does not directly affect the price paid for cottonseed.

There is no possible way whereby any excise tariff can affect the farmer's original production from which these items are recovered. They represent recovered tallows and greases which, as we have already explained, reach the soap kettle:

Through the renderers and are the butcher-shop scraps from the sale of meats, so that the meat price has already been paid;

From grease recovered by the city reduction plants which handle the accumulation of household scraps.

We have contended that if this group is sincere in their opposition from the standpoint of the farmer and dairyman's interests, their interest should be

confined to the edible situation and not to the inedible consumption of these imported oils.

The denaturing of vegetable oils can be done cheaply and effectively, and as there is no oil produced in the United States available to the soap kettle, there is no reason for penalizing the soap manufacturers because some of the oils imported are used edibly.

This action would increase the price of soap sharply to the entire consuming public without any compensating benefits to the farmer or dairy interests.

In order that you may understand fully the soapmaker's position as affecting his supply of fats and oils, the following table will indicate what the soapmaker uses and how it is divided as between the domestic fats and the foreign oils.

UNITED STATES OR DOMESTIC PRODUCTION 58 PERCENT OF TOTAL

	Pounds
Tallow	551,816,000
Grease	143,724,000
Fish oils	49,091,000
Foots (vegetable oils)	138,200,000
Vegetable oils	12,468,000
Total	895,299,000

IMPORTED OILS 42 PERCENT OF TOTAL

Coconut oil	376,056,000
Palm oil	176,419,000
Sulphurated olive oil	32,789,000
Marine animal oils	49,000,000
Miscellaneous vegetable oils	15,000,000
	649,264,000
Grand total	1,544,563,000

The consumption of soap in the United States has been growing faster than any possible production of materials in this country.

Soap produced:

	Pounds
1909	1,850,000,000
1933	3,168,985,000
Fats and oils consumed in producing:	
1909	750,000,000
1933	1,548,200,000

This increase has been due largely to increased population and to the development of local water works, which has brought running water to the homes of a great number of people in this country; to a higher standard of living on the part of our people through the efforts of health authorities in educating our people to the necessity of maintaining a high state of cleanliness in personal living conditions.

Due to the lack of domestic fats the soap manufacturer finds himself in the position of having to go out of the country in order to secure the necessary supply of fats to take care of this increased consumption.

We are not killing any more cattle. As a matter of fact we killed less cattle last year than we did in 1910, as our statement shows, and only 30 percent of our supply of tallow comes from direct kill of cattle and 70 percent comes from recovered fats through rendering establishments.

Every effort is being made to reduce the cotton crop further, which will mean less cotton, less cottonseed and less cottonseed oil.

As you know there are no coconuts grown in the United States. There are no palm nuts grown in the United States. While there are some olives produced in California, they are used edibly and none are available for pressing, thereby furnishing no oil to the soap kettle.

The statement has been repeatedly made on the floor of Congress that soap has not been reduced in price. The largest selling brand of soap of the Procter & Gamble Co. is P. and G. The white naphtha soap and we give you the

prices going back to 1928 at which this soap sold in the United States in 100 box lots.

	Per box
January 1, 1928	$3.70
February 14, 1929	3.85
February 1, 1930	3.70
January 17, 1931	3.20
July 18, 1933	2.55
May 8, 1933	2.65
January 11, 1934	2.30
February 16, 1934	2.30

The effect of an advance of this kind coming at a time when the soap industry has been cooperating with the National Recovery Administration program to keep down the price of our products to the consumer is going to be a very disturbing one. It also affects a lot of allied soap users, particularly the hospitals who are heavy users of soap; the steam laundries who have been affected very severely by the depression and an advance of this kind coming upon one of their principal items of cost is going to be disastrous to that industry.

The soap industry should not be penalized because 30 percent of the coconut oil imported is used in edible channels. Why not put the tax, if any, where it belongs—on the edible product.

The refiners of the United States have gone further and have voluntarily agreed to eliminate foreign oils entirely from edible consumption.

Furthermore, so far as the cottonseed-oil production is concerned, with the exception of a surplus carried from the bumper crop of 3 years ago, we are consuming edibly every pound of cottonseed oil produced in this country from a normal crop; and last year, with the cotton production of 13,144,000 bales, there was produced the year ending August 1, 1933, 1,272,780,000 pounds of refined cottonseed oil, and consumed 1,222,348,000 pounds of refined cottonseed oil (all of which was consumed edibly).

The Government and the trade records end each season with August 1.

You will see from the above that we consumed this past season practically the entire production of cottonseed oil edibly, and this from a crop of 13,144,000 bales.

Foreign oils were no factor in establishing the prices of edible fats in this country, but the effect of the lard pressure was a very determining factor in pressing down on our entire fat situation and affecting the price of all fats.

The effect of the proposal to place an excise tax of 5 cents per pound on coconut oil would be as follows:

1. It would confer no benefit to the farmer of the United States because our domestic farms produce practically no industrial oils and fats so far as the soap manufacturer is concerned.
2. It would penalize every farmer along with every other consumer in the United States in higher-priced soap without conferring compensatory benefit upon any single group.
3. It would allow the United States to be flooded with foreign merchandise into which these inedible oils go and more particularly the free shipment of soap on the part of foreign countries.
4. It would destroy any possibility of export business.
5. It would destroy that portion of the oil-seed-crushing industry in the United States which serves the industrial users of oils and fats.
6. It would affect seriously the labor situation in such manufacturing plants.

If we grant the argument of our opponents that it will raise the price of the United States production of fats and oils that go into soap, then we believe we are conservative in saying that it will increase the cost of soap to the consumer 50 percent of the price he is paying today.

The soap industry produces none of its raw materials, all of which must be purchased in the open market. Therefore the price they pay is reflected in the price of their product.

Yours very truly,

THE PROCTER & GAMBLE CO.,
By F. M. BARNES.

Distribution of oils among their major uses in United States in 1932

Oil	Pounds	Percent of total	Percent of grand total
Food column:			
Palm kernel oil [1]	11,310,000	0.20	
Olive oil [1]	74,919,000	1.32	
Palm oil [1]	22,803,000	.40	
Coconut oil [1]	172,404,000	3.04	
Miscellaneous oils [1]	27,835,000	.49	
Tallow	46,282,000	.82	73.6
Oleo oil and stearin	36,953,000	.65	
Corn and peanut oil	37,645,000	.66	
Cottonseed oil	1,135,203,000	20.05	
Lard	1,889,000,000	33.36	
Butter	2,209,000,000	39.01	
Total	5,663,354,000	100.00	73.6
Soap column:			
United States or domestic production (58 percent of total):			
Tallow, etc	551,816,000	35.65	
Grease	143,724,000	9.28	
Fish oils	49,091,000	3.17	
Foots (vegetable oil)	138,200,000	9.10	
Vegetable oils	12,468,000	0.80	
Imported oils (42 percent of total):			
Coconut oil	376,056,000	24.35	
Palm oil	176,419,000	11.42	
Sulphurated olive oil	32,789,000	2.11	
Marine animal oils	49,000,000	3.16	
Miscellaneous vegetable oils	15,000,000	.96	
Total	1,548,200,000	100.00	20.1
Drying oils column:			
Chinawood oil	67,170,000	20.84	
Perilla oil	5,020,000	1.56	
Miscellaneous oils	3,529,000	1.10	
Fish oils	19,616,000	6.09	
Linseed oil	215,269,000	66.81	
Soybean oil	11,593,000	3.60	
Total	322,197,000	100.00	4.2
Miscellaneous manufactured products column:			
Coconut and palm kernel oils	1,040,000	.65	
Inedible olive oil and foots	5,066,000	3.17	
Rapeseed oil	6,318,000	3.95	
Castor oil	10,721,000	6.71	
Palm oil	9,324,000	5.83	
Miscellaneous oils	8,993,000	5.03	
Linseed oil	3,492,000	2.18	
Fish oils	12,723,000	7.96	
Soybean oils	1,875,000	1.17	
Corn oils	2,152,000	1.35	
Tallow, etc	39,295,000	24.59	
Grease	58,819,000	36.81	
Total	159,818,000	100.00	2.1
Grand total	7,693,569,000		

[1] Imported.

Comparative compositions of typical fats and oils

	Edible group					Soap group	
	Lard	Cotton-seed oil	Corn oil	Peanut oil	Sesame	Coconut oil	Palm kernel oil
Glycerides of:							
Saturated fatty acids:							
Caproic						2.0	None
Caprylic						9.0	3.0
Capric						10.0	6.0
Lauric						45.0	50.0
Myristic		0.4				20.0	16.0
Palmitic	24.6	20.0	7.3	7.3	7.3	7.0	6.5
Stearic	15.0	2.0	3.3	5.5	4.4	5.0	1.0
Arachidic		0.6	0.4	3.6	4.0		
Lignoceric			0.2	2.9	0.4		
Unsaturated fatty acids:							
Oleic	50.4	35.0	43.4	56.7	46.0	2.0	16.5
Linolic	10.0	42.0	39.1	23.1	35.2		1.0

	Soap group				Drying group		
	Tallow	Palm oil	Whale oil	Inedible olive oil	Linseed oil	Wood oil	Soya bean
Glycerides of:							
Saturated fatty acids:							
Myristic	2.0	0.6	8.0	Trace			
Palmitic	29.0	44.0	12.0	9.2	2.7	3.7	6.5
Stearic	24.5	2.9		2.0	5.4	1.2	4.2
Arachidic				.2			.7
Lignoceric		.1					.1
Unsaturated fatty acids:							
Oleic	44.5	43.2	25.0	83.1	5.0	13.6	32.0
Palmitoleic			17.0				
Linolic		9.5	20.0	3.9	48.5		49.3
Linolenic					3[illegible].1		2.2
Elaeostearic						72.8	
(Clupandonic)			18.0				

References: Chemical Technology and Analyses of Oils, Fats, and Waxes, Lewkowitsch; Edible Oils and Fats, G. D. Elsdon; Jour. Amer. Chem. Soc. No. 42-1797, G. S. Jamieson; Pamphlets published by United States Bureau of Chemistry, Washington, D.C.

TAX ON GASOLINE

STATEMENT OF FAYETTE B. DOW, REPRESENTING THE AMERICAN PETROLEUM INDUSTRIES COMMITTEE

The CHAIRMAN. Is there anyone here on gasoline? We are going to give gasoline 10 minutes in the aggregate.

Senator GORE. Do you think that is enough?

Senator McADOO. Mr. Chairman, did you say 10 minutes or 10 hours?

The CHAIRMAN. What they asked for was 10 minutes.

Mr. DOW. The request made was for 15 minutes in the aggregate, and 10 minutes of it go to me.

The CHAIRMAN. We will give 15 minutes, and 10 minutes to you. How many are there?

Mr. DOW. Three.

The CHAIRMAN. Have you an understanding now that you are to take 10, and they are to take 5?

A VOICE. It will take us 5 or 6 minutes.
The CHAIRMAN. Together?
Senator MCADOO. For each of you?
Mr. DOW. I should like 10 minutes if I could have it. If I can get through in less time, I shall be glad to do it.
Senator MCADOO. Mr. Chairman, I suggest that this gasoline tax is a very important matter, and I suggest that these three gentlemen be allowed 10 minutes each.
The CHAIRMAN. I do not think that would be practical. The trouble is, Senator, we will have to have a session this afternoon if we do that. We have some other witnesses, and there has been a brief or two filed in the gasoline tax. It has been thoroughly discussed on this proposition.
Mr. DOW. It has not been discussed this time.
The CHAIRMAN. Not this session. But if there is one thing which I think the committee understands, it is the gasoline tax, and they want to take it off if they can.
Mr. DOW. Thank you, sir. May I proceed?
The CHAIRMAN. Yes.
Mr. DOW. The American Petroleum Industries Committee is a committee organized a year or so ago to study taxation affecting the industry, to assemble facts, to disseminate information, and to a certain extent to guide our tax work in the industry.
I have prepared a statement for the record. It is a fairly comprehensive study of this subject. I shall not have time to review it here, but I should like to call attention to 2 or 3 of the phases of this subject which I think are of outstanding importance. First of all, I wish to remind the committee that the responsibility for the Federal taxation of gasoline rests squarely upon the Finance Committee of the Senate. It was originally rejected by the House Ways and Means Committee, it was then rejected by the Finance Committee of the Senate, and then after the Secretary of the Treasury had appeared a second or perhaps a third time and revised the estimates of revenue needs, the Senate Finance Committee felt forced——
The CHAIRMAN (interrupting). We are familiar with this whole program and picture.
Mr. DOW. You remember it, you say?
The CHAIRMAN. Very distinctly.
Mr. DOW. Since that time this subject has been studied by a committee of the Ways and Means Committee, called the Committee on Double Taxation, and there is a printed volume, and a very large proportion of that printed volume is given over to the study of double taxation with reference to gasoline, and I have incorporated in my statement, which I will file here, references to it, which I think are pertinent.
Senator GORE. Do you think "double" is quite a broad enough term?
Mr. DOW. I could say triple, or quadruple. I could go on with some multiplication, but I am giving the title which the Ways and Means Committee gave to their subcommittee.
Here is the significant fact with which we start. Admittedly, this field of taxation was fully occupied by the States before the Federal Government entered it. We have now available for the first time the complete tax receipts of all of the States for the year 1931 from all sources, their entire revenue, and I have set the substance of that

out in my memorandum. It shows that taking all of the States in the aggregate in 1931, 38 percent of all of their revenues were derived from special motor-vehicle taxation, principally gasoline. There were only five States in the Union in 1931 which derived less than 25 percent of their total revenues from this source. There were 40 that derived more than 30 percent, there were 21 that derived more than 40 percent, 4 more than 50 percent, and 1 as much as 75 percent from this source of taxation.

Senator GORE. Which one was that?

Mr. DOW. Florida was 75 percent. And that was the situation at the close of 1931, and, as you remember, you entered the field in June 1932. I have set forth in my memorandum the details with respect to that, State by State.

Senator GORE. I would just like to interject in the record at that point that of all of the taxes raised by the National Government, the States, counties, cities, municipalities, townships, and school districts, 20 percent of our 14 billion raised by all the tax agencies in the United States combined, is raised on gasoline.

Mr. DOW. I am glad to have that additional statement in the record, Senator. I had not made that particular comparison. I was taking the State situation as a prelude.

I wish to point out to you the relation between this gasoline taxation and the price of gasoline; what it means in terms of wholesale and retail prices. The detail is shown in my memorandum. I have set forth the prices of gasoline at the first of each month, the average for 50 representative cities, for the last 15 years. Summarizing that situation, there is a retail sales tax on the average on gasoline alone of 36.2 percent. That is a retail sales tax. That combines the State average of 30 percent and the Federal of 6.2. That means that, out of every dollar spent for gasoline by the consumer, 36.2 cents goes for taxes. Of the wholesale price, there is an aggregate State and Federal tax on gasoline of more than 100 percent; and I wonder if the members of this committee realize that, if we repeal every State tax on gasoline tomorrow, there would be on the statute books in the Federal Act a manufacturer's sales tax of 20 percent on gasoline. In other words, the average wholesale price of gasoline today is approximately 5 cents a gallon the country over. You have a tax of 1 cent. That is a 20-percent manufacturer's tax on a most essential commodity of wide use and wide distribution, and that is added to the tax burden which had already been levied by the States.

The CHAIRMAN. You appreciate that this committee and Congress have no desire to enter the field except as a matter of necessity, to put on a gasoline tax. That is why we went into it, but you must appreciate—I am sure that the petroleum people and the automobile people appreciate—the fact the Federal Government has greatly increased appropriations for the public roads construction—400 millions last year, and additional this year.

Mr. DOW. I am sorry, Senator——

The CHAIRMAN. I will withdraw the remark, because I did not want to get into an argument about it, but it is a fact.

Mr. DOW. Well, sir, it is a fact that you appropriated last year $400,000,000 for roads. It takes just $26,400,000 for interest and amortization charges on that amount—in other words, one fifth of 1 cent a gallon Federal tax would take care of the entire $400,000,000.

The CHAIRMAN. That is not all. That was just for 1 year. We have been expending seventy-five to a hundred and a hundred and fifty million.

Mr. DOW. Perhaps you do not recall my statement when I appeared here before, but it is in the record. That if you take the entire history on the one hand of the special taxation of gasoline and of special motor vehicle taxes, and you take on the other hand the entire appropriation of the Federal Government for roads from the inception of State aid down to date, and you will find that the taxes exceed the amount of the Federal appropriation. The account was square.

The CHAIRMAN. You are talking about State taxes and county taxes and Federal taxes, too. The amount of the Federal taxes obtained does not balance that.

Mr. DOW. If you take from the history of the beginning of the special Federal taxes on automobiles, parts, tires, tubes, and gasoline, and put that in one column, and put in the other column the appropriations of the Federal Government for roads, you will find that the balance is in favor of the tax and not of the Government appropriation.

The CHAIRMAN. I won't argue with you, but I doubt the statement.

Mr. DOW. I put the figures in the record when I appeared before the Committee.

The CHAIRMAN. That was in 1932, and since then we have appropriated $400,000,000 and this year we intend to have $250,000,000 or $300,000,000 from the Federal standpoint alone.

Mr. DOW. In the Federal tax on gasoline, you have collected at the present rate of 1 cent, $125,000,000——

The CHAIRMAN (interrupting). $120,000,000.

Mr. DOW. All right. $120,000,000. That more than takes care on an annual basis of your $400,000,000, because it only takes $26,400,000 a year to pay the interest and amortization on $400,000,000.

Senator MCADOO. I think regardless of that, Mr. Dow, it is an economic question as to how far this particular commodity can bear further taxation or bear the taxation already imposed upon it. All of the oil states, like California, Oklahoma, and Texas, for them this is really a very serious problem. I mean the Federal and State taxation on gasoline, and now it is proposed to go still further and put a tax on crude oil.

The CHAIRMAN. We have recently decreased the gasoline tax one half cent a gallon.

Mr. DOW. That is correct.

The CHAIRMAN. And we hope to proceed in an orderly way to try to take it off.

Mr. DOW. May I say one other thing, and then I may finish. Senator, and that is this. The industry is not complaining simply because it wants to be in a complaining mood. What is happening is this. This gasoline tax over the country is so large that it cannot be fully collected. It is impossible to fully collect a 36 percent retail sales tax or a 100 percent wholesale tax. The result of that is that tax evasion is making it practically impossible for the petroleum industry to maintain a stabilized market structure. That is having an adverse effect upon the earnings of the petroleum industry, and

the result is that it is not paying the corporate income taxes which in our judgment would be paid by the industry if we had a reasonable taxation on its principal product.

Senator GORE. You mean the bootleg gasoline.

Mr. DOW. Yes, sir. That is found and set forth in the report of the committee on double taxation.

The CHAIRMAN. Thank you very much. Please file your brief.

Senator GORE. Could you add one or two paragraphs in regard to bootlegging in this report that you speak of?

Mr. DOW. I have set forth the finding of the Committee on Double Taxation on gasoline bootlegging, and it is set forth in my statement.

Senator CONNALLY. In your written statement that you are filing?

Mr. DOW. Yes, sir. Should you want to take the time to read it. it is there.

BRIEF OF FAYETTE B. DOW IN BEHALF OF THE AMERICAN PETROLEUM INDUSTRIES COMMITTEE WITH RESPECT TO FEDERAL TAXATION OF GASOLINE AND LUBRICATING OILS

The Federal taxes on gasoline and lubricating oils should be repealed as of the close of the current fiscal year, June 30, 1934.

I

The Federal gasoline tax originated in the Finance Committee of the Senate and it is therefore appropriate that this committee should take action to repeal it.

The origin of the Federal tax on gasoline is no doubt well understood by the members of this committee. But if I may take the liberty of refreshing your memories with reference to it, I will remind you that when the Revenue Act, 1932, was under consideration, there was some discussion by Secretary Mills at the hearings before the House Ways and Means with reference to a possible Federal gasoline tax. The Ways and Means Committee rejected the imposition of a gasoline tax at that time. When the bill came to the Senate Finance Committee a Federal tax on gasoline was again considered and this committee also rejected it. The revenue act as reported to the Senate by this committee did not contain a Federal tax on gasoline. But while the bill was being debated on the floor of the Senate, Secretary Mills again appeared before this committee and revised his estimates of the revenue needs of the Government, indicating a need of substantial additional revenue. Under these circumstances, and at the eleventh hour, this committee, under the compulsion of finding quickly a means of securing additional revenue, reported—and I am sure reluctantly, in favor of a Federal gasoline tax.

It has been the viewpoint of this committee, I believe, that the imposition of the Federal gasoline tax was only a temporary expedient and this is confirmed by the report of the Finance Committee, dated May 10, 1933, in which you said:

"Your committee is of the opinion that the gasoline tax should be reserved for the States after June 30, 1934."

It would be entirely appropriate, therefore, for this committee, which originated the Federal gasoline tax as a temporary expedient, to recommend its repeal.

II

The conclusion that the Federal gasoline tax has been regarded by the committees of both the House of Representatives and the Senate as a temporary measure is abundantly confirmed by committee reports.

I have already quoted from the report of the Senate Finance Committee on this subject. The House committee, in the report of its subcommittee on double taxation, said:

"When the gasoline tax was first discussed in the House of Representatives of the United States it was felt by many that this field of taxation was fully occupied by the States and should be left to them. The House did no include this tax in the revenue bill as sent to the Senate. The Senate, however, in

the light of later figures as to the deficit and as to the probable tax yield, was obliged to amend the bill by including a tax upon gasoline." (Report, p. 169.)

The same report on double taxation stated:

"The Federal (gasoline) tax is a temporary measure."

When this subject came up for discussion before the Ways and Means Committee of the House at this session, Chairman Doughton said:

"The CHAIRMAN. This was an emergency tax. I am sure Congress was reluctant to impose a tax on gasoline but in order to balance the Budget Congress felt that it was necessary temporarily to impose a tax of 1 cent a gallon on gasoline.

"Over the objection of the House it was passed in the Senate, and we concurred in it because they said the whole structure of the Government would perish if the Budget were not balanced, and we, too, were anxious to balance it, and consequently in the rush to close the session of Congress and to balance the Budget we imposed the gasoline tax."

(Hearings, p. 824, Dec. 20, 1933.)

Nothing further need be said to show that this Federal gasoline tax was enacted as a temporary measure, and I believe that it is still regarded by both committees and by the vast majority of the Members of both Houses of Congress as a temporary measure.

III

There are sound reasons for repealing the Federal gasoline tax at this time.

1. The Federal gasoline tax invades a field upon which the States rely to a very large extent for their revenues.

Everyone knows that gasoline and other motor-vehicle taxation has been tremendously increased in recent years, but I think very few people realize—perhaps even the members of this committee do not realize—the proportion of total State tax revenues which is derived from motor-vehicle taxes. By motor-vehicle taxes I mean the gasoline tax, the personal property tax on the motor vehicle, and registration fees. I shall attach to this statement a table which shows the figures for all States (appendix A). The year 1931 is the latest year for which a figure of total State revenues is available. In that year total State revenues from all sources amounted to $2,324,522,000. The collections of motor-vehicle taxes by the 48 States and the District of Columbia amounted to $880,735,112, or 37.8 percent of the total. In other words, in 1931 the States were getting approximately 38 percent of their total revenues from special motor-vehicle taxation. This does not include gasoline taxes levied by many counties and municipalities and, of course, it does not include the Federal gasoline tax.

The members of this committee will be interested, I think, at this point, in the figures for their individual States. They are as follows:

	Automobile registration fees and gas tax [1]	Total State revenue	Percent motor vehicle to total State revenues
California	$49,626,911	$126,249,000	39.2
Colorado	8,165,079	22,301,000	36.6
Connecticut	12,987,535	41,919,000	30.9
Delaware	2,115,254	14,852,000	14.2
Georgia	17,570,053	40,369,000	43.5
Kentucky	13,652,238	37,357,000	36.5
Massachusetts	22,306,082	74,020,000	30.1
Michigan	43,653,637	109,096,000	40.1
Mississippi	8,303,551	19,084,000	43.5
Missouri	19,346,093	51,485,000	37.5
New Hampshire	4,914,602	11,398,000	43.1
North Carolina	20,188,852	40,427,000	49.9
Oklahoma	17,522,539	39,675,000	44.3
Pennsylvania	64,059,849	195,982,000	32.6
Rhode Island	4,165,514	12,865,000	32.3
Texas	44,509,205	110,738,000	40.1
Utah	3,137,530	13,438,000	23.3
Virginia	17,604,472	45,921,000	38.3
Wisconsin	27,505,178	63,020,000	43.6

[1] Total receipts; does not show actual allotments to States. Does not include proceeds from bond issues. Figures on State revenues obtained from the U.S. Census Bureau.

There are only 5 States in the Union which collect less than 25 percent of their total revenues from motor-vehicle taxation. There are 40 States which collect more than 30 percent. There are 21 States which collect more than 40 percent. There are 4 States which collect more than 50 percent. And there is one State which collects more than 75 percent.

2. The Federal gasoline tax constitutes the most conspicuous and indefensible instance of double taxation.

As we have shown, the States are collecting annually approximately $900,000,000 in special motor-vehicle taxation. To this must be added Federal taxes of $125,000,000 on gasoline; and, as estimated by the Treasury for the fiscal year 1934, $22,900,000 on lubricating oils; $3,200,000 on auto trucks: $24,300,000 on other autos and motor cycles; $25,500,00 on tires and tubes; $4,200,000 on parts and accessories.

The total annual imposition of motor-vehicle taxes is approximately $1,105,100,000.

The subject of double taxation has been dealt with at some length in the report of the subcommittee of the Ways and Means Committee of the House, already referred to. That report clearly indicates that gasoline is both doubly and excessively taxed. The report was prepared in order to form a basis for an effort in a direction of eliminating double taxations, duplications, and overlapping. The subcommittee in transmitting the report expressed the hope "that it may form a basis for a revision of our taxation system as a whole in order that the tax burden may be more equitably distributed." (Report, p. v.) The report states that prior to 1932, every State in the Union, the territory of Hawaii, and the District of Columbia imposed a tax on gasoline. The Federal Government entered this tax field on June 21, 1932, with a 1-cent tax on gasoline limited to expire on June 30, 1933. It has since been extended to June 30, 1935. After reviewing the gasoline taxes then imposed by the 48 States and the District of Columbia, the report of the subcommittee on double taxation states:

"But even this does not represent the entire burden. Many of the counties and cities also impose additional gasoline taxes." (Report, p. 168.)

The following table shows the present rate per gallon in effect in each State:

State	Rate	State	Rate
Alabama	6	California	3
Arizona	5	Nevada	5
Colorado [1]	4	New Hampshire	4
Connecticut	2	New Jersey	3
Delaware	3	New Mexico	5
District of Columbia	2	New York	3
Florida	7	North Carolina	6
Georgia	6	North Dakota	3
Idaho	5	Ohio	4
Illinois	3	Oklahoma	4
Indiana	4	Oregon	5
Iowa	3	Pennsylvania	3
Kansas	3	Rhode Island	2
Kentucky	5	South Carolina	6
Louisiana	5	South Dakota	4
Maine	4	Tennessee	7
Maryland	4	Texas	4
Massachusetts	3	Utah	4
Michigan	3	Vermont	4
Minnesota	3	Virginia	5
Mississippi	6	Washington	5
Missouri	2	West Virginia	4
Montana	5	Wisconsin	4
Nebraska	4	Wyoming	4
Arkansas [2]	6		

In appendix B, attached to my statement, there is a list of the counties and/or municipalities which levy taxes on gasoline, over and above the state tax, the rate of tax, and the purpose for which the tax is used.

It has undoubtedly been recognized by most Members of Congress, probably by every Member of Congress, that in enacting a Federal tax on gasoline Congress invaded a field which had been fully exploited, to say the very least, by

[1] Colorado increased to 5 cents for period Feb. 1 to Aug. 31, 1934.
[2] Arkansas increased to 6½ cents if bonds are issued under Act.

the States. A typical instance of this attitude of Members of Congress is the statement of Representative Ragon, then a member of the Ways and Means Committee, at the time when the extension of the Federal gasoline tax for another year was under consideration. He said:

"I am one who would like to see this tax removed as soon as we can. In the first place, I think it invades a field of taxation that has been preempted by the States, and, in the second place, I think we should, as soon as we can, make a sharp line of demarcation between the two fields of taxation, the one in which the Federal Government should have priority and one in which the States should have priority; but it is necessary to continue this tax." (Congressional Record, Apr. 20, 1933, p. 2032.)

3. The present taxes on gasoline, Federal and State, are clearly excessive when shown in their relation to the cost of gasoline.

The gasoline taxes are sales taxes. The average for the States is 4.18 cents per gallon. The Federal tax is 1 cent, making the aggregate average tax 5.18 cents per gallon.

On January 1, 1934, the average retail price of gasoline in 50 representative cities, exclusive of tax, was 14.3 cents per gallon. If to this price is added the combined State and Federal tax of 5.18 cents, it is shown that the tax is 36.2 percent of the average retail price, including tax. To put the matter in another way, out of every $1 spent for gasoline, 36.2 cents go for State and Federal taxes and 63.8 cents for the gasoline itself.

If comparison is made with wholesale prices, the aggregate average gasoline tax is a tax of considerably more than 100 percent.

Gasoline is one of the greatest necessities of modern life, and I respectfully submit that on such a commodity the tax of more than 100 percent on the wholesale price or a retail tax of 36.2 percent is indefensible.

The subcommittee's report on double taxation contains abundant evidence that that committee regards the gasoline tax as excessive. The report says:

"It appears that the combined Federal, State, and local levies upon gasoline increases the sales price to the consumer from 30 percent to more than 100 percent, depending upon the State involved. This is a high percentage, and while the tax is productive and easy to collect, it is evident that the rates are approaching the point of diminishing returns." (Report p. 169.)

The report also says:

"If gasoline is classified as a necessity, as undoubtedly it must be in many cases, then the tax burden is unprecedentedly high for a necessity" (Report, p. 20).

Finally, leaving out of consideration all State, county, and municipal gasoline taxes, the Federal gasoline tax alone, at the present average wholesale price of about 5 cents per gallon, is a manufacturers' sales tax of 20 percent. This may be compared with the original proposal of the Ways and Means Committee in 1932 for a general manufacturers' sales tax at the rate of 2¾ percent.

4. A comparison of gasoline prices and taxes in 1926 with the corresponding figures for 1933 shows that increases in gasoline taxation have offset a substantial part of the gasoline price reduction.

In 1919, when the gasoline tax was first enacted in the State of Oregon, the average service-station price of gasoline in 50 representative cities (see appendix C) was 25.4 cents per gallon.

In 1926 the average service-station price of gasoline in these 50 cities, excluding tax, was 20.9 cents. In that year the average State gasoline tax was 2.3 cents, or 10 percent of the retail price to the consumer.

In 1933 the average service-station price of gasoline in the same cities, excluding tax, was 12.7 cents. In that year the average combined State and Federal gasoline tax was 5.4 cents, or 30 percent of the retail price to the consumer.

In other words, from 1926 to 1933 the average price of gasoline, excluding tax, was reduced from 20.9 cents to 12.7 cents, or 39 percent, while the gasoline tax was increased from 2.3 cents to 5.4 cents, or 135 percent.

The motor-vehicle users paid $253,000,000 in gasoline taxes in 1926. In 1933, taking into account an increased consumption, they paid $843,000,000.

These comparisons clearly show that increases in gasoline taxation have offset a substantial part of the gasoline price reduction.

While we are dealing with the subject of gasoline prices in comparison with 1926, it might be helpful to the committee to have before it the latest index figures of the Department of Labor. These are shown in Wholesale Prices,

January 1934, issued by that Department. These are wholesale price indices, taking 1926 as 100. Of the 11 major commodity groups tabulated by the Department of Labor, petroleum and its products is at the very bottom when compared with the 1926 price level. The index figure for the petroleum-products average for the year 1933 was 41 on the basis of the 1926 price as 100. This may be compared with the following major groups:

	Year 1933
All commodities	65.9
Farm products	51.4
Hides and leather products	80.9
Foods	60.5
Textile products	64.8
Fuel and lighting	66.3
Metals and metal products	79.8
Building materials	77.0
Chemicals and drugs	72.6
House-furnishing goods	75.8
Miscellaneous	62.5
Petroleum products	41.0

5. Excessive gasoline taxation places a heavy burden upon the oil industry and is a large contributing factor in making it impossible for the industry to earn a sufficient net income to pay corporate income taxes.

It must be apparent to everyone who is familiar with tax collection that it is impossible to fully collect sales taxes which constitute 36.2 percent of the retail price and more than 100 percent of the wholesale price. Gasoline-tax evasion is serious. It unquestionably accounts in many instances for the market demoralization which has made a stable retail price structure practically impossible. The expansion of retail outlets has results in an exceedingly keen competition for business. Most of the effort to increase gallonage at service stations and roadside pumps, for the purpose of reducing operating cost, has been by price cutting. An operator who can evade part of his gasoline-tax obligation by one device or another can use that evasion to reduce his price. In so doing he ultimately reduces his competitor's price. The marketing operations of the oil industry are conducted at a serious loss and gasoline-tax evasion has a large measure of responsibility for it. If the industry, which has 12 billions of dollars invested, could earn a fair profit, it could pay corporate income taxes to the Federal Government. Those who have any first-hand knowledge of the marketing problems of the oil industry know that gasoline-tax evasion, due in largest part to excessive gasoline taxes, is responsible in no small way for the oil industry's failure to operate profitably.

On this subject the report of the subcommittee on double taxation said:

"A very high rate of tax creates an incentive to evade by bootlegging or otherwise, with a resulting loss of revenue to the States and competitive hardships to reputable distributors and dealers."

The oil industry is so seriously menaced by evasions of gasoline taxes that it has set up its own organizations and is spending substantial amounts of money in many areas to assist the States in the full collection of these taxes.

It is also a demonstrated fact that the excessive gasoline taxes have reduced gasoline consumption, thus contributing to overproduction.

This point has been demonstrated at previous hearings before this committee. It is discussed in the report of the subcommittee on double taxation which said:

"There were declines in consumption in 1931 in all States having a gasoline tax rate of more than 2 cents per gallon. Where the tax rate was 3 cents, the decline was 1 percent; 4 cents, 3 percent; 5 cents, 8 percent; 6 cents, nearly 14 percent."

The American Petroleum Institute has published figures showing the decline in gasoline consumption in 1932 as compared with 1931, for the various States grouped according to the gasoline tax rate in effect during 1932.

In States where the 1932 State tax rate was 2 cents per gallon, the decline in gasoline consumption in 1932 as against 1931 was 4 percent; 3 cents per gallon, 5.2 percent; 4 cents per gallon, 9.1 percent; 5 cents per gallon, 8.9 percent; 6 cents per gallon, 11.3 percent; and 7 cents per gallon, 12.7 percent.

An objection to this comparison might be made on the ground that some of the States with high tax rates have been more adversely affected by general

economic conditions than the average State. This phase of the matter has been that subject of a very able study presented before the mid-year meeting of the American Petroleum Institute on May 18, 1933 ("Gasoline Taxation and Its Effect on Consumption", by Sidney A. Swensrud). The study demonstrates that adverse economic conditions do not explain the relative reductions in consumption, but indicates that the principal cause was excessive gasoline taxation.

While economic conditions have undoubtedly contributed to reduced consumption, there can be no doubt that, in those localities where the taxes are 50, 75, or 100 percent or more of the retail cost of the gasoline, these taxes have been a large factor in cutting down the use of automotive transportation.

6. The Federal Government now has sources of tax revenue which were not available when the Federal gasoline tax was enacted.

As already shown, the Federal gasoline tax was hurriedly imposed, after the Senate committee had reported the Revenue Act, 1932, to the Senate, in an effort to balance the Budget and with full knowledge that this tax was objectionable because it placed a further burden upon an already over-taxed commodity and invaded a filed of taxation which had been fully occupied by the States. It was imposed originally for one year only with the thought that other sources of taxation would be found to replace it. At that time a tax upon beer or wines or distilled spirits could not be imposed. These commodities have now become subject to excise taxation and will yield to the Federal Government a revenue of not less than $500,000,000 per year, with the probability that the yield will more nearly approximate $600,000,000 when the customs duties are included. There can be no possible question but that had beer, wines, and distilled spirits been available for taxation at the time of the Revenue Act, 1932, was under consideration, the Federal tax on gasoline would not have been imposed. It is submitted that these new sources of taxation should now be used to replace the Federal gasoline tax. It is also well understood that other sources of Federal taxation can now be expected to yield increased revenues, such, for example, as the corporate and personal income taxes.

7. The excessive taxation placed upon gasoline is jeopardizing a source of tax revenue which is otherwise inherently sound.

It is universally recognized that the gasoline tax, properly levied, fully collected, and with the proceeds properly used, is a valuable and sound source of tax revenue. The gasoline tax should be first, reasonable in amount; second, fully collected; third, wholly applied to the construction and maintenance of roads. If these principles are followed, the gasoline tax will provide sufficient funds for a splendid highway system in the United States. But it is equally clear that an inherently sound tax can be abused. Gasoline taxation has been greatly overdone. Many of the States have increased their gasoline taxes beyond the point of reasonableness, and there has been an increasing tendency to divert the proceeds of this tax from highway construction and maintenance to other uses.

It is estimated that as much as $200,000,000 is being diverted from roads, and road work thereby curtailed. Much of this diverted money goes into channels that do not afford opportunities for employment such as are offered by the building and maintenance of roads. The Federal tax, superimposed upon these State taxes, has increased the total gasoline tax burden to a point where it is jeopardizing the source of revenue. The point of diminishing returns has been reached and passed.

The States are beginning to realize that they have overdone gasoline taxation and that the Federal tax has invaded an overburdened field of taxation. Nine States have memorialized Congress to repeal the Federal tax. These States are Arkansas, Mississippi, Montana, New York, Nevada, North Carolina, Oklahoma, Oregon, and South Dakota.

It is, of course obvious that the needs of the Federal Government for revenues are great. It may be reasonably expected that tax burdens will be increased. But the present emergency spending of millions of dollars by the Federal Government is in behalf of all industries, all commodities, all groups of people in an extraordinary effort to break the depression. Under such circumstances there is no consideration more important than that tax burden should be equitably distributed. There can be no justification for the selection of a single commodity, or a small, special group of commodities, to be the subject of excessive taxation. The time has come when Congress should recognize the inequities of its present tax levies. A start should now be made to follow the principles laid down in the report of the subcommittee on double

taxation—that is, to eliminate "double taxations, duplications, and overlappings." To quote again from the report of this committee, there should be "a revision of our taxation system as a whole in order that the tax burden may be more equally distributed."

APPENDIX A

STATEMENT OF FAYETTE B. DOW

State motor taxes equal to 38 percent of total State revenues, 1931 varies from 14 percent to 75 percent

[From Facts and Figures, 1933 edition, National Automobile Chamber of Commerce]

	Automobile registration fees and gas tax [1]	Total State revenue (thousands)	Percent motor vehicles to total State revenue
Alabama	$10,576,866	$31,360	33.7
Arizona	3,971,796	13,547	29.3
Arkansas	9,943,594	23,413	42.4
California	49,626,911	126,249	39.2
Colorado	8,165,079	22,301	36.6
Connecticut	12,987,535	41,919	30.9
Delaware	2,115,234	14,852	14.2
Florida	19,838,138	26,372	75.2
Georgia	17,570,053	40,369	43.5
Idaho	4,507,729	12,351	36.5
Illinois	47,492,182	122,608	38.7
Indiana	24,366,654	58,410	41.7
Iowa	23,467,202	46,339	50.6
Kansas	14,130,795	36,923	38.2
Kentucky	13,652,238	37,537	36.5
Louisiana	13,947,027	34,590	40.3
Maine	7,566,819	24,297	31.1
Maryland	10,928,809	33,574	32.5
Massachusetts	22,306,682	74,020	30.1
Michigan	43,653,637	109,096	40.1
Minnesota	21,855,004	65,663	33.2
Mississippi	8,303,551	19,084	43.5
Missouri	19,346,993	51,485	37.5
Montana	4,517,646	13,514	33.4
Nebraska	12,838,649	23,389	54.8
Nevada	1,166,245	4,929	23.6
New Hampshire	4,914,602	11,398	43.1
New Jersey	$33,015,836	$97,545	33.8
New Mexico	3,912,801	13,527	28.9
New York	72,421,672	269,317	26.8
North Carolina	20,188,852	40,427	49.9
North Dakota	3,829,358	17,642	21.6
Ohio	52,146,758	88,328	59.0
Oklahoma	17,522,539	39,675	44.3
Oregon	13,127,422	29,767	44.1
Pennsylvania	64,059,849	195,982	32.6
Rhode Island	4,165,514	12,865	32.3
South Carolina	10,035,997	25,080	40.0
South Dakota	6,202,847	19,696	31.4
Tennessee	16,041,708	36,924	43.4
Texas	44,509,205	110,738	40.1
Utah	3,137,530	13,438	23.3
Vermont	4,322,457	10,278	42.0
Virginia	17,604,472	45,921	38.3
Washington	18,656,032	39,904	46.7
Wisconsin	27,505,176	63,020	43.6
West Virginia	9,906,980	24,543	40.3
Wyoming	2,314,681	10,487	22.0
United States [2]	880,735,112	2,324,522	37.8

[1] Total receipts; does not show actual allotments to States. Does not include proceeds from bond issues. Figures on State revenues obtained from the U.S. Census Bureau.
[2] Includes District of Columbia, $2,349,756.

APPENDIX B

TO STATEMENT OF FAYETTE B. DOW TO SENATE FINANCE COMMITTEE, MAR. 14, 1934

List of States and the counties and/or municipalities therein which levy a tax on gasoline, the rate of tax, and the purpose for which the revenue is used, as of Apr. 1, 1933

ALABAMA [1], COUNTY GASOLINE TAXES

County	Rate of tax per gallon	Purpose for which tax is used	County	Rate of tax per gallon	Purpose for which tax is used
Jackson	[2] $0.03	Roads	Montgomery	$0.01	Schools.
Limestone	.03	do	Pickens	.02	Roads.
Madison	.03	do	Randolph	.03	

[1] State tax is 6 cents per gallon.
[2] $0.01 to Scottsboro.

List of States and the counties and/or municipalities therein which levy a tax on gasoline, the rate of tax, and the purpose for which the revenue is used, as of Apr. 1, 1933—Continued

ALABAMA CITY AND TOWN GASOLINE TAXES

(T-Town; C-City; PJ-Police Jurisdiction, 3 miles as the crow flies, from city limits)

Municipality	Gasoline tax		Kerosene tax		Purpose for which tax used
	City	P.J.	City	P.J.	
	Cents	*Cents*	*Cents*	*Cents*	
Abbeville	1	1	½	½	Streets; fire department.
Albertville	1	½	½	¼	
Alexander City	1	...	1	...	
Aliceville	1	1	...	...	
Altoona	1	1	...	...	
Andalusia	1½	¾	1	½	Schools (bonds). City streets, bridges.
Anniston	1	½	...	...	
Ariton	1	½	½	¼	
Ashland	1	...	...	...	
Atmore	1	½	...	...	
Attala	2	1	...	...	
Auburn	2	1	...	...	General fund.
Austinville	2	1	...	...	
Banks	1	½	...	...	
Bay Minette	1	½	...	...	General fund.
Beatrice	1	...	...	...	
Bessemer	1	½	...	...	
Birmingham	1	½	...	...	Do.
Boaz	1	½	½	¼	Streets.
Brantley	3	1	1	½	
Brewton	1	...	...	...	
Brighton	1	½	...	...	
Brundidge	1	½	...	...	General fund.
Camp Hill	1	1	...	...	Streets.
Carrollton	1	...	...	...	
Castleberry	1	...	...	...	
Cherokee	2	1	...	...	
Childersburg	1	½	...	...	Do.
Citronelle	2	1	...	...	
Columbia	1	1	...	...	
Courtland	1	½	...	...	General fund; school.
Cullman	1	1	...	...	Streets.
Dadeville	1	...	½	...	Do.
Decatur	2	2	...	...	
Demopolis	2	1	...	...	
Dothan	2	2	...	...	
Dotler	1	...	...	...	
East Brewton	1	...	...	...	General fund.
Electric	1	...	...	...	
Elba	2	1	...	...	Do.
Enterprise	1	...	½	...	Do.
Eufaula	1	...	...	...	
Eutaw	1	1	...	...	Streets.
Fairfield	1	½	...	...	Do.
Faulkville	⅛	...	...	...	General fund.
Florala	1½	¾	1	½	
Florence	2	1	...	...	Do.
Foley	1	...	...	...	
Fort Deposit	1	...	½	...	
Fort Payne	1	...	½	...	Do.
Frisco City	1	½	...	...	
Gadsen	2	½	...	...	
Geneva	1	½	1	½	
Georgiana	1	½	...	...	
Glenwood	1	...	...	...	Schools.
Goodwater	1	½	...	...	
Gordo	1	...	...	...	
Goshen	1	...	...	...	
Greenville	8	1	1	...	
Guntersville	1	½	...	...	Streets.
Hackleburg	1	...	½	...	Do.
Hamilton (lake oil)	1	...	...	...	
Hanceville	1	1	...	...	General fund.
Hartselle	1	½	...	...	
Headland	1	½	...	...	
Homewood	1	½	...	...	
Hurtsboro	1	...	...	...	
Irondale	1	½	...	...	
Jackson	1	½	...	...	

List of States and the counties and/or municipalities therein which levy a tax on gasoline, the rate of tax, and the purpose for which the revenue is used, as of Apr. 1, 1933—Continued

ALABAMA CITY AND TOWN GASOLINE TAXES

(T-Town; C-City; PJ-Police Jurisdiction. 3 miles as the crow flies, from city limits)

Municipality	Gasoline tax		Kerosene tax		Purpose for which tax used
	City	P.J.	City	P.J.	
	Cents	*Cents*	*Cents*	*Cents*	
Kennedy	1				
Kingston	1				Schools.
LaFayette	1	½			Streets.
Leeds	1				Streets, bridges.
Leighton	1				General fund.
Linden	1	½			Do.
Lineville	1	½			Streets.
Lipscomb	1	½			
Luverne	1				Schools.
Marion	1				
McKenzie (lake oil)	¼	½	½	¼	Do.
(Lake oil)	5	2½			
Mobile	1	½			Streets.
Montgomery	1	1	½	¼	General fund.
Moulton	1	½			
Muscle Shoals	1	½			
New Breston	1	½			Schools.
Newsville	1	½	1	½	
Northport	1	½			
Notasulga	1				
Oneonta	1	½			Streets.
Opelika	1	½			Do.
Opp	1	1	1	1	Schools.
Oxford	1	½			Streets.
Ozark	2	2	½	½	General fund.
Pell City	1				Streets.
Petry	1				
Phil Campbell	1	1			General fund.
Piedmont	1	½			Streets.
Pinckard	1				General fund.
Prattville	1	1			Do.
Pineapple	1				
Prichard	1	½			
Ragland	1	1			Do.
Red Boy	1	1			Schools.
Red Level	1	½	½	¼	
Reform	1	1			
Repton	1				Do.
Roanoke	1	½			General fund.
Robertsdale	1	1			
Russellville	2	1			Do.
Salem	2	2			General fund; charity.
Sheffield	2				
Silver Hill	1				Streets.
Steppeville	1	1			Do.
Sulligent	1	½			Do.
Summerdale	1				
Sylacanga	1				Do.
Talladega	1	½			General fund.
Tarrant City	1	½			
Thomasville	1	½			Schools.
Town Creek	2	1			
Troy	1	½			
Tuscaloosa	1	¼			
Tuscumbia	2	1			
Tuskegee	1	½			Streets.
Union Springs	2	1			
Uniontown	1	½			Do.
Valley Head	1		½		Do.
Vernon	1	½			Schools.
Vina	1	½	½	¼	
Wadley	1	½			Streets.
Walnut Grove	1	1			
Warrier	1	½			
Waverly	1				
Wetumpka	1				

List of States and the counties and/or municipalities therein which levy a tax on gasoline, the rate of tax, and the purpose for which the revenue is used, as of Apr. 1, 1933—Continued

FLORIDA CITY AND TOWN GASOLINE TAXES

[State tax, 7 cents per gallon]

	Total tax per gallon	Purpose for which tax is used
	Cents	
Bay Harbor	1	(1).
Bronson	1	Street lights.
Shipley	1	Street work and cleaning.
De Funiak Springs	1	Street cleaning.
Lynn Haven	1	(1).
Mariana	1	General fund.
Milleville	1	(1).
Palatka	1	General expense.
Panama City	1	Do.
Pensacola	1	Repairs and improvements.
St. Andrews	1	(1).
St. Augustine	1	Paying for city lot—street work.
Wewahitchka	1	General fund.
Williston	1	Indebtedness for streets.

[1] All gas in Bay County is from Panama City, where there is a storage tax (see P.C.).

LOUISIANA PARISH GASOLINE TAXES

[State tax, 5 cents per gallon]

	Cents	
Acadia	1	Construction, maintenance, and repairs of parish roads and bridges.
Avoyelles	1	Do.
Assumption	1	Do.
Beauregard	1	Do.
Bienville	1	Do.
Calcasieu	1	Do.
Caldwell	1	Do.
Claiborne	1	Do.
East Carroll	1	Do.
East Feliciana	1	Do.
Evangeline	1	Do.
Franklin	1	Do.
Grant	1	Do.
Iberis	1	Do.
Iberville	1	Do.
Jackson	1	Do.
Jefferson	1	Do.
Jefferson Davis	1	Do.
Lafayette	1	Do.
Lincoln	1	Do.
Livingston	1	Do.
Madison	1	Do.
Natchitoches	1	Do.
Orleans	1	Do.
Plaquemine	1	Do.
Pointe Coupee	1	Do.
Rapides	1	Do.
Red River	1	Do.
Richland	1	Do.
Sabine	1	Do.
St. Bernard	1	Do.
St. Charles	1	Do.
St. Helena	1	Do.
St. John Baptiste	1	Do.
St. Landry	1	Do.
St. Martin	1	Do.
St. Tammany	1	Do.
Tangapihoa	1	Do.
Tensas	1	Do.
Terrebonne	1	Do.
Vermillion	1	Do.
Vernon	1	Do.
Washington	1	Do.
Webster	1	Do.
West Carroll	1	Do.
West Feliciana	1	Do.
Winn	1	Do.
New Orleans (municipality)	1	Paving fund.

List of States and the counties and/or municipalities therein which levy a tax on gasoline, the rate of tax, and the purpose for which the revenue is used, as of Apr. 1, 1933—Continued

MISSISSIPPI COUNTY GASOLINE TAXES

[State tax, 6 cents per gallon]

	Total tax per gallon	Purpose for which tax is used
	Cents	
Hancock	2	Retiring bonds issued for construction of sea wall.
Harrison	3	
Jackson	2	

MISSOURI MUNICIPALITY GASOLINE TAXES

[State tax, 2 cents per gallon]

	Cents	
Albany	1	
Aurora	½	
Bland	½	
Boonville	1	
Bowling Green	1	
Branson	1	
Brentwood	½	
Bridgeton	1½	
Caruthersville	¼	
Centertown	1	
Chamois	1	
Clayton	½	
Clinton	½	
Columbia	1	
Do Sota	½	
Excelsoir Springs	1	
Ferguson	½	
Glendale	½	
Hollister	1	
Jefferson	1	
Kansas City	1	
Kirkwood	½	
Lexington	1	
Liberty	1	
Linn	1	
Lupus	1	
Maplewood	½	
Marionville	½	
Marshall	1	
Meta	1	
Mexico	1	
Moberly	1	
Morrison	1	
North Kansas City	½	
Olivette	1½	
Osceola	1	
Owensville	½	
Ozark	1	
Republic	1	
Richmond Heights	½	
Rockhill	½	
Rolla	1	
St. Ferdinand	½	
St. Joseph	1	
St. Louis	1	
Savannah	½	
Sedalia	1	
Springfield	1	
Stanberry	1	
Shrewsburg	½	
Trenton	1	
Union	½	
University	½	
Vandalia	1	
Valley Park	½	
Walnut Grove	1	
Warsaw	½	
Webster Grove	½	

Lists of States and the counties and/or municipalities therein which levy a tax on gasoline, the rate of tax, and the purpose for which the revenue is used, as of Apr. 1, 1933—Continued

NEW MEXICO CITY AND TOWN GASOLINE TAXES

[State tax 5 cents per gallon]

	Total tax per gallon	Purpose for which tax is used
	Cents	
Belen	1	General fund.
Clovis	¼	
Estancia	1	Municipal building, sewers and parks.
Gallup	1	Publicity fund.
Lovington	1	General purposes.
Magdalena	1	Road fund.
Mountainair	1	Municipal building, fire protection, etc.
Santa Fe	1	General fund.
Socorro	1	Road fund.
Las Vegas	1	General fund.

APPENDIX C

TO STATEMENT OF FAYETTE B. DOW TO SENATE FINANCE COMMITTEE

Gasoline prices 1919–24 (average 50 representative cities in the United States)

[First of month in cents per gallon]

	Tank wagon (excluding tax)	Service station (excluding tax)	State gasoline tax	Service station (including tax)
1919				
January	$0.2424	$0.2543		$0.2543
February	.2426	.2545		.2545
March	.2422	.2541	$0.0002	.2543
April	.2417	.2538	.0006	.2544
May	.2417	.2538	.0008	.2546
June	.2426	.2547	.0008	.2555
July	.2442	.2563	.0008	.2571
August	.2414	.2555	.0008	.2563
September	.2385	.2532	.0008	.2540
October	.2385	.2532	.0008	.2540
November	.2386	.2530	.0008	.2538
December	.2384	.2531	.0008	.2539
1920				
January	.2377	.2531	.0008	.2539
February	.2517	.2671	.0008	.2679
March	.2568	.2727	.0008	.2735
April	.2769	.2931	.0008	.2939
May	.2789	.2953	.0008	.2961
June	.2867	.3037	.0008	.3045
July	.2895	.3067	.0010	.3077
August	.2909	.3081	.0010	.3091
September	.2983	.3155	.0010	.3165
October	.3017	.3189	.0010	.3199
November	.3005	.3190	.0010	.3200
December	.2968	.3151	.0010	.3161
1921				
January	.2959	.3143	.0010	.3153
February	.2874	.3061	.0010	.3071
March	.2040	.2825	.0014	.2839
April	.2549	.2755	.0016	.2771
May	.2507	.2711	.0016	.2727
June	.2367	.2570	.0016	.2586
July	.2193	.2397	.0022	.2419
August	.2133	.2345	.0022	.2367
September	[illegible]	.2305	.0028	.2333
October	[illegible]	.2273	.0028	.2301
November	.2191	.2399	.0028	.2427
December	.2340	.2545	.0028	.2573
1922				
January	$0.2286	$0.2493	$0.0032	$0.2525
February	.2219	.2425	.0032	.2457
March	.2181	.2391	.0036	.2427
April	.2174	.2398	.0038	.2436
May	.2309	.2519	.0038	.2557
June	.2447	.2668	.0040	.2708
July	.2493	.2713	.0040	.2753
August	.2411	.2630	.0040	.2670
September	.2290	.2514	.0040	.2254
October	.2288	.2514	.0040	.2554
November	.2074	.2301	.0040	.2341
December	.1992	.2219	.0040	.2259
1923				
January	.1948	.2177	.0040	.2217
February	.1965	.2192	.0040	.2232
March	.2159	.2392	.0040	.2432
April	.2176	.2409	.0079	.2488
May	.2096	.2333	.0081	.2414
June	.2012	.2250	.0087	.2337
July	.2003	.2236	.0107	.2343
August	.1933	.2179	.0119	.2298
September	.1664	.1916	.0119	.2035
October	.1581	.1834	.0123	.1957
November	.1466	.1717	.0127	.1844
December	.1386	.1641	.0127	.1762
1924				
January	.1452	.1700	.0137	.1846
February	.1783	.2035	.0137	.2172
March	.1908	.2160	.0138	.2298
April	.1895	.2158	.0141	.2296
May	.1895	.2158	.0141	.2299
June	.1878	.2145	.0149	.2294
July	.1795	.2071	.0153	.2224
August	.1685	.1954	.0155	.2109
September	.1638	.1908	.0155	.2063
October	.1523	.1780	.0155	.1935
November	.1384	.1638	.0155	.1793
December	.1394	.1648	[illegible]	.1803

Gasoline prices 1919–24 (average 50 representative cities in the United States)—Continued

[First of month in cents per gallon]

	Tank wagon (excluding tax)	Service station (excluding tax)	State gasoline tax	Service station (including tax)
1925				
January	$0.1399	$0.1653	$0.0161	$0.1814
February	.1687	.1950	.0165	.2115
March	.1910	.2174	.0173	.2347
April	.1878	.2140	.0203	.2343
May	.1835	.2099	.0219	.2318
June	.1903	.2165	.0221	.2386
July	.1932	.2193	.0228	.2421
August	.1946	.2207	.0232	.2439
September	.1701	.1976	.0233	.2209
October	.1597	.1858	.0233	.2091
November	.1580	.1848	.0233	.2081
December	.1579	.1848	.02333	.2081
1926				
January	.1629	.1898	.0233	.2131
February	.1626	.1896	.0233	.2129
March	.1731	.1994	.0237	.2231
April	.1768	.2031	.0242	.2273
May	.1838	.2103	.0242	.2345
June	.1978	.2231	.0242	.2473
July	.1982	.2232	.0244	.2476
August	.1982	.2232	.0244	.2476
September	.1978	.2229	.0244	.2473
October	.1947	.2189	.0244	.2433
November	.1849	.2089	.0244	.2333
December	.1791	.2041	.0244	.2285
1927				
January	.1779	.2029	.0246	.2275
February	.1787	.2037	.0250	.2287
March	.1736	.1997	.0253	.2250
April	.1626	.1893	.0266	.2159
May	.1530	.1798	.0271	.2069
June	.1508	.1771	.0279	.2050
July	.1521	.1779	.0290	.2069
August	.1527	.1785	.0298	.2083
September	.1507	.1751	.0300	.2051
October	.1489	.1718	.0303	.2021
November	.1485	.1699	.0305	.2004
December	.1408	.1684	.0305	.1989
1928				
January	.1468	.1680	.0307	.1987
February	.1469	.1674	.0307	.1981
March	.1501	.1710	.0303	.2013
April	.1515	.1750	.0304	.2054
May	.1543	.1788	.0305	.2092
June	.1550	.1784	.0304	.2088
July	.1564	.1791	.0304	.2095
August	.1608	.1846	.0304	.2150
September	.1642	.1878	.0302	.2180
October	.1642	.1878	.0302	.2180
November	.1637	.1874	.0302	.2176
December	.1596	.1832	.0304	.2136
1929				
January	.1594	.1828	.0308	.2134
February	.1490	.1738	.0312	.2050
March	.1490	.1738	.0316	.2054
April	.1496	.1744	.0336	.2080
May	.1498	.1752	.0350	.2102
June	.1586	.1838	.0350	.2188
July	.1606	.1852	.0360	.2212
August	.1594	.1834	.0370	.2204
September	.1584	.1832	.0374	.2206
October	$0.1600	$0.1832	$0.0374	$0.2186
November	.1586	.1788	.0374	.2162
December	.1562	.1754	.0374	.2128
1930				
January	.1554	.1732	.0376	.2108
February	.1524	.1684	.0376	.2060
March	.1440	.1614	.0380	.1994
April	.1408	.1574	.0380	.1954
May	.1508	.1676	.0380	.2056
June	.1502	.1678	.0380	.2058
July	.1463	.1637	.0378	.2015
August	.1485	.1655	.0378	.2033
September	.1452	.1620	.0378	.1998
October	.1374	.1542	.0378	.1920
November	.1347	.1512	.0378	.1890
December	.1325	.1475	.0382	.1857
1931				
January	.1292	.1448	.0382	.1830
February	.1331	.1479	.0384	.1863
March	.1292	.1446	.0386	.1832
April	.1179	.1329	.0398	.1727
May	.1155	.1281	.0400	.1681
June	.1119	.1251	.0401	.1652
July	.1121	.1244	.0405	.1649
August	.1100	.1201	.0409	.1610
September	.1109	.1197	.0409	.1606
October	.1143	.1331	.0409	.1640
November	.1132	.1213	.0408	.1621
December	.1192	.1281	.0408	.1689
1932				
January	.1189	.1279	.0408	.1687
February	.1197	.1293	.0408	.1701
March	.1203	.1288	.0413	.1701
April	.1240	.1317	.0413	.1730
May	.1304	.1384	.0413	.1797
June	.1302	.1379	.0414	.1793
July	.1349	.1436	.0514	.1950
August	.1317	.1399	.0514	.1913
September	.1281	.1386	.0514	.1882
October	.1147	.1234	.0514	.1748
November	.1212	.1300	.0514	.1814
December	.1200	.1287	.0516	.1503
1933				
January	.1161	.1248	.0516	.1764
February	.1002	.1141	.0515	.1656
March	.1038	.1125	.0515	.1640
April	.1019	.1092	.0515	.1607
May	.1028	.1101	.0515	.1616
June	.0987	.1053	.0515	.1568
July	.1180	.1241	.0567	.1808
August	.1207	.1270	.0567	.1837
September	.1260	.1324	.0568	.1892
October	.1347	.1444	.1568	.2012
November	.1336	.1433	.0568	.2001
December	.1322	.1419	.0508	.1987
1934				
January	.1334	.1433	.0518	.1951
February	.1287	.1380	.0520	.1900
March	.1276	.1405	.0521	.1926

LIST OF 50 REPRESENTATIVE CITIES

Atlanta, Ga.
Albuquerque, N.Mex.
Baltimore, Md.
Birmingham, Ala.
Boise, Idaho.
Boston, Mass.
Buffalo, N.Y.
Burlington, Vt.
Butte. Mont.
Casper, Wyo.
Charleston, S.C.
Charleston, W.Va.
Charlotte, N.C.
Chicago, Ill.
Denver, Colo.
Des Moines, Iowa.
Detroit, Mich.
Dover, Del.
Fargo, N.Dak.
Hartford, Conn.
Houston, Tex.
Huron, S.Dak.
Jacksonville, Fla.
Lexington, Ky.
Little Rock, Ark.
Manchester, N.H.
Memphis, Tenn.
Milwaukee, Wis.
Newark, N.J.
New Orleans, La.
New York, N.Y.
Norfolk, Va.
Omaha, Nebr.
Philadelphia, Pa.
Phoenix, Ariz.
Portland, Maine
Portland, Oreg.
Providence, R.I.
Reno, Nev.
Salt Lake City, Utah.
San Francisco, Calif.
South Bend, Ind.
Spokane, Wash.
St. Louis, Mo.
Tulsa. Okla.
Twin Cities, Minn.
Vicksburg, Miss.
Washington, D.C.
Wichita, Kans.
Youngstown, Ohio.

APPENDIX D TO STATEMENT OF FAYETTE B. DOW

REFERENCE TO OTHER STATEMENTS ON THE FEDERAL TAX ON GASOLINE AND ON LUBRICATING OILS BEFORE THE WAYS AND MEANS COMMITTEE OF THE HOUSE OF REPRESENTATIVES OR THE FINANCE COMMITTEE OF THE SENATE

Statement of J. Howard Pew before the Ways and Means Committee (p. 887, Hearings, 72d Cong., 1932).

Statement of W. R. Boyd, Jr., before the Ways and Means Committee (p. 892, Hearings, 72d Cong., 1932).

Statement of C. B. Ames before the Finance Committee p. 369, Hearings, 72d Cong., 1932).

Statement of Fayette B. Dow before the Ways and Means Committee (p. 181, Hearings, 73d Cong., 1933).

Statement of J. Howard Pew, same.

Statement of Fayette B. Dow before the Ways and Means Committee (p. 821, Hearings, 73d Cong., 1933).

STATEMENT OF HARVEY L. COBB, REPRESENTING CERTAIN AUTOMOBILE ASSOCIATIONS

Mr. COBB. Mr. Weeks is in Philadelphia engaged in the trial of a law case and could not get down, but I have a short brief which he has asked me to file. For the record, my name is Harvey L. Cobb, and we are appearing here in opposition to a continuation of this tax, representing the American Motorists' Association, the Keystone Automobile Club, which is the largest motor club in the East, and the Automobile Club of Southern California, which is the largest club in the world. We are the fellows that pay the 36 percent sales tax. Also for the record, Mr. H. G. Armstrong, who is the head of the National Rural Letter Carriers, is here. He is not scheduled to appear, but he has asked me to say that his organization is opposed to the continuation of this tax, and it means approximately $450,000 a year to them. They travel approximately

450 million miles a year, or about 1,450,000 miles a day, those rural letter carriers, and one cent a gallon represents a very serious burden to them.

I appreciate very much the opportunity of having a chance to go on record, and I just want to call your attention to the statement made in your report on May 10 to the effect that after June 30 of this year the committee felt then that this tax should be reserved to the States. We felt then as you expressed it, and we feel so today.

Senator GORE. When was that made?

Mr. COBB. May 10, 1933. I have it here, but I will not take your time to read it.

The CHAIRMAN. We are familiar with it.

Mr. COBB. In which is stated that the tax should be reserved to the States.

The CHAIRMAN. We were expressing the hope that the question of the tax on gasoline be left to the States, and we expected to get out of this field as quickly as revenues of the Government would permit.

Mr. COBB. And we are for that.

The CHAIRMAN. Thank you very much.

Senator GORE. The Federal Government imposes this gasoline tax, and some of the States do. Some of the States authorize the counties and municipalities to do that. Do you know how many?

Mr. COBB. I have set forth in my brief a complete analysis of the State and county taxation. It is principally in the South that the counties are taxing gasoline in addition to the States and the cities, but there are a large number of States in which that additional assessment has been made.

(The brief of Mr. Weeks is as follows:)

BRIEF OPPOSING CONTINUANCE OF FEDERAL GASOLINE TAX FILED BY AMERICAN MOTORISTS' ASSOCIATION, J. BORTON WEEKS, PRESIDENT

The American Motorists' Association has neither the intention nor the desire to occupy the time of your committee with a lengthy restatement of its position as regards the Federal tax upon motor fuel. It is desirous only of making a statement sufficiently brief to avoid presuming upon your patience, but sufficiently definite again to indicate to you that this association and its members now, as in the past, are opposed to the principle of a Federal tax upon gasoline and opposed to the continuance of the existing 1-cent Federal tax. We wish further to point out that, in making this statement, we second the opinion expressed by your committee last year that after June 30, 1934, the taxation of gasoline be left exclusively to the States.

We can tell you nothing regarding gasoline-tax rates of which you are not already cognizant. You know, quite as well as do we, that the Federal tax upon motor fuel represents tax duplication. Elimination of such duplication, specifically by withdrawal of the Federal Government from the field of gasoline taxation, was recommended last year by the Vinson Subcommittee of the House Ways and Means Committee.

You know, quite as well as do we, that the present 1-cent Federal gasoline tax increases by more than 20 percent the average rate (4.21 cents per gallon) at which the gasoline sales tax generally is imposed throughout the country. Actually, it increases State gasoline tax rates from 14.28 percent, in States levying a 7-cent gasoline tax, to 50 percent, in States levying a 2-cent tax. The Federal tax alone represents in relation to current average retail price of gasoline, (14.05 cents on Mar. 1) a sales tax of nearly 8 percent.

The Congress of the United States repeatedly has refused to impose a 2 percent or even a 1 percent tax upon commodities generally. It expressed fear that such a tax would increase too greatly the burden of taxation and the

cost of living. We submit that if a 2 percent sales tax levied upon all commodities is too expensive a sales tax four times as great levied upon one commodity cannot be considered as other than exorbitant.

To perpetuate such as injustice is to ignore the obvious. The motor vehicle is no longer a luxury. Ownership is no indication of wealth. It is, however, a sign of money spent for useful goods put into circulation with far-reaching and beneficial influence.

The average person who operates a motor vehicle in these days of the forced elimination of superfluities does so either because it serves him in his business, is a necessary medium of transportation, or is at most the last remaining means of earning a livelihood. It should be necessary to be required to prove to your committee that any Federal tax imposed upon the motor vehicle or its owner is a burden, a deterrent to the recovery of business, and a handicap to the restoration of prosperity, just as would be any other special class tax.

Frequently the argument is advanced—possibly by members of your committee—that Federal taxation of motor fuel and motor vehicles is justified by the expenditure of Federal funds for roads. That once was a correct picture of the situation. However, the decline in Federal expenditures for roads and the increase in Federal taxation of the motor vehicle have changed the picture completely.

Even if receipts and expenditures actually balance, there is some question as to the justice of directly taxing highway users for roads, which are, and must, represent Government service. No such direct tax is imposed upon the beneficiaries of other Government services.

You do not directly tax, for protection, those residents of cities guarded by permanent forces of the Army or Navy. You do not directly tax, for benefits received, those who make full use of United States post offices. You do not directly tax, for conveniences afforded, those who use and profit by the use of the waterways. Why select the highway user to bear a tax burden created by financing the cost of Government services which, like these other services, are of general benefit?

The American Motorists' Association once again urges that you eliminate duplicate taxation by eliminating from the 1934 revenue bill the provision for continuing the Federal tax upon motor fuel, and that you put into action the conviction of your committee that on and after June 30, 1934, the taxation of gasoline be left exclusively to the States.

STATEMENT BY J. H. ALPHIN ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ON OPPOSITION TO CONTINUATION OF 1-CENT FEDERAL TAX ON GASOLINE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is J. H. Alphin, Eldorado, Ark. I appear on behalf of the American Trucking Associations, Inc. I am a vice president of that association and member of the National Code Authority for the Trucking Industry. The American Trucking Associations, Inc., is a national organization, a federation representative of 108 regional, State, and local motor-truck associations. Its constituent groups are representative of approximately 500,000 owners having about 750,000 vehicles. The code authority, representing the industry, speaks for approximately one and a half million owners, representing close to two million vehicles. Under the provisions of our code it is estimated that many operators come within the jurisdiction of the code authority.

Our interest in this bill is confined chiefly to the section which would continue the 1-cent Federal tax on gasoline. I need not go into a recitation of statistics. Members of this committee well know that commercial motor vehicles consume gasoline; that the consumption of gasoline by motor-trucks is between two and three times as much per mile as that consumed by passenger cars. Two million vehicles operating an average of 10,000 miles each year will consume tremendous amounts of fuel, and would pay a large sum of money to the Federal Treasury in the form of tax on gasoline.

When the Federal gasoline tax was first proposed it was done so as a revenue measure. While heretofore the gasoline tax was looked upon largely as a State tax, the fact that the Federal Government was forced to tap this source of revenue was not objectionable. And this in spite of the fact that many of the States, particularly some of the Southern States, had increased their State taxes to a level wholly out of proportion to the selling price of

the product itself. I say the Federal tax on gasoline, at the outset, was not objectionable. The Government needed money. The motor vehicle owner was an easy source of revenue

Since then, however, the Federal Government has relaxed the tax on gasoline because other sources of revenue have become available and now, because of the repeal of prohibition, more sources of revenue are opened up to the Federal Treasury.

We believe the gasoline tax is a tax that should be reserved solely to the States. We think that it is time now for the Federal Government to relax the burden on motor-vehicle users by removing this Federal tax.

When the Federal Government decreased the Federal tax by one half cent some of the States, anticipating that the entire tax would be removed, immediately set about to increase the State tax. You well know that in some of the States the gasoline tax is inordinately high. Perhaps the States are justified in having their gasoline tax high. That is not a point at issue here. The point is, however, that the Federal Government if it can find other sources of revenue should grant some relief to the motor-vehicle owner and leave the matter of taxation of gasoline use to the respective States.

STATEMENT OF WILLIS CRANE, AMERICAN PETROLEUM INDUSTRIES COMMITTEE

Mr. CRANE. Mr. Chairman and Senators: I just want to take a moment to file a statement that has been prepared, and to tell you what it is and why I am filing it.

This deals with section 603 of the new bill which has to do with the administration of the oil and gasoline tax. This section was put in the new bill as the result of conferences between the Treasury Department and the Ways and Means Committee in executive session. That took place after the public hearings before the Ways and Means Committee, and of course, we had no opportunity to appear there, but since that time we have been in frequent conference with both the Bureau of Internal Revenue and the Treasury Department, and the result has been that we have suggested here in this statement, new language for section 603, which we think will serve the purpose of the original section 603, and that is to prevent tax evasion. We are hopeful that when the Treasury Department comes before you in executive session, that a similar amendment will be proposed by the Treasury.

The CHAIRMAN. We will take it up with them. I suppose you have conferred with Mr. Parker, but if you have not, we would be glad if you would do so.

Mr. CRANE. Thank you, sir.

(The matter referred to is as follows:)

MEMORANDUM SUBMITTED BY AMERICAN PETROLEUM INDUSTRIES COMMITTEE WITH RESPECT TO SECTION 603 OF H.R. 7835

This memorandum is submitted in behalf of the American Petroleum Industries Committee.

Section 603 of H.R. 7835 would amend the Revenue Act of 1932, as amended, in important particulars dealing with the administration of the Federal gasoline and lubricating oil taxes.

These changes were originally proposed by the Bureau of Internal Revenue and, in turn, by the Treasury Department in executive committee sessions of the House Ways and Means Committee after public hearings had been completed. At that time the petroleum industry was unaware of the proposed changes, and there was, therefore, no opportunity to appear before the Ways and Means Committee.

The apparent purpose of the changes proposed was to prevent tax evasion. While the petroleum industry is, of course, intensely interested in preventing tax evasion, for its own protection, the provisions of section 603 of H.R. 7835 seemed impractical of operation, so it was considered wise to revise the language. With this in view, numerous conferences have been held with the Commissioner of Internal Revenue and the Treasury Department. The purpose of these several conferences was to determine language for section 603, which would effectually prevent tax evasion and at the same time minimize administrative difficulties both for the Government and the petroleum industry. The specific language which we suggest for section 603 is indicated in appendix A hereto. This language has been adopted as the result of our conferences with the Commissioner of Internal Revenue and the Treasury Department, and we anticipate that the Treasury Department may suggest similar language for an amended section 603.

In the interest of preventing tax evasion the suggested amended language of section 603 would provide:

1. For registration, with the appropriate collector, of every producer of oil or gasoline purchasing tax free.

2. For the giving of a bond by such producer in an amount satisfactory to the collector conditioned 'that he shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under such sections; that he shall render truly and completely all returns, statements, and inventories required by law or regulations in pursuance thereof and shall pay all taxes due under such sections; and that he shall comply with all requirements of law and regulations in pursuance thereof with respect to tax under such sections".

3. A penalty for failure to register, to give bond, or for false representations consisting of a fine of not more than $5,000 or imprisonment of not more than 5 years, or both, together with costs of prosecution.

4. The right of the Commissioner of Internal Revenue to revoke registration of any manufacturer or producer found guilty of willfully evading any Federal or State tax on gasoline or libricating oil.

5. For making information respecting Federal oil and gasoline taxes available to the States with a view to an exchange of information by the States and the Federal Government by which tax evasion may be prevented.

6. A new definition of "gasoline" which is designed to assure assessment of taxes on all gasoline.

Probably the amendment of section 603, which we suggest will be found not controversial. However, for your information we attach hereto, as appendix B, copy of the brief which we filed as part of our conversations with the Commissioner of Internal Revenue and the Treasury Department. It will explain in large part the impracticable administrative situation which would arise under original section 603, both from the standpoint of the Government and that of the petroleum industry. It may be helpful, however, to outline briefly here the essential considerations which make it apparent that our suggested amendment offers the best plan for a practical administration of the gasoline and lubricating oil tax.

At the present time, under sections 617 and 601 (c) (1) of the Revenue Act of 1932, as amended, sales to manufacturers of gasoline and lubricating oil are made free of Federal taxes. Section 617 specifically provides that the tax on gasoline "shall not apply in the case of sales to a producer of gasoline". Section 601 (c) (1) provides that "no tax shall be imposed * * * upon lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him."

In addition, section 620 of the Revenue Act of 1932, as amended, provides for exemption from tax, in the case of material sold for further manufacture, or to a State or political subdivision thereof for use in the exercise of an essential governmental function.

Sections 617, 601 (c) (1) and 620 each contemplates that where sales are made by one producer to another, the second or last producer in any chain of sales between producers shall be subject to tax upon his sale to the consumer. This plan recognizes the practical operation of the petroleum industry and when strictly administered assures collection of taxes on the total volume of oil and gasoline sold or used for domestic consumption except, of course, the volume purchased by such tax-exempt agencies as States, etc.

Following nearly 2 years of experience with the operation of the 1932 law and the regulations thereunder, the industry has adjusted itself to the procedure there provided for administration of the taxes.

Section 603 of H.R. 7835, as passed by the House of Representatives, would exactly reverse the administrative plan with which the industry has become familiar by eliminating all tax-free sales in the first instance, requiring payment of the taxes on every sale by the first producer, and providing a system of refunds or credits which it seems would be a burden not only upon the petroleum industry but upon the Bureau of Internal Revenue itself. Section 603 would deprive producers of gasoline and lubricating oil of the right to make tax-free sales under sections 620, 601 (c) (1), and 617, but would reserve the right to producers of obtaining a credit or refund under the circumstances of sale contemplated by these sections.

In the very nature of the petroleum industry there is a constant exchange of thousands of cars of petroleum products between producers. Many refineries are equipped to make one kind or quality of oil or gasoline; others a different kind or quality. Many refineries run only to certain cuts of the crude oil with their residue to be sold to and further refined by other refineries differently equipped. Some refineries operate upon crude oil; others use only unfinished material. Many refineries have limited marketing outlets; others have marketing facilities beyond their own refining capacity and are buyers for resale. This constant exchange of products between component parts of the petroleum industry is an inherent characteristic of the industry and one which cannot be overlooked in any practical administrative plan having to do with the collection of taxes.

Ordinarily such exchanged oil or gasoline must be held in storage for long periods before being resold or, in the case of materials purchased for further refining before being further processed, the sale of the finished product. In the case of gasoline, it has been estimated that the average period of storage in the tanks of the purchasing producer is about 2½ months. Lubricating oils and oils of a similar nature purchased for further refining are held in storage an even longer period, as long, on the average, as 6 months. If it were required that tax be paid on this material at the time of sale by the first producer, the result would be that the investment in the industry's inventory would be very greatly increased, running into many millions of dollars. The industry would be compelled to pay increased personal-property taxes because of the increase in investment, and its cost for insurance and expansion of credit would be similarly increased by millions of dollars. In addition, due to the nature of the products, the industry would suffer a severe loss due to evaporation, leakage, fires, etc., in connection with materials purchased by one producer from another but never actually sold to the consuming public.

In the case of lubricating oil, an even greater loss would be suffered than in the case of gasoline. Many unfinished oils are used in the manufacture of motor oils, with a substantial output of nontaxable articles. For example, take the case of the Pennsylvania producer who operates on cylinder stocks instead of crude oil. In every instance the unfinished oil (cylinder stock) which serves as the basis of his operations would be subject to a tax on the total volume moving out of the refinery from which he purchased the material. But when this producer further refined the unfinished oil, as much as from 18 to 23 percent would constitute petrolatum, or some similar nontaxable product. A loss of some 2½ percent in refining operations would also be incurred. The net result would be that while this producer was compelled to pay a tax on 100 percent of the volume moving out of the first refinery, he in turn would sell only from 75 to 80 percent of that volume in taxable articles. Section 603, as originally constituted, would effectually put this type of producer out of business because he could not afford to absorb the tax on the amount of his inbound material represented by petrolatum, or any residual nontaxable products, and operating losses.

Of course, a matter of direct interest to the Bureau of Internal Revenue and the Treasury Department is their own cost of administration. It is clear that if the original section 603 were enacted the administrative difficulties of the Government would be greatly increased. Take the following example as illustrative, and it is really a representative case:

Let us assume that a carload of gasoline is sold by producer A to producer B, thence to producer C, who in turn sells it to the consuming public. As we would interpret original section 603 of H.R. 7835, in this chain of sales it would be necessary for each of the affected producers to pay a tax to the Government,

independent of the others. This would amount in this case to a payment of taxes to the Government by all three producers, leaving them to an involved proof of two separate claims for credit. In the first place, producer C, upon payment of tax on the gasoline in question would file appropriate evidence in support of a claim for refund of such tax from producer B. Producer B in turn would be required to file appropriate evidence with the Government indicating that the gasoline covered by his return has been resold and tax paid under it, that his vendee has been repaid the tax, or consented to a credit or refund in behalf of producer B. Having secured credit or refund from the Government covering taxes paid directly by it, producer B would then be required, in order to make itself whole of the tax passed on to it by producer A, to follow the same procedure of proving its right to a refund from producer A. Then, in turn, producer A would be required to file the necessary evidence with the Bureau of Internal Revenue to secure the credit or refund of tax paid by it to the Government in connection with the original sale.

It is clear that if such a procedure were enforced, to protect producers from duplicate taxation, the industry itself would not only be put to a tremendous and expensive effort but the Bureau of Internal Revenue would be forced to greatly increase administration examination of recurrent claims for credit and refund, far in excess of the administration efforts required under the present exemption certificate set-up of the regulations.

We think the plan of administration which we suggest is the practical one.

APPENDIX [illegible]

Strike out all of section 603 and insert in lieu thereof the following:

"SEC. 603. TAXES ON LUBRICATING OIL AND GASOLINE.

"(a) Section 601 (c) (1) of the Revenue Act of 1932, as amended, is amended by adding at the end thereof the following: 'Every person liable for tax under this paragraph shall register and file bond as provided in section 617, as amended.'

"(b) Section 617 (a) and (b) of the Revenue Act of 1932, as amended, is amended to read as follows:

"'(a) There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 1 cent a gallon, except that under regulations prescribed by the Commissioner with the approval of the Secretary the tax shall not apply in the case of sales to a producer of gasoline.

"'(b) If a producer or importer uses (otherwise than in the production of gasoline) gasoline sold to him free of tax, or produced or imported by him, such use shall for the purposes of this title be considered a sale. Any person to whom gasoline was sold tax-free under this section on or after the effective date of the Revenue Act of 1932 shall be considered the producer of such gasoline.'

"(c) Effective on the first day of the first month after the enactment of this Act, section 617 (c) (2) of the Revenue Act of 1932, as amended, is further amended to read as follows:

"'(2) The term gasoline means (A) all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline), benzol, benzene, or naphtha, regardless of their classifications or uses; and (B) any other liquid or a kind prepared, advertised, offered for sale or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes; except that it does not include benzol or naphtha (other than gasoline), sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel, and does not include kerosene, gas oil, or fuel oil.'

"(d) Section 617 of the Revenue Act of 1932, as amended, is amended by adding at the end thereof the following subsections:

"'(d) Every person subject to tax under this section or section 601 (c) (1) shall, before the first day of the first month after the date of the enactment of the Revenue Act of 1934, or before commencing manufacture or production register with the collector for the district in which is located his principal place of business (or, if he has no principal place of business in the United States, with the collector at Baltimore, Maryland) and shall give a bond, to be

approved by such collector, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under such sections; that he shall render truly and completely all returns, statements, and inventories required by law or regulations in pursuance thereof and shall pay all taxes due under such sections; and that he shall comply with all requirements of law and regulations in pursuance thereof with respect to tax under such sections. Such bond shall be in such sum as the collector may require in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, but not less than $2,000. The collector may from time to time require new or additional bond in accordance with this subsection. Every person who fails to register or give bond as required by this subsection, or who in connection with any purchase of gasoline falsely represents himself to be registered and bonded as provided by this subsection, or who willfully makes any false statement in an application for registration under this subsection, shall upon conviction thereof be fined not more than $5,000 or imprisoned not more than five years, or both, together with the costs of prosecution. If the Commissioner finds that any manufacturer or producer has at any time evaded Federal or State tax on gasoline or lubricating oil he may revoke the registration of such manufacturer or producer, and no sale to, or for resale to, such manufacturer or producer thereafter shall be tax-free under Section 620, as amended, but such manufacturer or producer shall not be relieved of the requirement of giving bond under this subsection.

"'(e) Under regulations prescribed by the Commissioner with the approval of the Secretary, records required to be kept under section 601 (c) (1), as emended, or this section, and returns, reports, and statements with respect to such taxes filed with the Commissioner or a collector, shall be open to inspection by such officers of any State or Territory or political subdivision thereof or the District of Columbia as shall be charged with the enforcement or collection of any tax on gasoline or lubricating oils. The Commissioner and each collector shall furnish to any of such officers, upon written request, certified copies of any such statements, reports, or returns filed in his office upon the payment of a fee of $1 for each 100 words or fraction thereof in the copy or copies requested.'"

APPENDIX B

Memorandum Submitted by American Petroleum Industries Committee with Respect to Section 603 of H.R. 7835 Introduced in the House of Representatives February 9, 1934

This memorandum is submitted in behalf of the American Petroleum Industries Committee.

Under section 603 of H.R. 7835, introduced in the House of Representatives, February 9, 1934, it is proposed to amend the Revenue Act of 1932, as amended, in important particulars dealing with the administration of the Federal gasoline and lubricating oil taxes.

For convenient comparison we show in appendix A hereto, in parallel columns, the provisions of the existing law which would be affected by the proposed amendment and the provisions which would be substituted therefor.

(a) At the present time, under section 617 and 601 (c) (1) of the Revenue Act of 1932, as amended, sales to manufacturers of gasoline and lubricating oil are made free of Federal taxes. Section 617 specifically provides that the tax on gasoline "shall not apply in the case of sales to a producer of gasoline." Section 601 (c) (1) provides that "no tax shall be imposed * * * upon lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him."

In addition, section 620 of the Revenue Act of 1932, as amended, provides for exemption from tax in the case of materials sold for further manufacture or to a State or political subdivision thereof, for use in the exercise of an essential governmental function.

Sections 617, 601 (c) (1) and 620, each contemplates that where sales are made by one producer to another, the second or last producer in any chain of sales between producers shall be subject to tax upon his sale to the consumer. This plan recognizes the practical operation of the petroleum industry and when strictly administered assures collection of taxes on the total volume of

oil and gasoline sold or used for domestic consumption, except of course, the volume purchased by such tax exempt agencies as States, etc.

Following a year and a half of experience with the operation of the 1932 law, and the regulations thereunder, the industry has adjusted itself to the procedure for administration of the taxes.

Section 603 of H.R. 7835, would exactly reverse the administrative plan with which the industry has become familiar by eliminating all tax-free sales in the first instance, requiring payment of the taxes on every sale by the first producer, and providing a system of refunds or credits which we believe would be found to be a burden not only upon the petroleum industry but upon the Bureau of Internal Revenue itself. The proposed amendment would deprive producers of gasoline and lubricating oil of the right to make tax-free sales under sections 620, 601 (c) (1) and 617, but would reserve the right to manufacturers of obtaining a credit or refund under the circumstances of sale contemplated by these sections. In the case of lubricating oil the proposed amendment would even go so far as to deprive producers of lubricating oil of the right to refund or credit in transactions involving sales of one producer to another for resale. Such a change in procedure at this time would work a great hardship upon the petroleum industry and we think it would increase the administrative difficulties of the Bureau of Internal Revenue.

In the very nature of the petroleum industry there is a constant exchange of thousands of cars of petroleum products between producers. Many refineries are equipped to make one kind or quality of oil or gasoline; others a different kind or quality. Many refineries run only to certain cuts of the crude oil with their residue to be sold to and further refined by other refineries differently equipped. Some refineries operate upon crude oil; others use only unfinished material. Many refineries have limited marketing outlets; others have marketing facilities beyond their own refining capacity and are buyers for resale. Exchange of products between component parts of the refining industry is an inherent characteristic of the industry and in a subsequent chapter we will point out to you, in some detail, the hardships which the proposed amendment would impose upon the industry and urge that there be no change from the existing provisions of the law with respect to tax-free sales.

(b) Section 603 of H.R. 7835 also proposes a new definition of the term "gasoline" to govern the application of the tax. At the present time "gasoline" is defined to mean "gasoline, benzol, and any other liquid, the chief use of which is as a fuel for the propulsion of motor vehicles, motor boats, or airplanes." In substance, the proposed new definition would add casinghead and natural gasoline, naphthas, regardless of use, and "any other liquid which is prepared, advertized, offered for sale, or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes." We will propose a definition which we think will adequately protect the interests of the Federal Government, but which will prevent a widening of the application of the tax to such commodities as industrial naphtha, fuel oil, etc.

(c) Section 603 of H.R. 7835 provides for registration of manufacturers and filing of bond. We are in sympathy with the principle of these requirements because we believe they would provide an excellent means of preventing tax evasion. It should be understood at the outset that the American Petroleum Industries Committee, and its affiliated division and state committees, are in entire sympathy wih and in support of any sound plan for the prevention of tax evasion.

1. THE PROPOSAL TO ELIMINATE TAX-FREE SALES WOULD IMPOSE AN UNJUST BURDEN ON THE PETROLEUM INDUSTRY

(a) *The elimination of tax-free sales would require an unjust and unnecessary increase in inventories.*—As we have seen in the preceeding chapter there is a tremendous volume of petroleum products for exchange between producers. Ordinarily, such interchange of oil or gasoline must be held in storage for long periods before being resold, or in the case of further refined materials, before sale of the finished material. It may reasonably be estimated that gasoline purchased by one producer from another is stored in the tanks of the purchasing producer for a period on the average of about 2½ months. Lubricating oils are stored for an even longer period than gasoline, probably on an average as long as 6 months. If it should be required that the tax be paid on this oil at the time of the sale by the first producer, the investment in the industry's inventory would be very greatly increased, running into many millions of

dollars. Of course, the industry can ill afford any such added strain upon its financial resources under present conditions, and this additional burden should not be imposed upon it.

In this connection, it should be mentioned that the increase in investment in inventories would increase personal property taxes in cases where the inventories are stored over a period of months. Insurance costs would also be increased by virtue of additions to insurable values of the products stored. The increased cost of the inclusion of the tax would make it necessary to increase the credit extended to all those who now buy on a tax-free basis. This would result in increasing the credit extension by the industry by many millions of dollars.

(b) *The case of gasoline.*—1. The very nature of gasoline makes it susceptible to losses due to shrinkage, because of temperature variations or because of losses incident to transportation, handling, evaporation, leakage, refinery operations and fires.

Gasoline is transported by tank car, by tank truck, by tanker, and by pipe line. Each of these means of transportation involves a loss by evaporation, by leakage, by contamination, and by fire. Losses due to these causes have been estimated to amount to at least 2 percent and probably would be somewhat greater. We have seen the substantial storage which is necessary in the tanks of the purchasing producer. This is another source of loss due to evaporation, leakage, and fire.

In support of the foregoing statement losses from handling and evaporation assume alarming proportions as evidenced by Bureau of Mines Report of Investigations No. 3138, of August 1931.

This report (appendix B) based on actual tests during the summer and fall of 1930 near Kansas City, under the direction of Ludwig Schmidt and C. J. Wilhelm, Bureau of Mines engineers, in cooperation with the State of Oklahoma, states conclusions and makes findings which demonstrate that losses from bulk plant storage tanks protected with the most modern and approved pressure and vacuum relief valves and vapor-tight gage hatches show loss figures ranging from 1.4 to 3.54 percent.

These results were obtained from tests of 12,000 and 100,000 gallon bulk storage tanks for a period of 4½ months, May 29 to October 15. The product was not moved during the entire period and the report points out that had unloading and refilling been conducted during that time additional losses of ¼ to ½ percent would have been experienced.

In conclusion the report states that the minimum storage loss of 1.4 percent was attained only by the use of specially insulated tank housing and the application of white paint, an uninsulated tank painted red showing the maximum loss of 3.54 percent. The report further calls particular attention to the fact that the investigators did not conduct a test on the ordinary type tank such as is being used at a vast majority of bulk stations now, a tank not equipped with modern vapor-saving devices. That being true, the report does not reflect in full the great difference in evaporation losses between these tanks and those with modern fittings, and painted with white nonheat conducting paint.

Unless some allowance from the total taxes were permitted to cover such losses from shrinkage, the results would be, under the proposed legislation, that taxes would be imposed on a volume of gasoline which a purchasing producer could not sell to the consuming market.

2. At the present time agreements creating a National Petroleum Agency are being executed by companies whose runs to stills represent the greater part of the refinery capacity of the United States. The purpose of this agency is to purchase distress gasoline, to stabilize gasoline markets, and to maintain the proper relationship between the price of gasoline and the price of crude oil. This agency has received the approval of the Secretary of the Interior and is the result of many weeks of discussion among the members of the industry of the Petroleum Administration Board and the Petroleum Administrator. If gasoline sold to the National Petroleum Agency is subject to the federal gasoline tax imposition, without allowance being made to the agency for shrinkage, evaporation or loss, a double penalty will be imposed upon the industry in its efforts and those of the Government to carry out the policy of the present administration. In the first place the gasoline tax imposition will be an added investment in the gasoline inventories accumulated by the agency. These inventories will be resold when, and as market conditions in the industry justify. In the second place, the agency after holding the gasoline for a period

of many months, will not have the volume of gasoline to sell which it actually purchased. To the extent that there is a difference between the volume purchased and the volume sold, there will be the equivalent of double taxation upon the gasoline acquired by the agency. In the event that the petroleum agency should not be a producer, serious questions might arise as to the ability of any subsequent purchaser of the gasoline from the agency to secure refunds of the Federal taxes levied and collected on the gasoline purchased by the agency and later resold.

(c) *The case of lubricating oil.*—An even more serious situation would arise in the case of sales of lubricating oil under the proposed amendment than in the case of gasoline transactions involving lubricating oils also are subject to shrinkage and other losses inherent in gasoline transactions, but in addition they are subject to the difficulty that where unfinished oils are used in the manufacture of motor oils, the result is a substantial output of nontaxable articles. For example, take the case of the Pennsylvania producer who operates on cylinder stocks instead of crude oil. In every instance the unfinished oil which serves as the basis of his operations would be subject to a tax on the total volume moving out of the refinery from which he purchased the material. But when this producer further refines the unfinished oil, as much as from 18 to 23 percent will constitute petrolatum, or some similar nontaxable product. A loss of some 2½ percent in refining operations would also be incurred. The net result would be that while this producer has been compelled to pay a tax on 100 percent of the volume moving out of the first refinery, he in turn would sell only from 75 to 80 percent of that volume in taxable articles. The proposed amendment would quite effectually put this type of producer out of business because he could not afford to absorb the tax on the amount of his inbound material represented by petrolatum, or any residual nontaxable products, and operating losses.

There is no apparent purpose in section 603 of H.R. 7835 to permit continuation of sales between producers of lubricating oil for resale without duplication of tax. At the present time provision is made in section 601 of the Revenue Act of 1932, as amended by H.R. 5040, that "no tax shall be imposed under this section upon lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him." While section 603 of H.R. 7835 contemplates that refunds or credits may be allowed in the case of sales of gasoline for resale, no such provision is made with respect to lubricating oils.

Of course, this would impose a very severe handicap upon the lubricating oil producers and would undo entirely what was accomplished by H.R. 5040 in its amendment of section 601.

II. THE ADMINISTRATIVE DIFFICULTIES INHERENT IN THE PROPOSED AMENDMENT

In the proposed legislation it is contemplated that while the tax shall be paid by the original producer in the first instance, refund or credit may be secured where transactions actually enter the channels contemplated by sections 620 and 621 (a) (1). This procedure would involve substantial practical difficulties in administration, not only for the petroleum industry, but for the Bureau of Internal Revenue itself.

In order that the matter may be clear, let us assume for purposes of illustration that, one producer sells to another producer a carload of lubricating oil. Let us further assume, in accordance with the usual practice in the industry, that the second producer purchases similar carloads of oil from other producers. In connection with each of these transactions the original producer pays the tax. The aggregate amount of oil purchased then goes into a common tank of the second producer. Some of this common store of oil may be sold in the same form in which purchased. Some may be further manufactured into motor oils, leaving a residue of petrolatum or other nontaxable articles. Some of the oil may be sold by the second producer to an exempt agency such as a State or political subdivision, or it may be sold to a dealer who in turn will sell to such an exempt agency.

We believe that it would be physically impossible in the light of the actual sales practices in the industry to prove, for example, that any particular part of oil purchased from any given original producer has gone into any given channel of consumption. It may be, going back to our illustration, that the oil sold by the first producer, thence mixed with the product of other producers in the tanks of the second producer, will find its way into taxable channels. But, on the other hand, it may find its way to tax-exempt agencies.

This is a practical difficulty which we do not believe could be overcome by any regulations which the Bureau might prescribe. If the Bureau is to insist upon strict proof of the disposition of the oil before making credit or refund, then there will inevitably be a duplicate taxation on any oil which is exchanged between producers prior to sale to the consuming public.

Under the existing procedure, it is unnecessary to trace each particular shipment through from the first producer to one who sells to the public. It is only necessary that each selling producer participating in any chain of sales shall have in his files an appropriate certificate showing sale for further manufacture or export. The essential check which the existing law provides to see that there is no tax evasion is a requirement that the producer who sells to the public shall make a return of all of his sales, and pay tax on them, unless he has appropriate certificate as to any volume which may have been sold in tax exempt channels.

In this connection, we will suggest to the Bureau in our later discussion of means to be taken to prevent evasion, that appropriate registration under strict supervision and the requirement of a reasonable bond will adequately protect the proper revenues of the Government.

Let us take another example to indicate the difficulty of administration and the hardships which the proposed amendment would entail. Let us assume that a carload of gasoline is sold by producer A to producer B, thence to producer C, who in turn sells it to the consuming public. As we would interpret section 603 of H.R. 7835, in this chain of sales it would be necessary for each of the affected producers to pay a tax to the Government, independent of the others. This would amount, in this case, to a payment of taxes to the Government by all 3 producers, leaving them to an involved proof of 2 separate claims for credit. In the first place, producer C, upon payment of tax on the gasoline in question would file appropriate evidence in support of a claim for refund of such tax from producer B. Producer B in turn would be required to file appropriate evidence with the Government indicating that the gasoline covered by his return has been resold and tax paid under it, that his vendee has been repaid the tax, or consented to a credit or refund in behalf of producer B. Having secured credit or refund from the Government covering taxes paid directly by it, producer B would then be required, in order to make itself whole of the tax passed on to it by producer A, to follow the same procedure of proving its right to a refund from producer A. Then in turn, producer A would be required to file the necessary evidence with the Bureau of Internal Revenue to secure the credit or refund of tax paid by it to the Government in connection with the original sale.

It is clear that if such a procedure is enforced, to protect producers from duplicate taxation, the industry itself will not only be put to a tremendous and expensive effort but the Bureau of Internal Revenue will be forced to greatly increase administration examination of recurrent claims for credit and refund, far in excess of the administration efforts required under the present exemption certificate set-up of the regulations.

A further objection to the proposed legislation is that it apparently would prevent any refund or credit in connection with any shipment of lubricating oil from one producer to another, despite the fact that according to the affirmative terms of the proposed amendment, each of these producers would be compelled to pay a tax on the same oil. It will be observed that, under the proposed amendment of section 617, subparagraph (e), specific provision is made for refund or credit in connection with gasoline resold in the original form, but no such provision is made in the proposed amendment dealing with lubricating oil.

We have thus far dealt primarily with the difficulties of administration from the standpoint of the industry. We should call attention to the fact that section 603 of H.R. 7835, if adopted, would impose a very great burden of administration upon the Bureau itself. We have seen that under the proposed language of the amendment, each producer participating in any chain of sales will be compelled to pay taxes and file a claim for refund or credit. It would follow that there must be a claim for refund or credit with accompanying proof in connection with every shipment moving into exempt channels, or between producers. We believe that this would impose upon the Bureau a burden of administration which could not be intelligently handled without a very large increase in its personnel.

Even under the present procedure, which involves a relatively limited number of claims for credit or refund, the Bureau does not make it a practice to

inform claimants for credit as to the outcome of the Bureau's examination of the claim, unless the claim is denied. Of course, if any general system of credit claims is adopted, it would be essential that prompt information be given the industry with respect to the action taken upon the claims. Otherwise, the industry would be continuously faced with the possibility that years after particular shipments moved there would be demands for very large sums of additional taxes, and there would be no practical way that the industry could protect itself from such a contingency. The Bureau should also be reminded that the new administrative procedure would necessarily involve a new procedure for claims for credit and would require that each such claim be subjected to a field audit.

III. THE DEFINITION OF "GASOLINE"

Section 603 of H.R. 7835 would define the term "gasoline" as including not only those products commonly and commercially known as gasoline but also benzol, benzene, and naphtha, as well as "any other liquid which is prepared, advertised, offered for sale, or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes."

This proposed definitioin would include any liquid which in infrequent cases might be used for the propulsion of motor vehicles but which is ordinarily used for other purposes. For example, fuel oil is of course ordinarily used for heating purposes. However ,under certain circumstances it is usable as a diesel-engine fuel for boats and trucks. It is inconceivable that the Bureau has any purpose, by the proposed definition, to tax fuel oil.

Similarly, kerosene, gas oils, and crude oils are not ordinarily used for the propulsion of motor vehicles, motor boats, or airplanes. However, there are infrequent instances where all of these fuels are so used. Of course, the language of the definition should be so restricted as to prevent widening of the application of the tax on gasoline to fuels of this character.

We suggest the following definition of "gasoline" in lieu of that proposed in section 603:

"The term 'gasoline' means (A) all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline) and (B) all products ordinarily, practically, and commercially usable in internal-combustion engines for the propulsion of motor vehicles, motor boats, or airplanes, except kerosene ,fuel oil, or gas oil."

IV. SOME CONSTRUCTIVE SUGGESTIONS FOR PREVENTION OF TAX EVASION

As we have indicated, the petroleum industry is intensely interested, for its own protection, in preventing tax evasion. It spends many thousands of dollars annually in efforts to assist governmental authorities in securing payment of the taxes. It is in entire sympathy with any purpose of the Bureau of Internal Revenue to prevent tax evasion.

We object to the proposal to eliminate tax-free sales because of the tremendous hardship which elimination of these provisions of existing law would impose upon the industry.

However, we believe that there is merit in the proposal to require registration of all producers of lubricating oil and gasoline. We also think there is merit in the proposed requirement that bond be furnished by such producers in reasonable amount.

In addition, we think that it would be advisable to require, by regulation, that each registrant definitely show that he is a bona fide producer. The American Petroleum Industries Committee would be glad to discuss with the Bureau the terms of such regulations.

While we agree with the bond requirements in principle, it is necessary that there be some account taken of the fact that the greater part of the petroleum industry is financially responsible. This suggests that any bond requirements to be enacted into law should contemplate a minimum of $5,000, and a maximum of $50,000. Further, the producer should be permitted to deposit securities of the United States in an amount satisfactory to the collector; in lieu of the bond, if that is desired by the producer.

We further volunteer the suggestion that there should be statutory provision permitting exchange of gasoline-tax information between the Federal Govenment and the various States. Exchange of information of this sort would serve as an effective check upon the payment of taxes.

We are persuaded that tax evasion would be effectually prevented if our suggestions of (1) controlled registration, (2) requirements of reasonable bond or United States security, and (3) exchange of information between the State and Federal Governments are adopted.

APPENDIX A

PROVISIONS OF REVENUE ACT OF 1932 (AS AMENDED BY H.R. 5040) AS AFFECTING TAXATION OF GASOLINE AND LUBRICATING OIL COMPARED WITH AMENDMENTS PROPOSED IN H.R. 7835

PRESENT LAW	PROPOSED LAW
TITLE IV—MANUFACTURERS' EXCISE TAXES	TITLE IV—EXCISE TAXES
SEC. 601. Excise taxes on certain articles (as amended by addition of last paragraph at (c) (1), by H.R. 5040, enacted June 16, 1933, 15 days later).	SEC. 603. Taxes on lubricating oil and gasoline.
(c) There is hereby imposed upon the following articles sold in the United States by the manufacturer or producer, or imported into the United States, a tax at the rates hereinafter set forth, to be paid by the manufacturer, producer, or importer;	No change.
(1) Lubricating oils, 4 cents a gallon; but the tax on the articles described in this paragraph shall not apply with respect to the importation of such articles.	No change.
Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax shall be imposed under this section upon lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him, but for the purpose of this title such vendee shall be considered the manufacturer or producer of such lubricating oils.	Any person to whom lubricating oils were sold tax free under this paragraph prior to the effective date of its amendment by the Revenue Act of 1934, shall be considered the manufacturer or producer of such lubricating oils. Every person liable for tax under this paragraph shall register and file bond as provided in section 617. No sale of lubricating oil after the effective date of the amendment of this paragraph by the Revenue Act of 1934 shall be tax free under section 620, and no credit with respect to tax on any such sale shall be allowed under section 621 (a) (1).
SEC. 620. Tax-free sales (as amended by H.R. 5040, sec. 4, enacted June 16, 1933, effective July 1, 1933).	
Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax under this title shall be imposed with respect to the sale of any article—	
(1) for use by the vendee as a material in the manufacture or production of, or as a component part of, an article enumerated in this title;	
(2) for resale by the vendee for such use by his vendee, if such article is in due course so resold;	A credit against tax under this paragraph, or a refund, may be allowed or made to a manufacturer or producer with respect to the sale (after the effective date of the amendment
(3) for resale by the vendee to a State or political subdivision thereof	

for use in the exercise of an essential governmental function, if such article is in due course so resold.

For the purposes of this title the manufacturer or producer to whom an article is sold under paragraph (1) or resold under paragraph (2) shall be considered the manufacturer or producer of such article. The provisions of paragraphs (1) and (2) shall not apply with respect to tires or inner tubes or articles enumerated in section 604, relating to the tax on furs.

SEC. 621. Credits and refunds (as amended by H.R. 5040, sec. 4, enacted June 16, 1933, effective July 1, 1933).

(a) A credit against tax under this title or a refund, may be allowed or made—

(1) to a manufacturer or producer, in the amount of any tax under this title which has been paid with respect to the sale of any article (other than a tire or inner tube) purchased by him and used by him as material in the manufacture or production of, or as a component part of, an article with respect to which tax under this title has been paid, or which has been sold free of tax by virtue of section 620, relating to sales of articles for further manufacture.

(2) to any person who has paid tax under this title with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

(3) to a manufacturer, producer, or importer in the amount of tax paid by him under this title with respect to the sale of any article to a dealer, if the manufacturer, producer, or importer has in his possession such evidence as the regulations may prescribe that (A) such article has after the date this paragraph takes effect been delivered by the dealer to a State or political subdivision thereof for use in the exercise of an essential governmental function and (B) the manufacturer, producer, or importer has repaid or agreed to repay the amount of such tax to the dealer or has obtained the consent of the dealer to the allowance of the credit or refund.

(b) Credit or refund under subsection (a) shall be allowed or made only upon compliance with regulations prescribed by the Commissioner with the approval of the Secretary.

of this section by the Revenue Act of 1934) of lubricating oils if the manufacturer or producer has in his possession such evidence as the regulations may prescribe (1) that such lubricating oils have been used by any other person in the manufacture or production of any article upon which tax has been paid under this title and (2) the manufacturer or producer has repaid or agreed to repay the amount of such tax to such person or has obtained the written consent of his vendee to the allowance of such credit or refund.

No change.

No change.

No change.

(c) In no case shall interest be allowed with respect to any amount of tax under this title credited or refunded.	No change.
(d) No overpayment of tax under this title shall be credited or refunded (otherwise than under subsection (a) (1), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the vendee, or (2) that he has repaid the amount of the tax to the ultimate purchaser of the article or unless he files with the Commissioner written consent of such ultimate purchaser to the allowance of the credit or refund.	No change.
SEC. 617. Tax on gasoline.	SEC. 617. Tax on gasoline.
(a) There is hereby imposed on gasoline sold by the importer thereof or by a producer of gasoline, a tax of 1 cent a gallon, except that under regulations prescribed by the Commissioner with the approval of the Secretary the tax shall not apply in the case of sales to a producer of gasoline.	(a) There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 1 cent a gallon.
(b) If a producer or importer uses (otherwise than in the production of gasoline) gasoline sold to him free of tax, or produced or imported by him, such use shall for the purposes of this title be considered a sale.	(b) If a producer or importer uses (otherwise than in the production of gasoline) gasoline produced or imported by him such use shall for the purpose of this title be considered a sale.
(c) As used in this section—	(c) As used in this section—
(1) The term "producer" includes a refiner, compounder, or blender, and a dealer selling gasoline exclusively to producers of gasoline, as well as a producer.	(1) The term "producer" includes only producers, refiners, compounders, and blenders; but any person who purchased gasoline free of tax under this section prior to the effective date of its amendment by the Revenue Act of 1934 shall be considered the producer of such gasoline.
(2) The term "gasoline" means gasoline, benzol, and any other liquid the chief use of which is as a fuel for the propulsion of motor vehicles, motor boats, or aeroplanes.	(2) The term "gasoline" means (A) all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline), benzol, benzene, or naphtha, regardless of their classification or uses; and (B) any other liquid which is prepared, advertised, offered for sale, or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes.
	(d) No sale of gasoline after the effective date of the amendment of this section by the Revenue Act of 1934 shall be tax-free under section 620 and no credit with respect to tax on any such sale shall be allowed under section 621 (a) (1).

(e) A credit against tax under this section, or a refund, may be allowed or made to a producer or importer in the amount of tax paid by him under this section with respect to the sale (after the effective date of the amendment of this section by the Revenue Act of 1934) of gasoline if the producer or importer has in his possession such evidence as the regulations may prescribe establishing that (1) such gasoline (A) has been used by any other person as material in the manufacture or production of, or as a component part of, any article upon which tax has been paid under this title or (B) has been resold and tax under this section paid on such resale or (C) (in the case of benzol only) was sold for use and used otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and (2) the producer or importer has repaid or agreed to repay the amount of such tax to his vendee or has obtained the written consent of such vendee to the allowance of the credit or refund.

(f) Every person subject to tax under this section or section 601 (c) (1) shall, within 30 days after the enactment of the Revenue Act of 1934, or before commencing business, register with the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, with the collector at Baltimore, Maryland, and shall give a bond, to be approved by such collector, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under such sections; that he shall render truly and completely all returns, statements, and inventories required by law or regulations in pursuance thereof and shall pay all taxes due under such sections; that whenever his sales for any month exceed or are likely to exceed the amount upon which the sum of such bond was based he shall immediately give notice thereof to such collector; and that he shall comply with all requirements of law and regulations in pursuance thereof with respect to tax under such sections. Such bond shall be in such sum as the collector may require in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, but not less than $2,000. The collector may from time to time require new or additional bond in accordance with this section. Every person who incurs any liability

for tax under this section or section 601 (c) (1) after 30 days after the enactment of the Revenue Act of 1934, without first registering and giving bond as required by this subsection, shall upon conviction thereof be fined not more than $5,000 or imprisoned not more than five years, or both, together with the costs of prosecution.	
SEC. 630. Exemption from tax on certain supplies for vessels (as added by H.R. 5040, enacted June 16, 1933, effective July 1, 1933, 15 days later). Under regulations prescribed by the Commissioner, with the approval of the Secretary, no tax under this title shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this title, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of section 601 (b).	No change.

STATEMENT OF J. P. KERR, REPRESENTING THE ASSOCIATION OF DRAINAGE AND LEVEE DISTRICTS OF ILLINOIS, VERSAILLES, ILL.

Mr. KERR. Mr. Chairman. I would like to say a word to this committee in reference to the tax that is imposed by Congress and the Government upon lubricating oil and gas, which the farmer must use in the production of his crop. Personally, I am a "dirt farmer." I live on a farm in the heart of Illinois, and while we realize that the gas tax is a burden, yet we are not yet in a position to contend against it, because these taxes are more or less necessary; but this extra cent on gas which the farmer must use with which to produce his crop, and the 4 cents that he must pay on his lubricating oil, seems to us is a burden that is not justified from any point of view, and to illustrate my point I take the case of my son, who was farming last year. He had to borrow $300 from the Farm Credit Administration in order to enable him to operate. He had to pay back $70 of the money in taxes on his gas and on his lubricating oil. And if you would be able to do it, and just how we are going to come out of it, we do not know, but this is one general effect that this tax is having upon the farmers as I see it, in my neighborhood.

Senator GEORGE. Do you mean that $70 was paid in Federal tax or all taxes?

Mr. KERR. No, Federal taxes.

Senator GEORGE. Federal taxes?

Mr. KERR. Through gasoline tax and lubricating oil alone; those two items.

Senator GEORGE. Just those two items?

Mr. KERR. Those two items.

Senator BYRD. Mr. Kerr, does Illinois give a refund?

Mr. KERR. They give a refund on the gas that we use for agricultural purposes of 3 cents, but this tax is not refunded.

Senator BYRD. Does practically every State make a refund?

Mr. KERR. Yes; that is true.

Senator BYRD. The Federal tax is not refunded?

Senator GORE. What is the Illinois tax on gasoline?

Mr. KERR. Three cents.

Senator GORE. That is the State tax?

Mr. KERR. Yes, sir.

Senator GORE. Do you know how much of this $70 is assigned to lubricating oil and how much to gasoline?

Mr. KERR. Approximately $60 was for gas, and the $10 was for lubricating oil.

Senator GORE. Then the State tax on his gasoline would have been about $180?

Mr. KERR. It would have been 3 cents a gallon, on approximately 6,000 gallons used in his farm operations. This is not the only serious phase of this subject. The farmers of Illinois, of course, like all other farmers, are driven to the wall, and they cannot see daylight. They are seeking to use every possible means to economize, and in this respect now they are resorting to cheaper fuels, and they are buying cheaper lubricating oils, both of which are disastrous in effect upon their tractors and upon their machinery. I felt I had a right to appeal to you as a user of these products and as a payer of these taxes, believing that it is a gross injustice and the "last straw" that is breaking our backs.

The CHAIRMAN. Well, we thank you very much, Mr. Kerr, for your statement.

Mr. FAYETTE B. DOW. Mr. Chairman, Mr. Chester Gray of the American Farm Bureau Federation, would like to file a statement on the gasoline and lubricating oil tax. (See p. 113.)

The CHAIRMAN. Very well; he has that right.

Mr. DOW. He expects to file it today.

The CHAIRMAN. Mr. Thomas P. Henry, president of the American Automobile Association, desires to file a brief upon the gasoline tax. That will be filed and included in the record.

BRIEF OF THOMAS P. HENRY, OF DETROIT, MICH., PRESIDENT OF THE AMERICAN AUTOMOBILE ASSOCIATION, URGING REPEAL OF FEDERAL GASOLINE TAX AND OTHER FEDERAL LEVIES ON HIGHWAY TRANSPORT

I come before you today to reiterate once again the unalterable opposition of the American Automobile Association and its affiliated motor clubs throughout the United States to the series of special motor excise taxes that are now imposed on highway transport.

In previous appearances before your honorable committee, the reasons for this attitude on our part were fully set forth. So that it is hardly necessary for me to dwell on these reasons at length at this time. Suffice it to say that we have contended and do now contend that these taxes are unsound in principle and discriminatory in character.

Every month that has passed since those taxes were first imposed has demonstrated that they seriously affect car ownership and operation, at the same time that they retard recovery because of their very detrimental effect on the automobile industry, particularly from the standpoint of employment.

With your permission, however, I will direct my remarks today to the amendment introduced by Senator Capper, of Kansas, providing for the repeal forthwith of the 1-cent Federal tax on gasoline. While constituting only one of the automotive taxes, it is by far the most serious of them from the standpoint of the individual car owner, particularly the man who is hard pressed to keep his automobile in operation from day to day.

When the Federal gasoline tax was included in the Revenue Act of 1932, a majority of the Members of both Houses of Congress frankly admitted that only an emergency confronting the Treasury would justify such a levy. No attempt was made to justify it on any other ground than that of sheer necessity and expediency. Certainly there were few that undertook to justify it on the ground that it was equitable in itself or that it had any relation to ability to pay. In adopting it, every assurance was given to motor vehicle owners that it would be repeated just as soon as other sources of revenue became available.

In this connection, I want to call your most particular attention to your own report no. 58 submitted on May 1, 1933, to the United States Senate. In connection with the decision of the committee to extend this particular tax beyond the original 1-year period stipulated in the Revenue Act of 1932, you had this to say: "Your committee is of the opinion that the gasoline tax should be reserved to the States after June 30, 1934."

In so advocating, the committee clearly recognized the wisdom of such a policy. And yet the life of the tax was thereafter extended and this in spite of the fact that the revenue needs of the various States and the burdens on the car owners increased, rather than diminished, during this period.

It would be very hard indeed, gentlemen, to cite a Federal tax that has been more uniformly condemned by business, industry, and agriculture, throughout the United States. No less than eight State legislatures have memorialized Congress urging its repeal. In view of this widespread sentiment and the general admission that the Federal Government has no place in this overexploited field of taxation, it is difficult to understand why it is being continued in the national tax structure from year to year.

We as an association are deeply appreciative of the heavy commitments that it has been necessary for the Government to make in order to carry out the recovery program. These committments, however, are no justification whatever for this type of tax. General governmental activities should be financed through general taxation and with this in mind, we have consistently advocated a general sales tax on manufactured products, with legitimate exemptions for necessities, such as food, clothing, and medicine, in preference to this and kindred levies.

To summarize our objections, let me say:

First. We believe that the Federal gasoline tax constitutes an unwarranted additional burden on motor transport which is already highly overtaxed.

Second. We believe that the tax is based on expediency and the ease with which it is collected rather than on equity and sound business considerations.

Third. We believe that the entry of the Federal Government into this field has further entrenched in the tax system of the Nation the evils accruing from duplication and triplication of taxes.

Fourth. We contend that in levying a gasoline tax for general purposes, the Federal Government has violated the only principle of justice that underlay this tax when the States enacted it, namely, that is should be used for road purposes alone. The Federal Government has thus placed the seal of its approval on diversion of special motor vehicle revenue, which is today threatening the whole motor tax structure of the Nation.

Fifth. We believe that in pyramiding the rate of this tax, the Federal Government has materially contributed to the diminishing returns from it that are already becoming apparent.

Sixth. We are convinced that the increase in the tax rate has greatly added to the motive for evasion and to that extent has given impetus to gasoline racketeering. Congress, itself, recognized this, since within a few days of the passage of the Revenue Act of 1932 a bill, designed to prevent evasion of the tax, was introduced.

Seventh. We believe that continuation of it from year to year will strengthen the desire and the temptation to convert it into a general and permanent source of Federal revenue.

Eighth. At a time when the credit and revenue resources of the States have about reached the breaking point, the collection of this tax by the Federal Government jeopardizes the standing of $1,000,000,000 of road bonds issued by the States and subdivisions thereof, and predicated on future gasoline tax returns.

Ninth. Partly from necessity and partly from policy, the State highway department are more and more taking over the secondary road systems of the States and their ability to take care of these increasing obligations hinges on revenue from motor taxes and particularly from the gasoline tax.

In conclusion, I would like to call the attention of the members of the committee to some salient facts in connection with motor taxation.

In 1933, the total motor tax bill soared to a new all-time high of approximately $180,000,000. This was roughly $180,000,000, or 15 percent more than was paid by motorists in 1930. Of the 1933 total, Federal taxes accounted for one fourth of the total, or approximately $257,000,000.

The steady rise in the tax burden imposed on car owners has, of course, imposed new hardships on the average motorist. On the basis of the approximate total motor tax bill cited above, the average motor vehicle was taxed $50.47, an increase of $12.75, or 33.8 percent, since 1930.

This current rate means that the average motor-vehicle owner annually pays 26.7 percent of the average value of his property in taxes. In the course of 7 years, the average life of a vehicle, he pays 186.9 percent of the value of his property in taxes.

While taxes have increased, registrations have delined. During the 3-year period, 1930 to 1933, inclusive, the number of registered motor vehicles has declined from a peak total of 26,545,281, to around 23,500,000, a drop of nearly 12 per cent. Registration trends during 1932, as compared to 1931, were particularly significant. Only one State, Washington, had an increase and this amounted to but 6 percent, and in four of these it was more than 15 percent. Arkansas had 24.5 percent fewer vehicles registered in 1932 than in 1931, Mississippi had 18.8 percent less and South Dakota, 16.1 percent less.

Seriously concerned over the downward trend in the number of registered vehicles, and the prospect of greatly decreased motor-tax revenue, no less than 15 States have reduced registration fees. It is particularly significant that in several of these, including States which have suffered as much as any others from the ill effects of the depression, registration increases have followed reductions in license-plate costs.

I trust that your honorable committee will see fit to give consideration to these things as well as to the indefensible character of the levy itself when the time comes to act on the amendment offered by the distinguished Senator from Kansas. Thank you.

The CHAIRMAN. Mr. Simpson, I understood that you wanted to put a resolution in the record.

Mr. SIMPSON. I will be about 3 minutes, Mr. Chairman and members of the committee.

The CHAIRMAN. Give your name and whom you represent.

STATEMENT OF JOHN A. SIMPSON, PRESIDENT NATIONAL FARMERS' UNION

Mr. SIMPSON. I am also authorized to speak for the National Grange. Mr. Brenckman is in the room and asked me to do that.

In our annual convention of the National Farmers' Union last November, on the subject of gasoline tax, this resolution was unanimously passed:

Farmers are the largest purchasers of gasoline of any group, and the largest payers of gasoline taxes. We are opposed to the Federal tax on gasoline and to the diversion of tax funds raised by the various States from road building and maintenance purposes.

Farmers are being eliminated from the use of motor-driven machinery and vehicles on account of excessive taxes on gasoline. I have looked up for the last 3 years and find that in the purely agricultural States the consumption of gasoline has declined and declined each year until in some of those States it is a 25 percent decline.

We do feel that from another standpoint the Federal Government should not tax gasoline, and that is that the most of our highways so far as the States are concerned, the gasoline taxes have been pledged to pay the bonds and expenses of those highways. We like to be modern and we like to use gasoline. That is one of the things that is necessary to be modern out on the farm, and we would like to have the gasoline tax eliminated.

The only other thing I want in the record, the Farmers Union approves the statement made by the Grange yesterday before your committee of the 5-cent tax on foreign oils and fats.

Senator BARKLEY. I saw a statement in the paper yesterday, Mr. Simpson, claiming that because of the cost of machinery and the expense of operating machinery on the farms, farmers are drifting back toward the horse. Do you know whether that is so? Or to what extent it is true?

Mr. SIMPSON. It is true to some extent and gasoline taxes are one of the things that is driving us back to the old way.

Senator CONNALLY. The mule comes in there, too.

Mr. SIMPSON. The mule is a necessary equipment on the farm. [Laughter.]

MOTOR CLUB OF IOWA,
Des Moines, Iowa, March 12, 1934.

UNITED STATES SENATE FINANCE COMMITTEE,
Senate Office Building, Washington, D.C.
Attention: Senator Pat Harrison, Chairman.

GENTLEMEN: Because they are unable to have a personal representative to voice their objections to the Federal gasoline tax, the boards of directors of the American Automobile Association Motor Clubs of Iowa have requested us to send you this communication. They hope that it will receive your careful attention.

We believe that the Federal gasoline tax should be discontinued because it is unfair.

1. In that it imposes upon the users of one kind of transportation a special and discriminatory tax.

2. The amount collected from citizens has no relation to their ability to pay, the burden ofter bearing heaviest upon those who are least able to pay the tax.

3. It imposes a special tax upon motorists for the use of government-owned property (highways) purchased, built, and maintained from other taxes collected from the motorists.

We believe that the continuation of this tax is unwise:

1. Because the motorists as a group have acquiesced to the heaviest taxation upon any necessity in order to have the above roads. The imposition of the additional Federal tax in many States including Iowa brings into effect the law of diminishing returns to such an extent that special legislation has been necessary and may again be necessary to protect the holders of road bonds which have been issued in this State.

2. Because it departs from the theory that gasoline taxes should be used for highway construction. Motorists have acquiesced to extraordinarily heavy taxes because the proceeds of the taxes were coming back to them in the form of hard roads. The collection of taxes upon this necessity and the use of those collections for purposes other than highway construction by the Federal Government has set an example of diversion which the States are following to an unprecedented extent.

3. We further believe this tax to be unwise because it imposes an additional burden upon the one industry (next to agriculture) whose revival would do most to restore prosperity to this country.

Hoping that your committee will give serious consideration to these suggestions, we are

Very truly yours,

Motor Club of Iowa, R. E. Rhoades, manager; Eastern Iowa Motor Clubs, Jos. Wagner, president; Southeast Iowa Motor Club, W. P. Cusack, manager; Dubuque Automobile Club, G. J. Timmerman, president; Cedar Rapids Automobile Club, Ellsworth Palmer, manager; Sioux City Automobile Club, Julia Shaw, manager.

THE APPALACHIAN WAY ASSOCIATION,
Cincinnati, Ohio, March 10, 1934.

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

DEAR SENATOR: In regard to the pending revenue bill which includes the reenactment of the Federal gasoline tax, I would like to present the following views:

The field of taxation on gasoline has been already preempted by the various States; in Ohio 4 cents is collected as State tax.

The cost of producing gasoline is a little less than 3 cents a gallon (2.96 cents in Tulsa), yet this same gasoline on reaching Ohio has to meet that 4-cent tax, as well as paying a transportation cost of 3.25 cents to get it here. So that we have an article costing 3 cents that lands in Ohio with a cost to the wholesale dealer of 10.21 without your Federal tax, and if that is reenacted the cost to lay gasoline in Cincinnati becomes 11.71 cents per gallon wholesale and it is a 3-cent article.

To use this gasoline every auto has had to pay a license fee first, a fee that runs from $4 to $48 for a "personal" car up to as high as $400 for a "commercial vehicle." This is a privilege tax, for the privilege of using an auto, yet it cannot be used without gasoline, with the above high taxes.

Do you know any other general commodity that bears such high taxes?

Whatever the requirements for our Federal Government may be, they should be met with more fairness in distributing that requirement over all the general commodities. Gasoline-driven automobiles are not now a luxury; they are either a liability or a necessity, and as there are enough of them in use to make about one to each and every family, it must be a necessity. Certainly, they give employment to a very large number of citizens, and taxes that run from 50 percent up to 250 percent are not being assessed on any other necessity.

We trust that the present tax by the States will be sufficient.

Yours very truly,

WM. T. CALERDINE, *Manager.*

TAX ON CANDY

STATEMENT OF WILLIAM F. HEIDE, REPRESENTING NATIONAL CONFECTIONERS' ASSOCIATION

Mr. HEIDE. My name is William F. Heide, associated with Henry Heide, Inc., for 38 years. I represent the National Confectioners' Association of the United States, a trade association in existence for more than 50 years. The association represents 50 percent of the number, and 80 percent of the volume of all production manufactured confectionery in the United States.

Eighty-seven percent of all candies sold to the consumer is in units of pennies, nickels, and dimes.

The average wholesale selling price of all candy during the year 1933 was approximately 13 cents per pound.

The low price that candy is sold for by the manufacturer makes it impossible for the manufacturer to pass the tax on and it must be absorbed by the manufacturer.

The CHAIRMAN. Were you before the committee the last time when we wrote this law?

Mr. HEIDE. Yes, sir; Senator.

The CHAIRMAN. Why don't you change your policy? Why don't you bring some nice candies in here? [Laughter.]

Mr. HEIDE. If I thought that you enjoyed that candy, it would be a privilege and a pleasure to send you some of it. I will hold you to that, Senator. And Senator Gore, you will get two boxes, one for Mrs. Gore and one for the daughter. [Laughter.]

Senator GORE. I hope then that you are still making good candy.

Mr. HEIDE. Better than ever.

Senator GORE. We could not take your word for it, though. [Laughter.]

Mr. HEIDE. I will try to prove it.

The number of failures in the candy industry from January 1931 to October 31, 1933, totaled 1,617, with total liabilities of $19,648,275.

Competitive products, such as chocolate-covered cakes and crackers, sweet crackers, sugar-coated crackers and cakes, pastries and pies, chocolate-covered ice cream bars, ice cream cones, glace fruits, plain and salted nuts, dried fruits, such as dates, figs, raisins, and prunes in packages or in bulk, all kinds of fresh fruit which are highly competitive with the candy industry, are not subject to a tax. Candy is as much of a food as any of the above-mentioned sweet foods and was so regarded by the Ways and Means Committee when they proposed the sales tax to the House in April 1932. At that time when the House failed to recognize a manufacturer's sales tax, and a new bill was hurriedly drawn up, candy was among those items proposed for taxation. Subsequently, it was my privelege to appear before this committee and from arrangements submitted, the tax was voted out, but on the insistence from one of the members of your committee, who objected to the removal of the tax, a 2-percent tax was restored when the bill was presented on the Senate floor.

In the brief submitted by me at the Senate Finance Committee hearing in the year 1931, 260 manufacturers, doing a volume of $140,199,693.37 worth of business with $104,506,000 capital invested, showed a loss of $1,373,346.32. I am firmly convinced that greater losses were sustained in the industry during the years 1932 and 1933 and I am certain that the 2 percent tax was chiefly paid out of principal or capital investment.

Manufacturing confectioners are desirous to cooperate and carry out the President's Recovery Program, and are cooperating. The N.R.A. adds to costs the same as costs of other industries. The tax added to increased costs adds more grief to the industry and is, in effect, a further tax on capital invested. If Congress passes favorably on the present sugar bill, the industry will be faced with an additional processing tax of at least 50 cents per 100 pounds on sugar and an equal tax, if not more, on corn sirup.

The excise tax has always been unfair as against competitive foods not taxed. If the industry is to survive in these days of mounting costs it must be relieved of this discriminatory tax.

The tax was put on to last for 2 years, to expire June 30, 1934, but was continued for a year, prior to repeal. Now that revenue from liquor taxes has been restored, we submit in all fairness that the candy tax should be repealed. The revenue raised from the 2 percent tax on candy during the fiscal year ending June 30, 1933, amounted to $3,628,443.24, a very small amount of revenue indeed, but a great hardship on the confectionery industry.

Senator REED. Would you favor a general manufacturers' sales tax?

Mr. HEIDE. Senator Reed, I favor any tax that is equitable to industry as a whole.

Senator REED. That would be, wouldn't it?

Mr. HEIDE. Yes; I would say it would be.

Senator REED. It has been very successful down in the State of Mississippi.

The CHAIRMAN. Mississippi's tax is not a manufacturer's tax. You would prefer not to have either one of these taxes, wouldn't you?

Mr. HEIDE. Senator Harrison, I will say for myself that I am in favor—I know the Government needs revenue—I am in favor of putting any tax on that Congress should decide upon which puts in a fair competitive position such items as are competitive with our industry.

Senator GORE. How many manufacturers of candy are there in the United States now?

Mr. HEIDE. I would say, Senator Gore, there are about 1,200 that have a volume of $50,000 or more. Wholesale manufacturers.

Senator GORE. How many do you say failed last year?

Mr. HEIDE. This includes the wholesale distributors, and I would say between the manufacturers and the wholesale distributors there are between 8,000 and 9,000. The exact number I do not know. And there were 1,640 odd.

Senator GORE. Out of the total, who failed.

Mr. HEIDE. Yes, sir.

In conclusion, I may say that we make the appeal to you to give what I have laid before you your favorable consideration to take it out at the earliest possible opportunity.

Senator GORE. The point is that this tax is a dead weight on the industry and is a discrimination in favor of its competitors.

Mr. HEIDE. It is, Senator Gore. There is no question about it. It puts all of those other food and sweets industries that are in competition with our industry, at a decided advantage.

I would like also to file a brief for the Association of Cocoa and Chocolate Manufacturers.

The CHAIRMAN. Very well.

(The brief referred to is as follows:)

BRIEF SUBMITTED ON BEHALF OF THE ASSOCIATION OF COCOA AND CHOCOLATE MANUFACTURERS BY W. PARKER JONES, 801 UNION TRUST BUILDING, WASHINGTON, D.C.

REASONS WHY THE EXCISE TAX SHOULD BE REMOVED FROM CHOCOLATE

1. Chocolate is not a mere confection or luxury but is a highly valuable food product. While it is attractive to the palate it is not eaten as a mere confection—it is eaten to satisfy the appetite.

2. At least 95 percent of all the chocolate subject to the existing excise tax is sold in units costing the consumer 10 cents or less. At least 95 percent of it goes to working people of small means.

3. Chocolate is a large user of farm products. The American chocolate industry consumes annually about 175,000,000 pounds of sugar, milk and milk products equivalent to about 130,000,000 quarts of milk, several million pounds of butter, and large quantities of Southern-grown peanuts and California almonds.

4. The tax on chocolate is unfair and discriminatory because products competing directly with chocolate are not taxed. This applies especially to the chocolate-covered biscuits and confections of various sorts put out by biscuit and baking companies.

5. The excise tax is simply another name for a sales tax which is abhorrent in connection with food products of any sort. Chocolate pays the tax because the law imposes a 2-percent excise tax on "candy", and the Treasury Department rules that chocolate, which is customarily sold through the same outlets through which candy is sold, is candy. Either chocolate should be exempt from the tax on candy or the tax on candy should be removed. The arguments in favor of removing the tax from chocolate apply to candy. By far the greater bulk of candy is sold in small units to working people and people of small means. The expensive gift packages represent a very small proportion of the total output of candy.

A study of confectionery distribution by the Department of Commerce covering the years 1931 and 1932 shows that 90 percent of all confectionery and chocolate goes to the consumer in penny pieces or 5 cent bars, or bulk at more than $1 per pound represented in those years less than 2 percent, the balance of 8 percent representing package candies selling for less than $1 per pound on retail.

TAX ON NONBEVERAGE ALCOHOL

STATEMENT OF H. B. THOMPSON, WASHINGTON, D.C., REPRESENTING THE PROPRIETARY ASSOCIATION, DISCUSSING ALCOHOL TAX REDUCTION

Mr. THOMPSON. I am suggesting to this committee, an amendment to the present alcohol liquor taxing law.

Senator COUZENS. There is no change in the present bill, is there, over the existing law?

Mr. THOMPSON. I am asking no change in the bill except to add a new section.

Senator COUZENS. For a reduction?

Mr. THOMPSON. For a reduction. I am suggesting that a new section be added to section 606. Without taking time to read the section, the amendment which I am suggesting leaves the present tax of $1.10 a proof-gallon upon all spirits, and except those which are intended for use, for sale of beverage purposes, or for use in the manufacture or production of any article used and intended for use as a beverage.

The CHAIRMAN. Now, Mr. Thompson, we have had this matter before us a good many times. The question of revenue is not so much involved, because you want this in connection with the alcohol that goes into proprietary medicines?

Mr. THOMPSON. Not only that, but generally.

Senator GEORGE. Industrial alcohol?

Mr. THOMPSON. Alcohol that goes into the arts and industries.

Senator GEORGE. Industrial alcohol?

Mr. THOMPSON. All industrial alcohol.

The CHAIRMAN. Now, would it be hard to administer, in your opinion? The experts say it is very difficult to administer.

Mr. THOMPSON. Not at all, because it has been a traditional policy of the Congress of the United States, insofar as they could do so, to make a distinction between them. In the Seventy-third Congress of the United States, at the first session, there was a provision written into the bill that it should not apply to the use of alcohol by druggists, chemists, and physicians, in the manufacture of medicines. I am referring particularly to medicines, but not asking that this be limited to medicines.

In the act of 1918, the American Congress took that matter into consideration and provided for a differential tax. They raised the tax then from $1.10 to $2.20 a proof-gallon, and provided for a differential tax of $4.20 when it diverted to beverage purposes.

They had no difficulty in administering it at that time.

The CHAIRMAN. That was when?

Mr. THOMPSON. In 1918. It followed the enactment of the act passed which provided that 1 month after its passage no food or food material might be used in the manufacture of distilled spirits for beverage purposes, and that was followed by the enactment of the Revenue Act which made provision for the differential.

Senator COUZENS. That has caused the Department more trouble than any one thing.

Mr. THOMPSON. It did? I have not so understood it. I had felt that this matter ought to be approached from this standpoint. The Government does now exact a tax on all alcohol used in industry, which has been denatured. They have recognized its use. Then there is the beverage interest, and then there is the manufacturing interest where pure alcohol has been required.

Senator COUZENS. After it is denatured, it is not so difficult to handle.

Mr. THOMPSON. It has been recooked and recooked. That has been the experience throughout this period, that it was just about as difficult to handle as in any other way. There were many, a great many, recooking stills in the United States that were producing illegitimately, alcohol for beverage purpose. A great many were shown by the prohibition department report. Frankly I have grave doubt in my own mind—I do not expect that this committee will entirely be affected by my view—that the raise in the tax from $1.10 to $2 will operate successfully for the benefit of the revenues. The history of the country has been against that.

Senator GEORGE. Some of us on the committee had grave doubts.

Mr. THOMPSON. Yes, sir. Will you permit me just to refer to one item here? In 1894, in the United States Senate, Senator Allison, in the Twenty-sixth Congressional Record, page 6941, said:

> Distilled spirits are recognized and have been recognized in our laws as a proper subject of taxation and we tax them and have taxed them in the past, at what might be called the revenue point, that is the levying such taxes as would yield the largest revenue.
>
> I remember very well when in 1866 we taxed distilled spirits $2 a gallon, that under that law in 1868 we received in revenue about $14,000,000 only. In 1868 we changed the entire system of levying the tax upon distilled spirits, first by preparing the system of stamps which now prevails and, secondly, by preparing a certain amount of tax to be paid at the distillery and also an

additional amount of tax to be paid as the distilled spirits were distributed and finally reached the consumer.

If I recall aright, the tax at the distillery was 50 cents a gallon. This with the tax of the wholesale and the retail dealer and the tax the rectifier of spirits had was so much a gallon. Thus by this combination of taxes we provided about 75 cents a gallon as the tax to be paid by the consumers of the country.

In the the first year, when the tax was $2 a gallon, we only raised $14,000,000. Under the new law, with the tax lower and distributed in the way I have stated, we were able to secure, I think, about $42,000,000.

In other words, the reduction of the tax upon distilled spirits resulted in an increase in the amount of revenue in about the inverse ratio as the diminishing of the tax.

In the meantime, as you gentlemen know, there has been an organization in this country of illegitimate industries which have so far proceeded that they certainly will be prodded, if you please, to exercise their ingenuity in preparing new forms of evading the tax when you are proposing a tax of $3.71 on a wine gallon. As it is now you have about $2.11 a wine gallon, and we do not ask a reduction under the present $1.10, which I think is as high as the traffic will properly bear. You add to that now 90 cents and raise that tax to $3.71 a wine gallon, and you have certainly made an enducement for the illegitimate distributor to do as they did back at the time that Senator Allison referred to, and probably reduce your revenue.

The CHAIRMAN. Will you make a constructive suggestion in the form of an amendment for the record?

Mr. THOMPSON. I have it in the form of an amendment and I also had prepared here for the use of the committee, a digest of all the laws in the United States up and until 1926. It does not include the Act of 1926, nor the taxing act which was enacted by Congress in January of this year, and I shall be happy if I may leave these with the stenographer to go into the record.

(The suggested amendment is as follows:)

Amend H.R. 7835 as follows:

After section 606 add a new section to read as follows:

Section 2 of the Liquor Tax Act of 1934 is amended to read as follows: Section 2. Paragraphs (3) and (4) of subdivision (a) of section 600 of the Revenue Act of 1918, as amended (relating to the tax on distilled spirits generally and the tax on distilled spirits diverted for beverage purposes) (U.S.C., sup. VI, title 26, sec. 1150 (a) (1) and (2)), are amended to read as follows:

(3) On and after the effective date of this act, $1.10 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon; and

(4) On and after the effective date of this act, if intended for sale for beverage purposes or for use in the manufacture or production of any article used and intended for use as a beverage, if such article when ready for the market contains more than one half of 1 percent of alcohol by volume, $2 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.

DIGEST OF THE ACTS OF CONGRESS RELATING TO IMPOSTS AND DOMESTIC TAXES IMPOSED UPON DISTILLED SPIRITS

Submitted by Mr. Thompson

1. *Impost.*—The second act passed by the Congress of the United States (1st Cong., 1st sess., ch. 2; 1 Stat. 11), on July 4, 1789, an act for laying duty on goods, wares, and merchandise imported into the United States, levied a duty of 10 cents per gallon on distilled spirits of Jamaica proof and of 8 cents per gallon upon all other distilled spirits.

2. *Impost.*—On August 10, 1790 (1st Cong., 2d sess., ch. 29), the Congress repealed the act of July 1789, and imposed an import tax upon distilled spirits, ranging from 12 cents per gallon on spirits more than 10 percent below proof, to 25 cents per gallon on spirits more than 40 percent above proof, according to the Dycos' hydrometer.

3. *Impost and domestic tax*.—On March 3, 1791 (1st Cong., 3d sess., ch. 15: 1 Stat. 199), the duties theretofore imposed upon distilled spirits were repealed and a tax was imposed upon imported distilled spirits ranging from 20 cents upon spirits more than 10 percent below proof to 40 cents upon spirits 40 percent above proof.

Sections 14 and 15 imposed, for the first time, a tax upon domestic distilled spirits.

Section 14 provided for a tax upon distilled spirits of domestic product but made for molasses, sugar, or other foreign materials, of from 11 cents on spirits 10 percent below proof up to 30 cents on spirits 40 percent above proof.

Section 15 provided a tax upon distilled spirits from materials grown in the United States, of from 9 cents upon spirits more than 10 percent below proof to 25 cents upon spirits above 40 percent above proof.

The act also provided rather elaborate provisions for the inspection and collection of the tax.

4. *Impost.*—On May 2, 1792 (2d Cong., 1st sess., chap. 27) the Congress passed an act to raise a further sum for the protection of the frontiers, etc., and provided that, in lieu of the duties laid upon imports, other duties should be imposed. The act provided a graduated tax of from 28 cents to 50 cents per gallon on spirits distilled wholly or chiefly of grain, and from 25 cents to 46 cents upon other distilled spirits.

5. *Domestic tax.*—On May 8, 1792 (2d Cong., 1st sess., chap. 32; 1 Stat. 267), the Congress imposed a tax on spirits distilled from molasses, sugar, or other foreign materials of from 10 cents to 25 cents.

Upon distilled spirits from materials of the United States, distilled at any place where the still or stills were of a capacity of 400 gallons or upwards, a graduated tax of from 7 cents to 18 cents was imposed.

Upon like spirits from stills of a capacity less than 400 gallons, the tax imposed was a yearly duty of 54 cents on the capacity, measured in English wine gallons, of the still. There was a provision that, at the option of the proprietor of the still, an alternate tax could be paid of 7 cents per gallon for every gallon of spirits distilled, or a payment made of 10 cents per gallon of the capacity of the still for each month the still was employed.

6. *Domestic tax.*—On June 5, 1794 (3d Congress, 1st sess., chap. 48; 1 Stat. 376), the Congress defined retail dealers in wines and foreign spirits and provided that such retail dealers should obtain licenses.

Provision was made in this act that it should not apply to "physicians, apothecaries, surgeons, or chemists, as to any wines or spiritous liquors which they may use in the preparation or making up of medicines, for sick, lame, or diseased persons only."

7. *Impost and domestic tax.*—On the same day, June 5, 1794 (3d Cong., 1st sess., ch. 49; 1 Stat. 378), an act was passed "making further provision for securing and collecting the duties on foreign and domestic distilled spirits, stills, wines, and teas."

This act extended the revenue inspection to "the States and Territories to be erected in the Northwest and south of the Ohio" and also contained certain drawback provisions.

8. *Domestic license tax.*—On March 3, 1797 (4th Cong., 2d sess., ch. 11; 1 Stat. 504), the provision granting to proprietors of stills of less than 400 gallons capacity, an option as to tax payments was abolished and a license was imposed for the employment of every such still ranging from 6 cents per gallon, according to the capacity of the still, for a 2-week period up to 42 cents per gallon for the employment of such still for and during a term of 6 months.

9. The act of January 29, 1798 (5th Cong., 2d sess., ch. 10; 1 Stat. 539), allowed owners of stills to make an election as to the rate of duty paid, whether by the year or for a shorter period.

10. The act of May 13, 1800 (6th Cong., 1st sess., ch. 66; 2 Stat. 84), changed the impost duties on wines and upon sugars and molasses and allowed an additional drawback upon sugar refined and reexported and upon distilled spirits made from such materials and exported.

11. *Domestic tax.*—The act of February 25, 1801 (6th Cong., 2d sess., ch. 11; 2 Stat. 102), continued the duties of licenses for selling foreign distilled spirits.

Section 1 of the act stated that with respect to the several acts therein enumerated, including the "laying of duties on licenses for selling wines and other foreign distilled spirits by retail" that they were thereby "continued in force without limitation of time."

12. *Repeal domestic tax.*—On April 8, 1802 (7th Cong., 1st sess., ch. 19; 2 Stat. 148), the Congress passed an act discontinuing the internal duties on stills and domestic distilled spirits, from and after 30 days from the next June.

13. *Domestic tax.*—On July 24, 1813 (13th Cong., 1st sess., ch. 25; 3 Stat. 42), the Congress imposed a license upon distillers based upon the per gallon capacity of the stills operated and ranging—in case of domestic materials—from 9 cents per gallon of the capacity of the still if operated for 2 weeks or less, up to $1 per gallon of the capacity, if operated for a year.

If foreign materials were used the tax was more and ranged from 25 cents per gallon of the capacity if operated for 1 month, up to $1.35 per gallon for a year.

Distillers were given the option in either case, of choosing the period rate under which they would pay the tax.

The act was to continue for 1 year after the termination of the war in force with Great Britain and Ireland.

14. *Domestic tax.*—On August 2, 1813 (13th Cong., 1st sess., ch. 39; 3 Stat. 72), the Congress imposed a tax upon certain retail dealers, among them, persons dealing "in the selling of any distilled spiritous liquors in less quantities than 20 gallons." The amount of the license tax was graduated according to the size of the community.

Exemption.—This law provided that nothing "herein contained shall be construed to extend to physicians, apothecaries, surgeons or chemists, as to any wines or spiritous liquors which they may use in the preparation or making up of medicines for sick, lame or diseased persons only."

Provision was made that this act should continue for 1 year after the termination of the war with the United Kingdom of Great Britain and Ireland and no longer.

15. *Exemption.*—On April 18, 1814 (13th Cong., 2nd sess., ch. 91; 3 Stat. 137), an act was passed dealing with the administration of the licenses "to retailers of wines, spiritous liquors and foreign merchandise."

"Nothing shall be construed to extend to physicians who keep on hand medicines solely for the purpose of making up their own prescriptions for their own patients, nor shall any physician, surgeon or chemist, for vending, solely to his practice, medicines to his patients, be subjected to take out license."

16. *Domestic tax.*—On December 21, 1814 (13th Cong., 3rd sess., ch. 15; 3 Stat. 152), the Congress amended the act of July 24, 1813, and imposed an additional tax upon distilled spirits of 20 cents per gallon.

This act required bonds provided penalties including the forfeiture of domestic, distilled spirits if the duties were not paid — and provided for licenses.

17. *Domestic tax.*—On January 18, 1815 (13th Cong., 3d sess., ch. 22; 2 Stat. 180), an act was passed to provide additional revenue.

This act imposed a tax upon a number of commodities and, among other things, provided for the giving of bonds and the keeping of records by owners of stills and the issuance of licenses to them and for penalties upon failure to pay such licenses.

Chapter 23, same Congress, imposed a tax upon household furniture above a certain value. This is stated merely to show the extraordinary exigency existing.

18. *Domestic tax.*—On April 19, 1816 (14th Cong., 1st sess., ch. 58; 3 Stat. 291), the Congress passed "An act to abolish the existing duties of distilled spirits within the United States and to lay other duties, in lieu of those at present imposed, on licenses to distillers of spirituous liquors."

This act provided for licenses for using stills, for bonds, and for taxes on stills ranging, in the case of domestic materials, from 9 cents for each gallon of the capacity of the still when used for a 2 weeks' period, up to $2.16 for each gallon of the capacity of the still when used for a year; and, in the case of foreign materials, from 23 cents for each gallon of the capacity of every such still when used for 1 month, up to $2.70 when used 1 year.

19. *Reduction of domestic tax.*—On April 29, 1816 (14th Cong., 1st sess., ch. 137; 2 Stat. 320), the Congress passed "An act reducing the duties on licenses to retailers of wines, spirituous liquors and foreign merchandise." This act repealed the act passed December 23, 1814.

20. On April 30, 1916 (14th Cong., 1st sess., ch. 172; 3 Stat. 338), an act was passed allowing drawbacks on distilled spirits upon export.

21. *Tax reduction.*—On December 23, 1817 (15th Cong., 1st sess., ch. 1; 3 Stat. 401), the internal duties upon licenses to distillers were abolished, among other things, effective December 31, 1817.

22. The act of September 11, 1841 (27th Cong., 1st sess., ch. 24; 5 Stat. 463), provided that the drawbacks on exported rum distilled from foreign materials should be reduced in proportion to the reduction in duties on molasses or sugar when imported and that in no case should the drawbacks exceed the amount of duty paid on either of these articles.

23. *Impost.*—On March 2, 1861 (36th Cong., 2d sess., ch. 68; 12 Stat. 180), the Congress passed "An act to provide for the payment of outstanding Treasury notes * * * and fix the duties on imports", etc.

Section 6 of this act provided for an import duty "on brandy, for first proof, $1 per gallon, on other spirits manufactured or distilled from grain, for first proof, 40 cents per gallon.

24. *Domestic taxes.*—On July 1, 1862 (37th Cong., 2d sess., ch. 119; 13 Stat. 432), the Congress passed "An act to provide internal revenue to support the Government and to pay interest on the public debt." This act imposed a variety of internal duties—stamp taxes, licenses, and other taxes.

Among the license taxes were taxes on taverns and eating houses; upon stock exchange brokers, land warrant brokers, and other brokers of various kinds; upon theaters and circuses, and upon jugglers; upon bowling alleys and pool rooms; upon tobacconists and confectioners; upon horse dealers, livery-stable keepers, and cattle brokers; upon tallow candlers and soap manufacturers; upon peddlers, and various retail dealers; upon manufacturers of any kind doing a business above $600 gross; upon apothecaries, photographers, lawyers, physicians, surgeons, claim agents, and patent agents.

Exemption.—There was an exemption as to apothecaries "as to wines or spiritous liquors which they use exclusively in the preparation or making up of medicines for sick, lame, or diseased persons."

The act provided for a tax of 20 cents per gallon on distilled spirits of first proof and for a proportionately greater tax for any greater strength than the strength of proof.

The licenses upon distillers was $50 for each license, with a provision that, if the output was less than 300 barrels a year, the license would be $25.

Wholesalers in distilled spirits paid $100 per year. Retail dealers in spirits paid $20 for each license. Rectifiers paid $25 for each license to rectify up to 500 barrels of not more than 40 gallons each, and $25 additional for every additional 500 barrels or fraction thereof.

25. *Impost.*—On July 14. 1862 (37th Cong., 2d sess., ch. 163; 12 Stat. 544), an act was passed to increase, temporarily, all duties on imports. This act imposed a duty of 25 cents per gallon on brandy of first proof and upon other spirits. 50 cents per gallon.

26. *Domestic Tax and Impost.*—On March 7, 1864 (38th Cong. 1st sess., ch. 20; 13 Stat. 14). the Congress passed "An act to increase the internal revenue."

This act amended the act of July 1, 1862 (24 supra), and provided that, in addition to the duties payable for licenses, a tax of 60 cents should be imposed upon each and every gallon of distilled spirits, distilled, and sold, or removed for sale, prior to the first day of the next July.

The act also provided a tax of 40 cents per gallon on the first proof upon all distilled spirits of whatever origin or source imported into the United States prior to the first day of the next July.

27. *Impost.*—On June 30. 1864 (38th Cong.. 1st sess., ch. 171; 13 Stat. 202), an act was passed "to increase duties on imports", etc. This provided a tax of $2.50 for brandy of the first proof and a tax of $2.00 upon other than distilled spirits.

28. On June 30, 1864 (38th Cong., 1st sess., ch. 173; 13 Stat. 223), the Congress also passed an act "to provide internal revenue to support the Government, to pay interest on the national debt, etc.

This act imposed a tax of $1.50 per gallon on distilled spirits on and after July 1, 1864, and prior to February 1, 1865, and after February 1, the tax was increased to $2 per gallon, on the basis of the first proof.

Domestic Taxes.—The act provided a system of licenses for various persons and occupations. Among these were licenses upon wholesale and retail dealers in liquors. Wholesalers with a yearly business of less than $50,000 paid $50 and paid $1 more for every additional $1,000 of business done above $50,000. Retailers paid $25 for each license. Distillers paid $50 for each license or, if manufacturing less than 300 barrels, $25. Rectifiers paid $25 if they did not exceed 500 barrels of not more than 40 gallons each and paid an additional $25 for each additional 500 barrels or fraction thereof.

29. *Domestic.*—On March 3, 1865 (38 Cong. 2d sess., ch. 78; 13 Stat. 469), the Congress passed "An act to amend the act of June 30, 1864." This clarified the provisions of the previous act but did not change the rates upon distilled spirits except to increase the rate upon brandy from grapes from 25 cents to 50 cents and to provide that brandy distilled from peaches or apples should be taxed $1.50 per gallon.

30. *Domestic Taxes and Licenses.*—On July 13, 1866 (39th Cong., 1st sess., ch. 184; 14 Stat. 98), the Congress passed an act to reduce the internal taxation and amending the act of June 30, 1864, as amended by the act of March 3, 1863.

Section 32 of this act provided a tax of $2 on every proof gallon of distilled spirits.

Wholesale dealers in liquors paid a license of $100 where their sales did not exceed $50,000 and an additional $1 for every $1,000 of sales above $50,000. Retail dealers in liquors paid $23. Distillers paid $100. Distillers of apples, grapes, or peaches distilling from 50 to 150 barrels, paid $50 and, if distilling less than 50 barrels, paid $25. Rectifiers paid $25 when rectifying up to 500 barrels of 40 gallons each and $25 additional for each additional 500 barrels or fraction thereof. Hotel keepers, selling liquor at retail, paid an additional tax of $25, in addition to their license as such.

The act provided "That no tax shall be imposed for any still, stills or other apparatus used by druggests and chemists for the recovery of alcohol for pharmaceutical and chemical or scientific purposes which has been used in those processes.

Exemptions.—The act contained a further provision (p. 122) that nothing should be construed to impose a special tax upon "apothecaries as to wines or spiritous liquors which they use exclusively in the preparation or making up of medicines."

31. *Domestic Taxes.*—On March 2, 1867 (39th Cong., 2d sess., ch. 169; 14 Stat. 471), the Congress passed "An act to amend the existing laws relating to internal revenue."

Section 14 imposed a tax upon distilled spirits of $2 per gallon.

Section 12 imposed a tax on brandy from grapes of $1 per gallon.

Exemptions.—Section 11 provided that on and after March 1, 1867, there should be additional exemptions from internal taxation. Among the items were "alcoholic and ethereal vegetable extracts when sold and used solely for medical purposes."

An interesting provision is found in section 27, which reads:

"Section 27. And be it further enacted that no distilled spirits which have been forfeited to the Government in accordance with law shall be sold for a price less than the amount of the tax required thereon by law at the time of such sale. And if the officer having such spirits in charge shall have been unable for a period of 90 days, to sell the same for a price equal to the tax, such spirits in charge shall have been unable for a period of 90 days, to sell the same for a price equal to the tax, such spirits shall be destroyed under such rules and regulations as the commissioner of internal revenue may prescribe.

32. *Reduction of domestic tax—Licenses.*—On July 20, 1868 (40th Cong., 2d sess., ch. 186; 15 Stat. 123), the Congress fixed the rate of tax upon distilled spirits at 50 cents per proof gallon.

Distillers with an output of 100 barrels of 40 gallons proof spirits each, paid $400 and an additional $4 for each barrel distilled in excess of 100 barrels.

Rectifiers paid $200 on an output of 200 barrels or less and 50 cents a barrel additional for each barrel in excess of 200.

Retail liquor dealer paid $25 a year license. Wholesale dealers paid $100 for sales up to $2,500 and an additional $10 for each additional $1,000 of sales above $2,500.

33. *Domestic Tax.*—On July 14, 1870 (41st Cong. 2d sess., ch. 255; 16 Stat. 256), the Congress passed an act reducing special taxes upon occupations except upon distillers, etc.

Section 21 provided that after the 31st of December, 1870, in lieu of the duties then imposed by law, there should be levied upon brandy and other spirits not otherwise provided for, $2 per proof gallon.

34. *Domestic Tax.*—On June 6, 1872 (42d Cong., 2d sess., ch. 315; 17 Stat. 230), the Congress passed "An act to reduce duties on imports and to reduce internal taxes", etc.

Section 12 of the act amended section 1 of the former act by striking out the word "fifty" and inserting in lieu thereof the word "seventy." Thus the tax became 70 cents per proof gallon.

Section 13 of this act amended the act of July 20, 1868, imposing taxes on distilled spirits, etc. as amended by the act of April 10, 1869, and removed the special tax upon distilled spirits of $4 per barrel, and the tax upon wholesale and retail sales and the tax on rectifiers of 50 cents per barrel in cases of 200 barrels.

35. *Domestic tax.*—On February 9, 1875 (43d Cong., 2d sess., ch. 36; 18 Stat. 307), Congress passed "An act to amend existing customs and internal revenue laws," etc.

Section 18 provided that retail dealers in liquors should pay a license of $20 and wholesale dealers should pay $100.

Exemption.—Section 22 provided "That nothing hereinafter contained in the revenue laws shall be construed so as to authorize the imposition of any stamp tax upon any medical articles prepared by any manufacturing chemist, pharmaceutist, or druggist, in accordance with a formula published in any standard dispensary or pharmacopoeia in common use by physicians and apothecaries, or in any pharmaceutical journal issued by any incorporated college of pharmacy, when such formula and where found shall be distinctly referred to on the printed label attached to such article, and no proprietary interest therein is claimed. Neither shall any stamp be required when the formula of any medicinal preparation shall be printed on the label attached to such article where no ownership in such article shall be claimed."

36. *Domestic.*—On March 3, 1875 (43d Cong., 2d sess., ch. 127; 18 Stat. 339), Congress passed an act providing that from and after that date the tax on distilled spirits should be 90 cents per proof gallon or, when below proof, per wine gallon.

37. On February 18, 1878 (45th Cong., 2d sess., 20 Stat. 248), the Congress passed a joint resolution that a reduction of the tax on distilled spirits was inexpedient.

38. *Domestic tax.*—On March 1, 1879 (45th Cong., 3d sess., ch. 123; 20 Stat. 327), the Congress passed an act to amend the laws relating to internal revenue.

This act reduced distillers' licenses on the small distilleries so that the license was $100 where any person distilled less than 500 barrels of 40 gallons proof spirits a year. Retail dealers paid $25 for their license and wholesale dealers paid $100.

39. *Impost.*—On March 3, 1883 (47th Cong., 2d sess., ch. 121; 22 Stat. 488), the Congress passed "An act to reduce internal revenue taxation," etc.

Schedule H, Liquors, (p. 304) provided for a tax on "brandy and other spirits. . . not specifically enumerated or provided for in this act, $2 per proof gallon, each and every gage or wine gallon of measurement, shall be counted as at least one proof gallon."

This act also repealed the tax on medicinal prepartions and other articles imposed by Schedule A following Section 3437 of the Revised Statutes of that period.

40. *Impost.*—On October 1, 1890, (51st Cong., 1st sess., ch. 1244; 26 Stat. 567), in an act to reduce and revise the duties on imports, the Congress imposed a rate (Schedule H, p. 589) on brandy and other spirits not provided for of $2.50 per proof gallon, to become effective October 6, 1890.

41. *Impost and domestic.*—On August 27, 1894, (43d Cong., 2d sess., ch. 349; 28 Stat. 409), Congress passed "An act to reduce taxation, to provide revenue for the Government," etc.

This act imposed an impost tax, Schedule H, (p. 525) on brandy and other spirits . . . not specifically provided for of $1.80 per proof gallon.

Section 48 of the act imposed a tax upon all distilled spirits in bond at the time of the passage of the act and thereafter produced in the United States, of $1.10 on each proof gallon or wine gallon when below proof.

42. The Act of June 3, 1896 (54th Cong., 1st sess., ch. 310; 29 Stat. 195) repealed section 61 of the act of August 27, 1894.

This act provided that a joint, select committee of three Senators and three Members of the House of Representatives should be appointed to "consider all questions relating to the use of alcohol in the manufactures and arts free of tax, and to report their conclusions to Congress on the first Monday in December 1896."

43. *Impost.*—On July 24, 1897 (55th Cong., 1st sess., ch. 11; 30 Stat. 151) the Congress passed "An act to provide revenue for the Government and to encourage the industries of the United States."

Schedule H imposed an import tax upon brandy and other spirits not specifically provided for of $2.25 per proof gallon.

Provision was made in section 3 (p. 203) for reciprocal trade provisions with other countries on several articles, chiefly brandy or spirits. The duties imposed under this provision would be $1.75 per proof gallon.

NOTE. To raise revenue for the Government in the conduct of the war in 1898, no provision was made with respect to distilled spirits but the tax on fermented liquors was increased from $1 to $2. This was reduced to $1.60 on March 2, 1901 (56th Cong., 2d sess., ch. 806; 31 Stat. 938), and on April 12, 1902 (57th Cong., 1st sess., ch. 300; 32 Stat. 96) the old rate of $1 was restored.

44. On June 7, 1906 (34 Stat. 217; chap. 3047), the Congress passed an act providing, from and after January 1, 1907, for the withdrawal from bond, tax-free, of domestic alcohol "for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed * * * with methyl alcohol or other denaturing material or materials, or admixture of same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes."

45. On March 2, 1907 (34 Stat. 1250; chap. 2571), the act of June 7, 1906, was amended by an act providing that, notwithstanding anything in the act of 1906, "domestic alcohol, when suitably denatured, may be withdrawn from bond without the payment of internal-revenue tax and used in the manufacture of ether and chloroform and other definite chemical substances where said alcohol is changed into some other chemical substance and does not appear in the finished product as alcohol."

46. *Impost.*—On August 5, 1909 (61st Cong., 1st sess., chap. 6; 36 Stat. 11), the Congress passed "An act to provide revenue, equalize duties, and encourage the industries of the United States", etc.

Schedule H provided an import tax upon brandy and other spirits of $2.60 per proof gallon.

47. *Impost.*—On October 3, 1913 (63d Cong., 1st sess., chap. 16; 38 Stat. 114), the Congress passed "An act to reduce tariff duties and to provide revenue for the Government", etc.

Schedule H provided an impost tax on brandy and other spirits of $2.60.

Provision was made in section IV (N), subsection 2, that after the 1st day of January 1914, under regulations of the Commissioner of Internal Revenue and the Secretary of the Treasury, "any farmer or association of farmers, any fruit grower or association of fruit growers, or other person or persons might manufacture alcohol free of tax for denaturization only, out of any of the products of farms, fruit orchards, or any substances whatever, on condition that such alcohol shall be directly conveyed from the still by continuous closed pipes", etc.

48. *Impost and domestic tax.*—On October 3, 1917 (65th Cong., 1st sess., chap. 63; 40 Stat. 300), the Congress passed "An act to provide revenue to defray war expenses", etc.

Section 300 provided for a tax of $1.10 in addition to the taxes then imposed on all distilled spirits in bond then or thereafter to be produced in the United States or imported.

There was an additional provision that if spirits were to be withdrawn for beverage purposes or used in the manufacture of any beverage the tax should be $2.10. Section 304 imposed an additional tax in addition to the increased tax imposed by the act of 15 percent on all distilled spirits or wines thereafter to be rectified.

49. *Domestic tax.*—On February 24, 1919 (65th Cong., 3d sess., chap. 18; 40 Stat. 1057), the Congress passed "An act to produce revenue", etc.

Section 600 (a) imposed a tax on distilled spirits of $2.20 or, if withdrawn for beverage purposes, $6.40.

Section 604 imposed a floor tax of $3.20 upon all distilled spirits tax-paid and held at the date of the passage of the act if intended for beverage purposes or use in beverages.

Section 605 imposed a tax of 30 cents a gallon on all spirits rectified with an exception for those distilled over juniper, etc.

50. *Domestic.*—On October 28, 1919 (66th Cong., 1st sess.) the Congress passed the National Prohibition Act, section 10 of title III of this act reads, in part, as follows:

"SEC. 10. Upon the filing of application and bond and issuance of permit, denaturing plants may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall be used exclusively for the denaturization of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage.

"Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export."

51. *Domestic tax.*—On November 23, 1921 (67th Cong., 1st sess., ch. 135; 42 Stat. 227), the Congress passed "An act to reduce and equalize taxation, to provide revenue," etc., and by this act continued the tax of $2.20 per proof gallon.

Section 600 contained a provision that there should be imposed a tax of $4.20 upon all distilled spirits diverted to beverage use which had been taxed at the nonbeverage rate of $2.20 per proof gallon.

52. *Impost.*—On September 21, 1922 (67th Cong., 2d sess., ch. 356; 42 Stat. 858), the Congress passed "An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States," etc.

Paragraph 4 provided an import tax of 6 cents on "alcohol, amyl, butyl, propyl, and fusel oil. Upon methyl or wood (or menthanol) 12 cents per gallon and upon ethyl and alcohol for nonbeverage purposes only, 15 cents per gallon.

Schedule 8, on spirits, wines, and other beverages, imposed a tax of $5 per proof gallon on brandy and other spirits distilled, or cordials, liqueurs, etc., containing spirits and compounds and preparations of which distilled spirits are the component material of chief value, not specially provided for.

Angostura bitters were taxed at $2.60 per proof gallon.

53. On June 1924 (68th Cong., 1st sess., chap. 234, 43 Stat. 353), the Congress passed "An Act to reduce and equalize taxation, to provide revenue", etc.

Under "Miscellaneous Occupational Taxes", section 701 (9), distillers and wholesale liquor dealers and retail dealers shall pay $1,000 license tax in addition to all other taxes.

STATEMENT OF W. BRUCE PHILIP, NATIONAL ASSOCIATION OF RETAIL DRUGGISTS, WASHINGTON, D.C.

Mr. BRUCE. Mr. Chairman and members of the committee: My name is W. Bruce Philip, and I am counsel for the National Association of Retail Druggists, and that association represents by direct membership and affiliated membership more than half of the 60,000 retail druggists in the United States. I am also a pharmacist and a drug-store owner.

I have two briefs here, one supporting Mr. Thompson's suggested amendment that the alcohol tax on medicinal alcohol be reduced or left at the old figure of $1.10.

May I suggest a comment on this? The sick man becomes unemployed, and you reduce his resources, and he becomes an expensive charity patient. Therefore, you increase the charges of the Government, and the tax, when you exhaust the resources of the sick. The alcohol tax is one way of reducing the sick man's limited income or the income he receives from friends. It seems odd that a gallon of whisky for beverage purposes would pay $2 tax, but a gallon of alcohol to be used as a rub, on a tubercular or some other patient, should pay the Government $3.60 for a wine gallon.

Also I think we are very desirous of eliminating the bootlegger. The higher the tax, the more temptation to buy small lots of alcohol that is continually thrown up to the retail druggist. We are really proud of our record during the eighteenth amendment, and we feel that we do not want to be tempted by higher alcohol tax, because we will face that issue.

I will leave this brief in support of the statement.

As to soda-fountain tax——

Senator KING (interrupting). Soft drinks?

Mr. PHILIP. Soft drinks. That is not a tax of sirups or ingredients. It is a tax on the retail druggist. He pays it out of his sales and out of his profits, if he has any. And furthermore, the amount of bookkeeping, the amount of notations that must be made is astonishing. Take the still drink. You serve 6 ounces of orangeade or lemonade, and you make a record. 128 ounces to the gallon means that the druggist makes 21 records to pay the munificent sum of 2 cents to the Government. Or you make 1,050 records to pay to the Government $1 under the alleged soda fountain or soft drink tax. We feel that that is unfair to charge 2 cents per gallon, that seems reasonable, and ask the retail druggist to pay 10 to 20 to 30 times as much in order to make the records. There are thousands of reports under $1 where the bookkeeping and the labor has amounted to more than $1 in order to pay the Government a few cents.

I will leave this brief also, Mr. Chairman.

Senator GORE. Do you think there ought to be any tax on fruit juices?

Mr. PHILIP. We pay, Senator, a tax of 2 cents a gallon on the finished product, that is, the water plus the fruit juice. Carbonated or plain.

Senator GORE. Don't you think that ought to be tax-free?

Mr. PHILIP. I do.

The CHAIRMAN. That is free in this bill, isn't it?

Mr. PHILIP. I understood that there was no change in that.

The CHAIRMAN. On fruit juices?

Mr. PHILIP. On still drinks.

The CHAIRMAN. Thank you very much.

(The two briefs referred to are as follows:)

SUBMITTED BY W. BRUCE PHILIP

On behalf of the National Association of Retail Druggists, an organization which represents by direct and affiliated membership over half of the 60,000 retail druggists of the United States, I ask you to very seriously consider the removing of the excise taxes, under section 615—of the Revenue Act of 1932, which were passed by the last session of Congress.

These obnoxious excise taxes have received the name of nuisance taxes because of the aggravating, ranking unfairness of them.

They are a nuisance to the drug trade which I represent. They cause a vast amount of detail work and worry that in the end is not justified, because the tax has not in any measure brought in the revenue anticipated to be brought in by it. Therefore, again I ask that this section be rescinded.

To illustrate, the amount of clerical labor and the number of notations that must be made to pay $1 to the United States under a section of these nuisance taxes just consider the following:

There are 128 fluid ounces to 1 gallon. When 6 ounces of orangeade or lemonade is served to a customer a record must be made. Six ounces divided into 128 ounces gives 21 glasses to the gallon. That is, 21 records must be made to pay the Government the magnificent sum of 2 cents.

In the same way it is seen that to pay the Government $1 in tax for these sales there are 1,050 transactions, regardless of how simple a bookkeeping system is worked out. Surely there is no justification in the United States Government demanding that a busy drug store making orangeade and lemonade fresh for each customer should have to keep a record numbering 1,050 times in order that one single dollar be paid.

You can readily see that this means the druggists are put to an unreasonable expense to keep records so as to pay a dollar asked by this measure. There is nothing fair or reasonable about this. Such a tax should be repealed.

Let us look at a few generalities that are familiar to the committee, but which may aptly be brought up in this specific case.

It is the solid business man, the merchants in the class of retail druggists, who have education enough to keep the kind of records required by the Government, and who are the ones who really pay the excise taxes.

There are competitors of these established merchants—fly-by-night vendors of soft drinks. Come-and-goers who appear on holidays and festive occasions, and those who remain in locations but for short periods, who do not pay the tax. Is that just?

On the other hand, those persons who are evading paying the tax cannot be caught or collected from by our Government. If they were caught, there would still remain no profit. No profit from the amount collected because of the expense of the procedure.

It then may well be assumed that the Government is collecting a tax from honest merchants, and excusing the dishonest ones. The dishonest ones are not only defrauding the Government, but are stealing business from the merchants who are supporting the Government. If such were the history of a few isolated cases, business men would accept the inevitable.

Inasmuch as the aggression just cited is far flung and universal, it is high time that an adjustment be made in favor of the merchants who have paid already for a year. The abolition of the tax is requested.

Let me illustrate. Under section 615 of the Revenue Act of 1932, a tax of 6 cents a gallon was levied upon a gallon of finished soda fountain sirup, as well as a tax on soft drinks, orangeade, and lemonade. Who pays this tax? The people have been told, and the people believe, that this tax is paid to the Government by sirup manufacturers, who sell to the retailer, as the tobacco tax is paid. The people believe that this tax is added to the price of the commodity (say, soda-fountain drinks) when the customer, who consumes the drink pays for it. In a like manner are consumers supposed to pay in the same way what the stamps on tobacco and cigarettes really repay to the manufacturers the amount which manufacturers have paid to the Government. The ultimate consumer of tobacco thereby pays the tax.

Nothing could be further from the reality of what has taken place in business the last year. No longer are we druggists arguing, we are presenting the facts that have become established data fit to present to this committee.

To continue the illustration about soft drinks and soda fountain sirups:

The public today pays the same price for a glass of ice-cream soda, orangeade, or lemonade as it paid prior to the passage of the 1932 Revenue Act.

If there has been any change in the price of beverages which contain taxable sirup, it has been due to trade conditions, and is not due to the tax put on by section 615 of the 1932 Revenue Act. The theory that the manufacturer who would absorb and pay the tax has not become a fact.

The well-known Coca Cola Co. at once added the 6 cents a gallon to their wholesale price. The new price paid by the druggists includes this tax. Other manufacturers followed the lead of the Coca Cola Co. The correct answer to the question "Who pays the tax on fountain sirups?" is answered by that portion of the 60,000 retail druggists who have soda fountains, after a year of experience. The druggists pay the tax. The druggists do not even get that slight reward of having their customers know that they, the druggists, personally pay the tax. The customers are deluded, the druggists are not, and they ask to be relieved.

Some one may answer this question by saying that all taxes are passed on in one way or another to the consuming public. If this is true, then the tax on fountain sirup is more than ever objectionable, because then the tax-consuming public must pay the tax which is supposed to be levied upon sirup, by having a raise in prices fostered upon it, on some other commodities which are purchased.

Why pretend to tax sirups if one knows that this tax is passed on to the public by a raise in the price of other commodities sold in the stores? When the Governmet is in reality taxing these other commodities unnamed and unknown, it is not taxing fountain sirups.

The revenue of $824,917.13 (from p. 28, Report of the Internal Revenue Collector, fiscal year 1933) is not enough to justify the annoyance caused by this fountain sirup tax, or of having on our statute books a tax that does not tell the truth about who pays it.

According to figures obtained from the United States Department of Commerce, we find that 34,844 out of about 60,000 drug stores have soda fountains. Then calculating that one third of this $824,917.12 comes from drug stores, we can say that the Government is taxing each drug store $10 a year, but the Government is not taxing soda-fountain sirup in any sense of the word.

Concerning taxes on other soft drinks under section 615 of the Revenue Act of 1932, I might say that the taxes are just as unfair as those supposedly placed on sirups. The same arguments hold good.

In no way can the tax which was collected under section 615 of the Revenue Act of 1932, and which is reported to be over $4,000,000, be called a tax on the products manufactured and which products are named in the law. It is in fact a direct tax on the owners of retail stores.

In the name of the thousands of the owners of such stores, I beg of you to take the tax off by rescinding that objectionable section 615 of the law.

The small amount of Government revenue received from these soda taxes is as follows:

Internal-revenue collections, fiscal year 1933, preliminary statement July 31, 1933

Manufacturer's excise taxes, soft drinks:	
Cereal beverages, per gallon, 1¼ cents	$588,775.10
Grape juice, unfermented, per gallon, 5 cents	114,920.88
Fruit juices, unfermented, per gallon, 2 cents	93,633.77
Carbonated beverages made with concentrates, etc., per gallon, 2 cents	57,325.41
Still drinks, per gallon, 2 cents	98,002.59
Mineral or table waters, per gallon, 2 cents	144,947.12
Finished sirups for use at fountain, etc., per gallon, 6 cents	824,917.37
Finished sirups for bottle carbonated beverages, etc., per gallon, 5 cents	1,149,810.52
Carbonic acid gas, per pound, 4 cents	1,114,114.57
Total (sec. 615, Revenue Act of 1932)	4,186,447.33

SUPPORTING AMENDMENT SUGGESTED BY MR. THOMPSON

The National Association of Retail Druggists, which I represent as counsel, does not desire to suggest to you how alcohol preparations used for beverage purposes should be taxed.

There is, though, the problem of taxing alcohol used for medicinal purposes. Any tax on alcohol so used is a tax on the sick. There is no other way to interpret a tax on medicinal alcohol. No matter how low or how high is this medicinal alcohol tax, it must be passed on to the consuming public. The consuming public using medicinal preparations are surely handicapped enough by their unfortunate circumstances. During these depressing times, special care should be made to relieve these unfortunates, rather than to burden them further.

Our Government does not need that kind of tax money. Furthermore, any tax on the sick must eventually increase the general taxes because many of the sick become public charges when their expenses which include medicines, are increased.

It should be remembered that alcohol is the best solvent for medical preparations the world knows. Science has tried acetic acid, glycerine, and many other liquids, without being able to find a solvent that will extract the needed constituents from drugs and keep the finished product uniform and active.

It should be noted that alcohol carries almost twice the tax per liquid gallon that whisky carries; whisky is usually 100 proof and alcohol is usually 190 proof. Therefore, a tax per proof gallon almost doubles when you speak of alcohol.

A very few years ago, a prohibition administrator in one of our districts decided he would curtail the sale of alcohol and cut every drug store permit so that only a few gallons a year could be withdrawn and used. What happened? Within 24 hours every drug store in the largest city in that district was offered bootleg alcohol at $4 a gallon.

A high tax on medicinal alcohol opens up the temptation of bootleg alcohol. Let us frame our taxes on alcohol and liquor, so that the bootlegger will be a person of the past.

TAX ON TOILET ARTICLES

BRIEF OF E. C. BROCKMEYER, REPRESENTING BEAUTY AND BARBER SUPPLY INSTITUTE, INC.

WASHINGTON, D.C., *March 10, 1934.*

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

DEAR MR. CHAIRMAN: The Beauty and Barber Supply Institute, representing approximately 75 percent of the production and distribution of the supplies and equipment required by the beauty parlors and barber shops of this country, protested against the discriminatory and confiscatory taxes on toilet articles imposed by the Revenue Act of 1932 and respectfully urges the repeal of this special excise tax in the revision of the existing revenue law.

Toilet articles have been classified as "semiluxuries." If public use and demand mean anything, and the requirements of the fair sex, as well as the other, are considered, toilet articles have come to a stage in modern life where they must be regarded as necessaries. Personal appearance today has much to do with the opportunity to earn a living, or conduct a successful business, or profession.

A majority of those engaged in the industry and profession today are in a desperate financial condition. This applies alike to manufacturers, dealers and beauty parlors and barber shops. The members of this institute lost 4 percent in the conduct of their businesses last year. Few have more capital than sufficient to tide them over for a period exceeding two months. Added labor costs imposed by N.R.A. have not been absorbed by increased profits because of failure to check destructive competition. Repeal of the 10 percent tax on cosmetics and toilet articles would materially help the industry in its distress. The loss of revenue to the Government would be inappreciable, considering the cost of collection of the tax.

The industry is willing to bear its fair share of taxation required by the Federal Government if uniformly and equitably imposed.

Very respectfully,

MAX H. BERLINER, *President.*
E. C. BROCKMEYER, *General Counsel.*
JOSEPH BYRNE, *Secretary.*

BRIEF OF E. C. BROCKMEYER, REPRESENTING FEDERAL WHOLESALE DRUGGISTS ASSOCIATION

WASHINGTON, D.C., *March 10, 1934.*

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

DEAR MR. CHAIRMAN: The Federal Wholesale Druggists Association, representing approximately 17,000 retail druggists as stockholders and members

through 25 companies located in the principal cities of the United States and known as cooperative and mutual wholesale drug companies, respectfully submits that the discriminatory and confiscatory taxes on toilet articles, flavoring sirups and the ingredients thereof, candy, chewing gum, cameras, and other articles sold in drug stores, singled out as objects of special taxation, should be repealed.

Very properly these taxes have been designated as "nuisance taxes", because in disfavor both with preceding national administrations and the taxpayers affected. The revenue derived from these special taxes has not justified the cost of collection and the time and trouble expended by the taxpayers.

President Roosevelt has urged increased employment and wages to promote general business recovery. Additional labor costs have been imposed upon the drug trade. The income to meet these additional labor costs has not been forthcoming because destructive competition has not been checked by the national administration. The drug trade, above all, should be relieved of discriminatory and confiscatory taxation. It is the one trade that serves the needs when the health and lives of the people are at stake.

The officers and members of this association will cheerfully bear their fair share of taxation required to wisely and efficiently conduct the Federal Government, but they respectfully protest against any form of taxation that is not uniform and equitably imposed.

Very respectfully,

H. Z. KRUPP, *President.*
R. E. LEE WILLIAMSON, *Secretary.*
PAUL PEARSON, *Chairman.*
E. C. BROKMEYER, *General Counsel.*

TAX ON ELECTRIC REFRIGERATORS

STATEMENT OF LOUIS RUTHENBURG ON BEHALF OF THE REFRIGERATION DIVISION OF THE NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

Mr. RUTHENBURG. Mr. Chairman, my name is Louis Ruthenburg, and I represent the refrigeration division of the National Electrical Manufacturers Association, whose members are responsible for about 90 percent of the present production of electric household refrigerators. The members of this association are in full sympathy with the Congress as to the necessity of raising adequate revenue. We come here in a spirit of coöperation and explanation. Our members would be very happy to bear their share in a general manufacturers' excise tax, and point to the experience of France, Canada, Mississippi, and a number of the other States, in such taxes, which indicate clearly——

The CHAIRMAN. Well, some of those States have not created the manufacturers' sales tax; they have created the retail sales tax?

Mr. RUTHENBURG. Correct; yes, sir. We think the experience, however, and the precedent is adequate to indicate a broad base for revenue, economy of collection and equity to everyone concerned, providing, of course, that certain exceptions are made in the matter of foodstuffs, and possibly in wearing apparel. We believe that that is the only base that will provide adequate revenue in the last analysis. We object and plead for relief from the present tax on electric refrigerators, because it seems to us to be obviously discriminatory and unfair. I shall speak from this brief and, if it is permitted, I should like to place it before the members, because there

are a number of exhibits here that will make it much more understandable.

The CHAIRMAN. Yes. The clerk will distribute them among the members as they come in.

Mr. RUTHENBURG. I simply offer that because it will save time in presenting this matter. If we examine the tax schedule, we find that electric refrigerators are the only utilitarian household appliances in the list. It would seem just as equitable to tax any other entirely utilitarian appliance as to tax electric refrigerators. We might just as fairly tax the sink or the stove or the vacuum cleaner or the furnace—anything that goes into the household to fulfill a utilitarian purpose.

There are many ways in which electric refrigerators might be classified. They cannot be fairly classified as luxuries, first, because their sole purpose is for the preservation of food; and they serve that purpose as no other instrumentality so far discovered serves it. Second, they are purchased almost entirely by people with small incomes. That is particularly true in these days. Our market, in terms of wired homes, is about 25 percent saturated. That means that people of small incomes, are of necessity our present and future market.

If you will be good enough to refer to exhibit D, you will find an indication of the classification of incomes, and inasmuch as that indicates that 86 percent of the incomes are less than $2,000 per year, and our market is 25 percent saturated, it must be clear that that market lies among people of very small incomes.

Another method by which refrigerators might be classified is as a means of food preservation. If they were so classified, it would seem equitable to tax all methods of food preservation. We might tax refrigerator cars, cold-storage warehouses, the canning industry, any other industry that has to do with food preservation. Moreover, this industry is in direct competition with other industries which have for their purpose the preservation of foods. The canning industry is not taxed, but the canning industry is another industry in which food preservation is the objective.

We have had experience with this tax. The immediate effect of the tax, when it went into effect in June 1932, among other things, was to bring about a tremendous increase of unemployment in the industry. I should like you, if you please, to refer to exhibit G, which indicates graphically just what happened with this industry after the tax was imposed.

Senator COUZENS. Do you attribute that decrease to the tax?

Mr. RUTHENBURG. I beg your pardon?

Senator COUZENS. Do you attribute that falling off to the tax?

Mr. RUTHENBURG. We attribute the immediate shock directly to the tax, Senator Couzens, and I will explain that.

Would you mind referring to that exhibit, exhibit G, on page 19? That is a chart showing the monthly sales of electric refrigerators before and after the tax. If you will refer to the chart that shows 1931 you will see that the peak month was April, and from that period the decline took place gradually through the balance of the year.

Now, please refer to the line that indicates the effective date of the tax, in June 1932. You will see that, first, there was a tremendous increase in sales, down to the divisional line in June. That represents the buying that was done to avoid the tax, and then you will notice that sales dropped almost to the zero line—to some 5 million dollars as compared with 12½ million dollars in the previous year.

Senator COUZENS. As a matter of fact, was not business progressively decreasing during that period of 1932?

Mr. RUTHENBURG. In 1932, you will notice there was an abnormal rise in business in June.

Senator COUZENS. Yes.

Mr. RUTHENBURG. That was due to people buying to avoid the tax, obviously.

The CHAIRMAN. Well, isn't it true with reference to these electric refrigerators, that in the summertime people buy them more than they do in the wintertime?

Mr. RUTHENBURG. Oh, that is true.

The CHAIRMAN. I notice that in 1933, your line went up about the same. Of course, the drop was not as great.

Mr. RUTHENBURG. That is true, and that is the reason, I point out, that the immediate effect was tremendously increased unemployment. Instead of gradual unemployment increasing as the year progressed, we had it all at once.

Senator COUZENS. While I am not very keen about the tax, yet I think you are stretching the point when you attribute the entire drop to the tax.

Mr. RUTHENBURG. Now, Senator Couzens, if you will let me go on, you will notice that our sales were extremely low during the balance of the year. Now, that was partly due to the general economic situation and partly due to the tax.

The taxes had a further effect, gentlemen, of causing this industry enormous grief, in several State taxes that were proposed. The State of Ohio last year proposed a 10-percent discriminatory tax against electric refrigerators. They proposed that only because the Congress had seen fit to select electric refrigerators as one of the things to be taxed.

Senator CLARK. How do you figure out that the Congress is responsible for taxes imposed by the State?

Mr. RUTHENBURG. The State legislatures naturally looked to the Congress for their precedents. Otherwise, why would they choose that one means of preserving foods, for a discriminatory tax? Only because the precedent lay in what the Congress had done, sir.

Senator GEORGE. They might have chosen it for the same reason that Congress did. Isn't that a fact?

Mr. RUTHENBURG. And what was that reason, if I may ask?

Senator GEORGE. We had to get in some money.

Mr. RUTHENBURG. Right.

Senator GEORGE. Perhaps they felt as Congress did, that that was a suitable manner of raising money.

Mr. RUTHENBURG. This industry has struggled, perhaps wisely, perhaps not, to keep up its volume. I should like to direct your

attention to the exhibit which appears on page 10, which shows the price that has been paid by this industry to maintain volume. In the upper chart, the heavy line indicates the number of dollars realized from the sale of those units; and it is obvious from that chart, that this industry has made tremendous sacrifice to meet the problems that confronted it, one of which is the tax—one of the serious ones.

This industry is not a prosperous industry. Last year was the largest year the industry had in point of unit volume, and no single manufacturer made an adequate return upon capital. A great many of them took serious losses, and four important organizations were in financial difficulty, one of the largest being in bankruptcy today. I do not tell you that because I think the tax is solely responsible, but I do say the tax is a contributing factor, and if ever you could take a consolidated balance sheet of the whole industry, it would be clear that the tax, which was estimated to produce some $4,000,000, and actually produced about half that, has been in fact a capital levy.

The CHAIRMAN. Well, thank you very much, Mr. Ruthenburg. Now, of course, we cannot put all these charts in your brief here in the record, but each member of the committee will be given this brief.

Mr. RUTHENBURG. Thany you, very much.

TAX BRIEF—MANUFACTURERS' EXCISE TAX ON ELECTRIC HOUSEHOLD REFRIGERATORS

To the Senate Finance Committee:

The mechanical household refrigeration industry is here represented by a committee of the Refrigeration Division of the National Electrical Manufacturers Association. The members of this division are as follows:

Apex Electrical Manufacturing Co., Cleveland, Ohio; Crosley Radio Corporation, Cincinnati, Ohio; Frigidaire Corporation, Dayton, Ohio; General Electric Co., Cleveland, Ohio; Gibson Electric Refrigerator Corporation, Greenville, Mich.; Grigsby-Grunow Co., Chicago, Ill.; Kelvinator Corporation, Detroit, Mich.; Leonard Refrigerator Co., Detroit, Mich.; Merchant & Evans Co., Philadelphia, Pa.; Norge Corporation, Detroit, Mich.; Potter Refrigerator Co., Buffalo, N.Y.; Servel, Inc., Evansville, Ind.; Stewart-Warner Corporation, Chicago, Ill.; Sunbeam Electric Manufacturing Co., Evansville, Ind.; Trupar Manufacturing Co., Dayton, Ohio; Uniflow Manufacturing Co., Erie, Pa.; Universal Cooler Corporation, Detroit, Mich.; Westinghouse Electric & Manufacturing Co., Mansfield, Ohio; Rudolph Wurlitzer Manufacturing Co., North Tonawanda, N.Y.

Members of this association made and sold 80 percent of all electrical household refrigerators in 1932, and are responsible for approximately 90 percent of current production. They comply with the provisions of the National Industrial Recovery Act, under the Code of Fair Competition for the Electrical Manufacturing Industry, approved by President Roosevelt August 4, 1933.

The industry as here represented is in full accord with the Congress as to the need for adequate revenue and advocates a general manufacturers' sales tax of which it is quite willing to bear its just share in the present emergency. It is believed by this group that, because of its essential equity and because of its capacity for producing large revenue, such a tax is greatly to be preferred to discriminatory taxes levied against certain industries or parts of industries.

The case of this industry with reference to the proposed tax is laid before your committee, not in a spirit of combativeness, but with a desire to place certain facts before you in a spirit of cooperation toward a fair and equitable decision.

The attitude of the industry toward the tax, certain facts in respect to the status of the industry and comments upon the effect of the manufacturers excise tax on this industry are respectfully submitted. It is proposed to show that:

(*a*) The items designated in the schedule of manufacturers' excise tax revenue bill evidently are selected luxuries, whereas the mechanical household refrigerator is the only utilitarian household appliance designated for taxation.

(*b*) The manufacture and sale of mechanical household refrigerators is a young industry involved in costly experimentation and development.

(*c*) The industry has not been generally profitable to investors.

(*d*) The present and future market for mechanical household refrigerators lies among families of moderate incomes.

(*e*) The tax has curtailed sales volume.

(*f*) Mechanical refrigeration, far from being a luxury, is an instrument of health preservation and of thrift.

(*g*) Reduced volume in the industry has increased unemployment.

(*h*) The proposed tax adversely affects allied industries, and tends to defeat a declared policy of the administration.

(*i*) Refrigerator cabinets should not be taxed.

(*j*) The tax should not exceed that levied against automobiles.

(*k*) Revenue received as the result of the refrigeration tax has been far less than estimated returns.

THE ITEMS DESIGNATED IN THE TAX SCHEDULE EVIDENTLY ARE SELECTED LUXURIES, WHEREAS MECHANICAL HOUSEHOLD REFRIGERATORS ARE THE ONLY UTILITARIAN HOUSEHOLD APPLIANCE DESIGNATED FOR TAXATION

Examination of the proposed tax schedule indicates that, as a general proposition, it was intended to designate certain luxuries. The mechanical household refrigerator, peculiarly enough, is the only strictly utilitarian household appliance included in the entire list. Evidently there was no intent to levy a tax against utilitarian household appliances generally, otherwise the list would necessarily include many items far less necessary for the preservation of health and comfort than mechanical refrigerators.

Inasmuch as there is designated for tax only one of many household appliances, the proposal is highly discriminatory.

THE MANUFACTURE AND SALE OF MECHANICAL HOUSEHOLD REFRIGERATORS IS A YOUNG INDUSTRY INVOLVED IN COSTLY EXPERIMENTATION AND DEVELOPMENT

The number, retail value, and average unit value of mechanical household refrigerators manufactured and sold during the past two decades is indicated by the following tabulation:

Year	Number	Retail value	Unit value	Year	Number	Retail value	Unit value
1910-20	10,000	$6,000,000	$600	1927	390,000	$136,500,000	$350
1921	5,000	2,750,000	550	1928	560,000	190,400,000	340
1922	12,000	6,300,000	525	1929	840,000	273,000,000	325
1923	18,000	500,000	475	1930	850,000	243,100,000	286
1924	30,000	13,500,000	450	1931	965,000	236,425,000	245
1925	75,000	31,875,000	425	1932	850,000	163,800,000	195
1926	210,000	81,900,000	390	1933	1,050,000	177,277,420	169

These figures are quoted from recognized trade journals (Electric Refrigeration News of Feb. 15, 1933, and Electrical Merchandising, January 1934). According to the same authorities, there were, as of December 31, 1933, 4,900,000 electric refrigerators in use which, as compared with the number of wired homes in the country (19,843,724), indicates a market saturation of 24.6 per cent. From the average unit prices above cited, it is apparent that the industry has struggled to increase volume by constant reduction of retail prices.

It is also apparent that annual volume did not start to increase at a rapid rate until 1925. It will be noted further that while unit volume increased during 1930 and 1931 and was relatively well sustained in 1932, total dollar volume reached a peak in 1929 and has diminished in succeeding years.

Enormous sums of money have been spent by the industry for technical development, sales promotion, and advertising. Many manufacturers, unable to survive the inital struggles that characterize the early years of any new industry, have failed. Others have not yet replaced with profits, the losses and inital expenses in which they have been involved.

We believe that the industry can grow and prosper only if it is not burdened by discriminatory taxes.

(Exhibit B is a photostatic copy of the news story published in the Feb. 15, 1933, issue of Electric Refrigeration News, which news story incorporated the statistics commented on above. Exhibit B1 is a graph of household electric refrigerators sales from 1919 to 1934 and a chart of the average unit price over the same period.)

THE INDUSTRY HAS NOT BEEN GENERALLY PROFITABLE TO INVESTORS

While considerable sums of money have been set in motion by the activities of the industry, the courageous investors who have seen fit to finance the industry have profited in a far less degree than the army of employees whose wages have been paid by the industry.

Examination of the financial history of the companies here represented would disclose an average record of extremely heavy initial expense and losses with very meager earnings available for dividends. It is believed that if one were to take into account the moneys lost in unsuccessful companies, and if one could develop a combined profit and loss statement for all the companies that have engaged in this industry from the beginning of its activities until the present, a very substantial loss would be indicated.

Examination of the profit and loss positions of the several companies engaged in manufacturing and selling mechanical refrigerators during the year 1933, indicates that despite the volume attained in that year, many companies suffered heavy losses. Profits and dividends have been conspicuous by their absence.

EXHIBIT A.—THE ONLY STRICTLY UTILITARIAN HOUSEHOLD APPLIANCE INCLUDED IN THIS LIST

TITLE IV, MANUFACTURERS' EXCISE TAX

Sec. 601. Excise taxes on certain articles.
Sec. 602. Tax on toilet preparations, etc.
Sec. 603. Tax on furs.
Sec. 604. Tax on jewelry, etc.
Sec. 605. Tax on automobiles, etc.
Sec. 606. Tax on boats.
Sec. 607. Tax on radio receiving sets, etc.
Sec. 608. Tax on mechanical refrigerators.
Sec. 609. Tax on sporting goods.
Sec. 610. Tax on firearms, shells, and cartridges.
Sec. 611. Tax on cameras.
Sec. 612. Tax on matches.
Sec. 613. Tax on candy
Sec. 614. Tax on cheming gum.
Sec. 615. Tax on soft drinks.
Sec. 616. Definition of sale.
Sec. 617. Retail sales.
Sec. 618. Sales for less than fair market price.
Sec. 619. Contracts prior to March 1, 1932.
Sec. 620. Return and payment of manufacturers' taxes.
Sec. 621. Applicability of administrative provisions.
Sec. 622. Rules and regulations.
Sec. 623. Effective date.

Exhibit B

Saturation of Wired Home Market in U.S. Now Estimated at 20.12%—Number of Units Sold Equals 1929 Boom Record

Estimated total sales of household electric refrigerators (including exports) by all United States manufacturers	840,000
Estimated average retail price	$195
Total retail value	$163,800,000
Estimated total number of household electric refrigerators in use on January 1, 1932	3,500,000
Sales during 1932, less exports (approximately 40,000)	800,000
Total	4,300,000
Deduct for obsolescence and replacement (estimated)	300,000
Total in use on January 1, 1933	4,000,000
Divide by number of wired homes in United States	19,874,513
Market saturation ....percent	20.12

By F. M. Cockrell

DETROIT.—During 1932, a total of 840,000 household electric refrigerators was sold by all United States manufacturers.

This brings the saturation of the wired home markets in the United States to 20.12 percent.

As many refrigerators were sold during 1932 as during 1929, although the retail value of the entire number sold was less than that of 1928.

My estimate was reached by assuming that the 672,258 refrigerators sold by the 10 members of the refrigeration division of the National Electric Manufacturers Association constituted 80 percent of the industry total.

The 10 Nema companies reporting their year's total sales are: Copeland, Frigidaire, General Electric, Grigsby-Grunow, Kelvinator, Norge, Servel, Trupar, Universal Cooler, and Westinghouse.

A very thorough survey of the sales made by all manufacturers outside of the association covering the first half of 1932 was made and this survey indicated that the 80–20 ratio between Nema and non-Nema companies represented a very accurate division of the business. The all-industry sales of household units during the first 6 months was estimated to be 649,500, which was over 80 percent of the year's total. In other words, the sales of all companies not reporting their figures to the Nema headquarters was figured at approximately 130,000 for the first 6 months.

For the first 9 months of the year sales of the 10 Nema companies were nearly 600,000 and it was estimated that the sales of all others amounted to 150,000 or a total of three-quarters of a million units.

For the entire year the Nema sales amounted to 672,000 units and all other companies are figured at 168,000 or a total of 840,000.

It should be noted in this connection that the figures for two Nema companies, namely Gibson and Crosley, are not included in the statistics issued by the association.

MARKET SATURATION

I estimate that there are now 4,000,000 household electric refrigerators in use in the United States. This figure was arrived at by adding the total number sold last year to the estimate of refrigerators in use at the beginning of 1932 (3,500,000), then by deducting 40,000 for the year's export and 300,000 for estimated obsolescence and replacements during 1932.

Using 19,874,513 as the number of wired homes in the United States, the market saturation point at the beginning of 1933 was 20.12 per cent.

AVERAGE RETAIL PRICE

Figuring that the average retail price of all household models sold was $195, the total retail price of the 840,000 refrigerators was $163,800,000.

Statistics issued by the association, published elsewhere in this issue, show that the manufacturers realized slightly over $100 per unit for their household

equipment. Ordinarily it is assumed that the final retail price is double the factory value. The margin allowed to distributor and dealer must cover a number of substantial expense items including transportation, warehousing, delivery, installation, service during the guarantee period, advertising and sales expense, etc. Experience has demonstrated that the normal 50 percent of the retail price allowed for all costs after the product leaves the factory is none too much for sound business.

The fact remains, however, that an important share of the 1932 volume was sold by manufacturers direct to department stores or by dealers at cut prices and it is believed that the average of $195 represents a fair estimate. There is no way, of course, whereby the true average can be determined. This figure is necessarily only an estimate and anyone who thinks that it should be different is welcome to his opinion. I wouldn't even argue the matter with him.

It may be worthwhile to comment, however, that one may be easily misled by the voluminous publicty which has been given to low-priced units selling at retail in the neighborhood of $100. If we may believe the Nema figures showing the division of business between low, medium, and high-priced units, the extremely low prices put on leader models were not particularly productive of volume sales. Whatever may have been the value of low prices in terms of psychological effect upon prospects, it appears that a good share of the buyers finally decided upon models of larger capacity and better construction.

STOCKS ON HAND

The value (at factory prices) of stocks in the hands of manufacturers, in factories, warehouses, branches, distributorships, and dealerships on January 1, 1933, is estimated to be $21,800,000.

The above stock does not appear excessive in the light of past experience. Judging from the monthly stock figures issued by the Nema headquarters for 1930, 1931, and 1932, it appears that the value of equipment on hand at the beginning of 1933 was less than that at any time during the previous 3 years.

Year	Number of units	Average	Total value
To 1920	10,000	$600	$6,000,000
1921	5,000	550	2,750,000
1922	12,000	525	6,300,000
1923	18,000	475	8,550,000
1924	30,000	450	13,500,000
1925	75,000	425	31,875,000
1926	210,000	390	81,900,000
1927	390,000	350	136,500,000
1928	560,000	334	187,040,000
1929	840,000	292	245,280,000
1930	850,000	275	233,750,000
1931	965,000	258	248,970,000
1932	840,000	195	163,800,000
Total	4,805,000	....	1,356,215,000

THE PRESENT AND FUTURE MARKET FOR MECHANICAL HOUSEHOLD REFRIGERATORS LIES LARGELY AMONG FAMILIES OF MODERATE INCOMES

The statistics first cited indicate that the market, at the end of 1933, was 24.6 percent saturated. The first buyers of a new device, particularly during the period when the average unit prices are high, are the wealthy families. According to investigations made by the National Bureau of Economic Research, only 13.5 percent of the personal incomes in the United States exceed $2,000 annually. It is therefore apparent that future buyers of mechanical refrigerators must be people of moderate incomes.

The experience of companies here represented in selling refrigerators to owners of and receivers for apartment houses indicates conclusively that apartments commanding very low rental figures remain vacant if they are not equipped with mechanical refrigeration.

The Starch report, based upon an analysis of 1,057 families in cities of various sizes ranging from Greenville, Tex., to Philadelphia, Boston, and San Francisco, was made to determine what a representative cross section of the

American public "intends to buy next" in connection with types of goods used by the entire family. Twenty-eight percent of the families interviewed indicated that they next intended to buy electric refrigerators. Incomes among these people fall into the following classifications:

	Percent
Under $1,000	3.9
$1,000 to $2,000	26.9
$2,000 to $3,000	37.0
$3,000 to $5,000	26.2
$5,000 to $10,000	5.2
Over $10,000	.8

the average income being $2,519.

It is believed that any study that might be made to indicate the incomes of families who will buy mechanical refrigerators during the next several years would indicate conclusively that they will be families of moderate incomes. It is apparent, therefore, that the burden of the tax falls not upon the wealthy few but upon the multitude of American families whose incomes are small.

(Exhibit C is a reproduction of excerpts from the Starch Report referred to, which appeared in Electrical Home Ware, April, 1932. Exhibit D is a chart showing the distribution of yearly incomes by amounts.)

THE PROPOSED TAX HAS CURTAILED SALES VOLUME

In order that the market might be expanded, manufacturers have struggled to reduce retail prices of refrigerators even though unit profits have been greatly reduced. Inasmuch as the increase in volume of the refrigeration industry has been attained largely by means of constant reductions in retail prices, it follows that any tax which increases the cost to the consumer will curtail volume.

It is not wholly a matter of economics. It is believed that the psychological effect of stigmatizing refrigerators in the minds of the public as luxuries has a serious and far-reaching effect upon sales.

The Federal excise tax upon mechanical refrigerators became effective July 1, 1932. Sales during the 6 months immediately preceding imposition of the tax had declined only 18.45 percent below sales in the corresponding period of 1931. But, in the first 6 months after the tax became effective, sales declined 61.37 percent below sales in the corresponding period in the preceding year.

While the general economic situation admittedly influenced this decline, the tax cannot be disregarded as an important contributing factor.

MECHANICAL REFRIGERATION, FAR FROM BEING A LUXURY, IS AN INSTRUMENT OF HEALTH PRESERVATION AND OF THRIFT

It is estimated that 70 percent of the foodstuffs sold in the United States are perishable. Perishable foods become dangerous with the growth of bacteria. The national loss caused by the shrinkage of perishable foods amounts to hundreds of millions of dollars annually. Any mechanism that tends to reduce this tremendous loss must contribute greatly to national welfare.

The most practical means for preventing or minimizing the growth of bacteria in the home is the storage of these foods under constant low temperature. The growth of bacteria at temperatures above 50° F. is extremely rapid. The consumption of food of dangerously high bacterial count frequently results in illness and sometimes in death. Faulty preservation of milk is known to be conducive to high infant mortality.

Dr. Royal S. Copeland, Senator from the State of New York, well known as an authority on public health, has said on this subject, "Milk must be kept at a low temperature (50° F. or below) from the time it is produced until it is consumed, if its quality is to be maintained. The only safe way is to have at your disposal some method of artificial refrigeration."

Food preservation has been man's greatest problem from the very first pages of history. In ancient Rome, the legionnaires received part of their pay in salt, because it had been found that salt helped to preserve meats. The ancient Egyptians worshipped their sun god Ra because his rays dried their foods and helped to preserve them.

Christopher Columbus discovered this continent accidentally while searching for a new route to the East Indies—the source of spices which were needed to

disguise the bad flavor in foods of the medieval world. Lord Francis Bacon died of pneumonia contracted while stuffing a fowl with snow to see if cold would preserve it.

Francois Appert discovered canning after Napoleon had offered 12,000 francs to anyone who could find some way of preserving the French army's rations. During the Civil War in this country, an ice-making machine was run through the blockade to help save the starving population of New Orleans.

Throughout history there has been this universal, never-ending struggle to protect the foodstuffs of mankind. Without pure foods, human resistance runs low; with unhealthy, poorly fed people, the progress of the state is threatened.

During the last 20 years this Nation has far out-distanced the rest of the world in the care taken with its foodstuffs. Two decades ago, before milk was properly handled and refrigerated, cholera infantum caused a very high death rate among babies. Thousands of them were poisoned during a single summer by the only food their delicate bodies could assimilate.

Among the poor, this disease was particularly prevelent. Even the middle-class families and the rich were powerless to combat this dread sickness.

Many an old-time physician still tells, with tears in his eyes, how he watched life slowly depart from helpless infants. Throughout long nights he has sat beside the tiny crib as the feverish baby cried faintly in the grasp of this weakening disease. He could do nothing; polluted milk, carelessly handled in the home was too great a handicap.

Not alone are children attacked by food poisoning. Adults, too, give way to the ravages of that invisible army which populates the food we eat. These molds and bacteria derive their sustenence from the same types of food we consume. And they cast off a waste, which if swallowed in sufficient quantities will poison our systems.

As many as 950 per 100,000 of population have died from food poisoning in one year, according to the United States Bureau of Census reports. Epidemics, arising from the same source, have struck entire countries from time to time.

Ten thousand cases of sore throat caused by impure milk swept over Chicago. Fifteen hundred cases of typhoid caused by oysters were reported during one season in various parts of the United States. Milk caused 4,755 cases of typhoid in Montreal.

Improperly protected foods have caused, and are still causing, infantile paralysis, undulant fever, summer diarrhea, para-typhoid fever, tapeworm, trichinosis, foot-and-mouth disease, typhoid fever, dysentery, tuberculosis, septic sore throat, scarlet fever, and diphtheria.

Since 1923 the death rate from food poisoning has been decreasing. The last report shows it reduced to 750 deaths per hundred thousand.

Federal and State inspection of foods, coupled with enforcement of the Pure Food and Drug Act, have helped mightily in this work. Unscrupulous food dealers no longer feel free to endanger the health of their customers by purveying poisonous foods.

The Government has spent millions to protect the health of its people. This investment has been wisely made because the strength of the nation depends upon the physical well-being of its people.

Enforced protection of foods, though, stops when these edibles leave the merchant's store. No laws can assure the proper preservation of foods after they reach the home.

If left at room temperature, or in a refrigerator which cannot maintain a temperature continually below 50°, these foods become an incubator for harmful organisms.

The United States Department of Agriculture, Bureau of Home Economics, has warned:

"Milk, fresh meat, poultry and fish, and many fresh fruits and vegetables, should be kept at a temperature of 50° F., or preferably lower, to check the growth of microbes that cause souring and decay."

The mechanical refrigeration industry has spent tens of millions of dollars in repeating this vital fact over ond over again. In effect, this industry has extended the work of the Federal, State, and municipal governments by impressing the vital importance of food protection on the minds of the public.

This industry, with millions spent in education through advertising and other mediums, has helped to increase the effectiveness of the Government's insistence upon pure foods.

Fundamentally, the mechanical refrigeration industry and the Government health bureaus are contributing to the achievement of the same results.

In view of this, can mechanical refrigeration fairly be considered a luxury?

Foods are canned to protect them from putrefaction. Canning achieves the same results as mechanical refrigeration. It is merely another means for protecting the health of the public.

Canners use heat to destroy the dangerous microbes in foods. Mechanical refrigerators use cold to halt the growth of these parasites.

"Not alone does a low temperature such as that obtained in a mechanical refrigerator reduce or at least curb the growth of putrefaction bacteria," wrote Dr. W. L. Mallman, famed bacteriologist of Michigan State College. "It also has a marked effect on disease-producing bacteria. The longer foods are kept in a mechanical refrigerator, the fewer disease bacteria do they contain."

So far as known, no luxury tax is contemplated on canned foods. Since canning and mechanical refrigeration both protect the public's health, can one method fairly be called a luxury and taxed, while the other escapes this handicap?

The present plans, we understand, are also to exclude ice cabinets from taxation. Instead of a cooling unit automatically kept cold by a condensing unit, they use ice as a source of refrigeration. But the purpose is just the same. They also are intended for the protection of foods.

If the ice refrigerator is not in the luxury class, is it fair to tax a mechanical refrigerator, which really fulfills the purpose for which it is designed?

The mechanical household refrigerator affords the best means so far discovered of maintaining suitable temperature conditions for the proper preservation of perishable foods. Older means for household refrigeration are relatively faulty because they allow temperatures to rise dangerously high and they are not automatic in their operation.

The mechanical refrigerator is an instrument of thrift because, compared with less modern food preservation mechanisms, the mechanical refrigerator accomplishes the following results:

(1) Economy in cost of operation.

(2) Prevention of food losses.

(3) The householder, having adequate and efficient means for food storage and preservation, need purchase perishable foods only when the lowest prices are offered.

(Exhibit E is a graphic presentation showing growth of bacteria at various temperatures, which graph was issued by the Bureau of Home Economics, U.S. Department of Agriculture. Exhibit F is an excerpt from Farm Bulletin No. 602 indicating the rapid growth of bacteria at temperatures above 50° F.)

REDUCED VOLUME IN THE INDUSTRY HAS INCREASED UNEMPLOYMENT

A canvass of the companies here represented indicated that they gave employment to approximately 180,000 people as of April 1932. In July 1932, the first month in which the tax was effective, Nema factory sales were only 20.78 percent of April sales. With sales reduced by four-fifths, reduction in employment was correspondingly drastic.

Seasonal sales tendencies and the general economic situation contributed to this sharp decline in employment, but in the preceding year, reflecting normal seasonal tendencies, July factory sales were 66.18 percent of April 1931, sales—a decline of only 33.82 percent as compared with a decline of 79.22 percent in 1932. It is therefore aparent that this unfair and discriminatory tax brought about a sudden great increase in unemployment.

It is interesting to speculate as to what part of the total tax revenue received from this industry has been required to relieve distress brought about directly by the imposition of that tax.

(Exhibit I is a bar chart of sales of electric refrigerators before and after imposition of the Federal excise tax.)

THE PROPOSED TAX HAS ADVERSELY AFFECTED ALLIED INDUSTRIES AND TENDS TO DEFEAT A DECLARED POLICY OF THE ADMINISTRATION

The mechanical refrigeration industry has, during this period of general depression, contributed a considerable volume of business to other industries which are suffering most seriously from curtailed volume, heavy losses, and unemployment.

According to estimates made in April 1932 by the publishers of Electric Refrigeration News, the volume contributed by the mechanical household refrigeration industry to a few of these industries is as follows:

Iron and steel	tons	150,000
Copper and brass	do	25,000
Electric motors and electric controls		$15,000,000

To these figures might be added purchases of important volume from the lumber industry, from the insulation industry, from the paint industry, and from many others. In the aggregate, this volume purchased by the refrigeration industry from allied industries represents the annual employment of many thousands of people and the motivation of large sums of money which must tend, in some measure, to alleviate the distress brought about by unsettled economic conditions. Sharp curtailment of the refrigeration sales in the first year of the tax was reflected in decreased employment by those industries which act as suppliers to refrigerator manufacturers.

Electric current is a commodity purchased by 19,843,724 families in the United States. It is reliably estimated that this represents above 65 percent of the homes in this country. Any development that tends to reduce the cost of elecric current used in the homes of this country must therefore be regarded as a well-distributed blessing. The present administration recognizes the force of this statement and has given it expression by the organization of the Tennessee Valley Authority.

Mechanical household refrigerators make it possible for the public utilities to generate and distribute electric current to domestic users at reduced cost. The electric refrigerator adds greatly to the connected household load, and the load characteristics are such as greatly to reduce the cost of generating and distributing household current. It is said that in many wired homes an electric refrigerator virtually doubles the current demand, and in a given community the demand created by electric refrigerators is a constant one throughout the 24-hour period and does not fluctuate seriously throughout the 12 months of the year. A connected load of this type permits public utilities to generate and distribute electric current at lower cost than that which obtains in connection with the lighting load alone.

Any curtailment in the volume of mechanical refrigeration industry will delay a process which ultimately must result in reduced cost for electric current bought by the home owners of America.

Thus the imposition of a discriminatory excise tax on mechanical refrigerators tends to obstruct the accomplishment of a definite objective of the present administration.

(Exhibit H is a photostatic copy of an editorial which appeared in the April 13, 1932, issue of Electric Refrigeration News analyzing the distribution of money brought about by the electric refrigeration industry.)

REFRIGERATION CABINETS SHOULD NOT BE TAXED

No tax is proposed upon ice or ice boxes. This again emphasizes the discriminatory nature of the proposed tax.

There is no essential difference in construction between an ice box and a mechanical refrigerator cabinet—in fact, thousands of ice boxes have been converted into mechanical refrigerators. Under the proposed revenue bill a home owner could purchase an ice box not subject to tax and convert it into a mechanical refrigerator by purchasing the necessary mechanical elements. In this way the tax can be partly evaded. Such evasion will reduce the volume of the mechanical refrigeration industry and bring about a serious element of confusion.

THE TAX, IF CONTINUED, SHOULD NOT EXCEED THAT LEVIED AGAINST AUTOMOBILES

In the entire tax schedule the only other item listed that is not generally regarded as a luxury is the automobile, against which a 3 percent tax is levied. If a tax must be borne by the mechanical refrigeration industry, there is no apparent reason why it should be higher than the tax imposed on automobiles.

REVENUE RECEIVED AS THE RESULT OF THE REFRIGERATION TAX HAS BEEN FAR LESS THAN ESTIMATED RETURNS

It has been shown that the immediate effect of the discriminatory excise tax on mechanical refrigerators was to bring about wide-spread unemployment in the industry and in associated industries. It should be noted that this drastic curtailment of employment took place during the second 6 months of 1932, which is now generally conceded to be the worst phase of the depression.

Revenue produced by this tax has been disappointing. Surely, such revenue represents an absurd ratio to the damage done by the tax. The estimate of revenue to be obtained from the refrigeration tax was $4,000,000. For the fiscal year ended June 30, 1933, actual revenue from this source was $2,112,000—little more than half of the anticipated return.

SUMMARY

In the proposed revenue bill, mechanical refrigeration is classed as a luxury. It has been shown that the industry cannot reasonably be so classified.

Under the proposed revenue bill, mechanical refrigeration industry is assumed to be a money-making industry. It has been shown that this is not generally true.

The process of developing this new industry must depend upon constantly reduced prices. This process should not be retarded by a discriminatory tax.

It has been shown that this tax is discriminatory in that it is placed upon only one of many utilitarian household devices. It is also discriminatory in that it is levied against one division of the refrigeration industry whereas no tax is levied against competitive divisions of the same industry.

The imposition of a discriminatory tax upon mechanical refrigerators retards the process of making cheap electricity available to our citizens, thereby tending to defeat a declared policy of the present administration.

There is no apparent justification for taxing the mechanical refrigeration industry at a higher rate than that which applies to the automobile.

The people engaged in the mechanical refrigeration industry are fighting to create and develop a new and useful industry. The other industries selected to bear the tax are comparatively old and well established.

This committee is prepared to submit any additional substantiating evidence that may be required. We shall welcome the opportunity of supplying any additional information concerning our industry that may be helpful to your committee.

CONCLUSION

In view of the foregoing facts, we respectfully suggest that:

A general manufacturers' sales tax, in which this industry would gladly bear its fair share, be reconsidered.

If the first suggestion cannot be adopted, that mechanical household refrigerators be eliminated from the selective tax schedule.

If neither of the foregoing suggestions can be adopted, that the tax levied against mechanical household refrigerators shall not exceed two and one quarter percent.

If a selective tax is levied against mechanical household refrigerators, it shall apply only to the mechanism and not in any case to the cabinet in which the mechanism may be assembled.

G. M. JOHNSTON,
Chairman, Refrigeration Division,
National Electrical Manufacturers Association.

JANUARY 19, 1934.

THESE ARE THE THINGS THEY INTEND TO BUY NEXT

From Electrical Home Ware, April 1932

But, in an effort to find out what a representative cross-section of the American public "intends to buy next", in connection with types of goods used by the entire family, the Tower Magazines recently commissioned Dr. Daniel Starch, one of the foremost consultants in commercial research, to make an investigation of this subject, tabulating the replies in the order in which they were given.

* * * * * * *

Electrical refrigerators were named as the "next purchase" in 28 percent of the families included in the Tower Magazine survey, with floor coverings in second place, followed closely by radios, washing machines and vacuum cleaners.

"Furniture" of a general nature came sixth on the list, with specialized types of living-room and bedroom furniture next in order. It will also be noted that "an automobile" was the reply of only 5.5 percent of those interviewed while "curtains" ranked almost as high.

Ranges, electric clocks, lamps, general "electrical appliances", sewing machines, electric irons, electric fans, and oil burners were the other types of electrical home ware mentioned by those interviewed, while, in the entire list the only items which cannot be classified as "home ware" are automobiles and telephones—certainly striking proof of the interest which the public is taking in home ware in general and electrical appliances in particular at the present time.

The income groups fell into the following classifications: Over $10,000, 0.8 percent; $5,000 to $10,000, 5.2 percent; $3,000 to $5,000, 26.2 percent; $2,000 to $3,000, 37 percent; $1,000 to $2,000, 26.9 percent; under $1,000, 3.9 percent, the average income being $2,519, a figure which parallels very closely the average income for the country as a whole—approximately $2,500 a year. It will therefore be seen that the heavy preponderance of replies naming various types of electrical home ware were not weighted by any large proportion of families of the wealthy type, thus bearing out conclusions reached from other sources that those moderate means are the best possible prospects for appliances of the labor-saving type.

Exhibit F

COOL THE MILK PROMPTLY AND KEEP IT COOL

A large number of bacteria found in milk when it reaches the consumer are due to improper cooling and keeping the milk at too high a temperature during storage, transportation, and delivery. The rapidity with which bacteria multiply in milk at different temperatures is shown in table 1.

TABLE 1.—*Growth of bacteria in milk when the milk is held at 50° and at 68° F.*

Temperature of milk	Number of bacteria per cubic centimeter—				
	At beginning	At end of 6 hours	At end of 12 hours	At end of 24 hours	At end of 40 hours
50° F.	10	12	15	41	62
68° F.	10	17	242	61,280	3,574,960

At the above rate, if the milk, when produced, contained 1,000 bacteria per cubic centimeter, the part held at 50° F. would have contained only 4,100 bacteria at the end of 24 hours, whereas that held at 68° F. would have contained 6,128,000. The effect of temperature on the growth of bacteria is graphically shown in figure 5. (Reprinted from U.S. Department of Agriculture Farmers' Bulletin No. 602.)

Exhibit H

HOW ELECTRIC REFRIGERATION SALES AID EMPLOYMENT AND PROSPERITY

By F. M. Cockrell

The sale of 1,000,000 household electric refrigerators in 1932 means a total retail volume of business amounting to about $200,000,000.

When we analyze the distribution of this money it is evident that a high percentage of the total goes into salaries and wages paid to employees of manufacturers, distributors, and dealers.

About 10 percent, or $20,000,000, will be the share of local salesmen who carry the message of health, economy, and better living to American homes.

Millions of dollars will be paid for insulation, lumber, porcelain, lacquer, chemicals and other materials, parts, and supplies, all of which require labor for their production.

At least $20,000,000 will go to the metal industries for 150,000 tons of iron and steel products, 25,000 tons of copper and brass products, and other metals. Even though this amount is used for the purchase of materials, practically all of it will be paid for labor—mining, refining, fabricating, etc. These industries are badly in need of business to relieve unemployment.

Another $15,000,000 of the total will go for motors, controls, wiring, and other electrical parts also largely made of metal, and requiring a high "content" of skilled labor.

In fact, the entire $200,000,000 eventually goes into the pockets of people—several hundred thousands of them—who receive this money for service of one kind or another. The public thereby has $200,000,000 more to spend for other products and services. It is this turn-over of capital, this exchange of money for service, which makes jobs, raises the standard of living, and promotes prosperity.

TAX ON MATCHES

Mr. CHAIRMAN. Mr. J. H. Weaver, of Cleveland, Ohio. You are speaking on matches?

Mr. WEAVER. There are two of us talking on matches. May I surrender my time to Mr. Begle, who is the largest manufacturer of strike-on-box type of match in the United States.

The CHAIRMAN. How much time does he want?

Mr. WEAVER. Just a very short time. About 5 minutes.

Mr. BEGLE. It will be very short.

Senator REED. Where is your home, Mr. Begle?

Mr. BEGLE. Greenwich, Conn.

The CHAIRMAN. All right, Mr. Begle.

Mr. BEGLE. Our office is in New York City.

STATEMENT OF NED G. BEGLE, CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE MATCH INSTITUTE, CHAIRMAN OF THE MATCH CODE AUTHORITY, AND PRESIDENT OF THE BERST-FOSTER-DIXFIELD CO.

Mr. BEGLE. The Berst-Foster-Dixfield Co. is the largest manufacturer of this type of match (indicating strike-on-box type). I am chairman of the Match Institute, which is made up of 100 percent of all the match manufacturers of the country.

Senator COSTIGAN. When you refer to this type of match, what type have you?

Mr. BEGLE. The strike-on-box. When you strike on the side of the box to ignite. I am also chairman of the code authority, because, we are now operating under our code, which was signed December 30.

Our suggestion is not a cut in revenue. Our suggestion is an increase in revenue. The 1932 bill put a tax of 2 cents a thousand on wood matches, whether they are natural stem, which is like this [indicating], the white without any preparation, whether they are the colored, which is a fancy or colored match and costs more to the amount of the cost of the coloring, 2 cents on that; and the other article which is in direct competition with it, the lighter, which is widely advertised as making 1,000 lights, and on which there is no tax whatever. This displaces the match, as a very rapidly grow-

ing article, growing so fast that their advertisement of their sales would indicate that a tax similar to the tax put on this match would have an income amounting to $1,000,000 a year.

Senator COUZENS. Are they buying those lighters to save the tax on matches?

Mr. BEGLE. I could not say that.

The CHAIRMAN. Do those lighters last a day?

Mr. BEGLE. They advertise them as good for a thousand lights. I have no advertisement for them, but they are constantly springing up. In fact, one company advertised December sales of 90,000 of those [exhibiting a lighter].

Senator BARKLEY. What do they cost?

Mr. BEGLE. From 10 cents up. You can buy them wholesale as low as 7 and 8 cents.

Senator BARKLEY. What do matches cost?

Mr. BEGLE. A box of matches cost a penny before the war, and after the war and before the excise tax was put on, and after it was put on. It is still a penny a box.

Senator BARKLEY. How many matches to a box?

Mr. BEGLE. Forty. At one time there were 50. The box is not smaller. There is just as much wood in a box of 40 as in a box of 50.

The CHAIRMAN. You have nothing to do with the book matches?

Mr. BEGLE. No.

Senator BARKLEY. How much tax do you want to put on the lighter?

Mr. BEGLE. Equivalent to our tax. Twenty-five percent of the selling price. The tax we paid last year on our American match amounts to 25 percent of our net selling price.

Senator BARKLEY. Wholesale?

Mr. BEGLE. Wholesale; yes, sir. Jobber's price. We only ask exactly the same tax on the lighter.

Senator WALCOTT. Twenty-five percent of the net?

Mr. BEGLE. Yes.

Senator WALCOTT. Where are those largely made, those lighters?

Mr. BEGLE. In the United States. There were a great many imported, but the American manufacturers are making them cheap and in large quantities, and they are mostly made now in the United States.

Senator WALCOTT. What is the import duty, do you know?

Mr. BEGLE. No; I do not. The importation is so small that we have not been concerned with the importaion. It is strictly as a competitive article on an American article.

Senator CONNALLY. Are you basing the tax on the cost of the article or the number of lights?

Mr. BEGLE. On the selling price.

Senator CONNALLY. You said it was a thousand lights.

Mr. BEGLE. Two cents a thousand here, and 25 percent on this, and the jobber's price being about 8 cents would also make 2 cents a thousand lights. So it is based on the number of lights.

Senator CONNALLY. So it is based on the number of lights.

Mr. BEGLE. Yes.

Senator CONNALLY. You are taking their word for it that there are a thousand lights.

Mr. BEGLE. There are widely advertised circulars which say that they can get a thousand lights.

Senator CONNALLY. I think you are mistaken about that being so.

The CHAIRMAN. Where are they made?

Mr. BEGLE. Warsaw, Ill., and this one happens to be Chicago, Ill.

The CHAIRMAN. Of course, you would prefer that the whole tax be taken off of matches altogether, wouldn't you?

Mr. BEGLE. Yes, sir.

Senator REED. Would you favor a uniform manufacturers' sales tax of, say, 2 percent instead of this special sales tax of 25 percent?

Mr. BEGLE. Senator Reed, because we have had this excise tax which seemed to be permanent as far as we were concerned, I have not put any particular thought on the sales tax.

Senator REED. You are paying a sales tax of 25 percent now.

Mr. BEGLE. Yes, sir; the highest tax in the 1932 tax bill is what we are paying.

The CHAIRMAN. Do you want to put a brief in the record?

Mr. BEGLE. I have just a few points I want to bring out.

Senator REED. Did you make any complaint on the taxation of these fancy matches with colored stems?

Mr. BEGLE. Yes, sir; we do. A tax of 5 cents a thousand that we are asking for on this colored-stick fancy match would, besides yielding the revenue of about $650,000 a year more than is now paid, would plug up a very serious hole in the tariff law.

The CHAIRMAN. Are they made here or in foreign countries?

Mr. BEGLE. The colored match largely comes in from Japan, Austria, Czechoslovakia—all the so-called low-wage countries in Europe.

Senator REED. What is the tariff on a white splint match?

Mr. BEGLE. 20 cents on 1,000 boxes of this kind.

Senator REED. And colored?

Mr. BEGLE. Forty percent ad valorem, which amounts to about 6 cents a gross. They were never colored until after the 1930 tariff bill.

Senator REED. So by putting a color on the splint they cut down the tariff.

Mr. BEGLE. Yes, sir.

The CHAIRMAN. They put one over on us. I think the committee understands pretty much what you are getting at, and I imagine they want to make it uniform. I wish we could get at the people who are evading the law.

Mr. BEGLE. We paid last year a tax of $6,842,000 and did not raise the price of matches. They are still a penny a box, and it seems absolutely unfair to allow lighters to go free, and an evasion of this kind on the colored matches.

Senator WALCOTT. Have you made clear in your brief the advantages in favor of the colored stem as far as the tax is concerned?

Senator REED. He has just made it clear in reply to a question.

Mr. BEGLE. May I answer any question you have on that? There were no colored stick matches sold in this country or abroad until 1930, when our tariff law went into effect. Then because of the tariff law since 1913 called for the 40 percent ad valorem on a colored stick match, the tariff went up to 20 cents, the colored match with this cheap dye, which was the first time they did that, and they sold

just enough to establish the low price. In Austria, for instance, they will sell a white stick match for their own consumption at three times this, and the duty is only 6 cents.

Senator REED. That is what I want to have brought out in the record.

The CHAIRMAN. Thank you very much. Put your briefs in.

(The briefs referred to are as follows:)

THE MATCH INSTITUTE,
New York, N.Y., March 14, 1934.

Honorable MEMBERS OF FINANCE COMMITTEE,
United States Senate, Washington, D.C.

I am speaking as chairman of the executive committee of The Match Institute, chairman of the match code authority, and president of the Berst-Forster-Dixfield Co., the largest manufacturer of the strike-on-box type of match in the United States. The Match Institute is made up of 100 percent of the match manufacturers of the United States.

In reference to Revenue bill H.R. 7835, now being considered by your honorable body, the match industry of the United States would like to amend Revenue Act of 1932, section 612, "Tax on matches", as follows:

"Section—(a) section 612 of the Revenue Act of 1932, as amended (relating to tax on matches), is amended by adding before the period at the end thereof a comma and the following: 'and except that in the cases of fancy matches and matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax shall be 5 cents per 1,000 matches.'

"(b) Section 612 of such act, as amended, is further amended by adding at the end thereof the following new paragraph:

"'There is hereby imposed upon cigarette and cigar lighters, and upon other devices used as substitutes for matches that can be used more than once, a tax equivalent to 25 percent of the price for which such lighters or devices are sold by the manufacturer, producer's or importer thereof.'"

A very large volume of strike-on-box matches is being imported into this country (at the present time principally from Japan) paying a duty of 6 cents per gross, whereas the duty imposed by the Seventy-first Congress reads:

"PAR. 1516. Matches, friction or lucifer, of all descriptions, per gross of 144 boxes, containing not more than 100 matches per box, 20 cents per gross; etc."

Later in the same paragraph it reads: "Wax matches, wind matches, and all matches in books or folders or having a stained, dyed, or colored stick or stem" are dutiable at "40 percent ad valorem."

The foreign match manufacturers have colored the sticks of the matches with an inexpensive dye and have sold small quantities at extremely low prices in their own countries, averaging 15 cents, to establish a low market price. The ad valorem duty of 40 percent is therefore only about 6 cents a gross, or only 30 percent of the duty and protection that Congress, in good faith, intended to give the American match industry.

Through this evasion of the 20-cent duty by merely coloring the stems, the customs revenue lost approximately one half million dollars in 1933.

The excise tax imposed on matches under the 1932 tax law is 2 cents per thousand matches, equivalent to 25 percent of the net return from sales. This tax amounted to $6,842,731.87 in 1933, an average of $570,227.60 per month. This tax is collected with very little expense to the Government.

The American industry which also manufactures colored-stick matches contends that these colored stick or fancy matches should pay an excise tax of 5 cents per thousand. This tax would act to plug the leak in our laws, and based on last year's imports would yield the Government an additional tax of $650,000 and would not raise the price to the consumer. These colored stick matches would still sell at a penny a box.

If the American industry, which is now taxed nearly $7,000,000 per year is willing to stand this additional tax, imported matches that have for years been evading the true intent of our laws should be willing to pay a similar tax.

It is important to understand that no American-made matches are exported. The high wage rates and therefore high costs in the United States makes it impossible to export to low cost, low wage rate countries.

As the American match manufacturers pay 25 percent of their net return from sales in excise taxes, we feel on cigarette and cigar lighters, which are substitutes for matches, "25 percent of the price for which lighters or devices are sold" is but fair and equitable.

Matches have no second hand value. A lighter is used over and over again. Manufacturers often advertise a thousand lights for one filling. A match manufacturer is paying his tax continuously, a lighter manufacturer would pay his tax once only.

We estimate a tax of this kind on lighters would yield approximately $1,000,000 a year, based on sales, claims made by the lighter manufacturers. This proposed tax on fancy or colored matches, combined with a tax on lighters, would yield a tax of approximately $1,600,000 yearly, would plug a leak in our laws, and would correct the unfairness of taxing matches and allowing similar and competitive articles to go untaxed.

American match manufacturers and those making materials for match making employ fully 25,000 people, operate in thirteen States, north, east, south, and west, use raw materials exclusively grown or made in this country and pay the highest excise tax of any in the 1932 tax bill. We feel that our request is fair and reasonable and offers a way to increase revenue without penalizing the consumer.

We respectfully urge your support of this amendment.

NED G. BEAGLE,
Chairman, Executive Committee.

TAX ON CARBONATED BEVERAGES AND CARBONIC ACID GAS

The CHAIRMAN. Who represents the Bottlers' Associations?

Mr. VERNOR. I do.

The CHAIRMAN. How much time do you want, Mr. Vernor?

Mr. VERNOR. I will make it just as short as I possibly can, and I will not have any arguments. I just want to present a few facts.

STATEMENT OF JAMES VERNOR, JR., DETROIT, MICH., REPRESENTING THE AMERICAN BOTTLERS OF CARBONATED BEVERAGES

Mr. VERNOR. What we are asking for is a repeal of the portion of section 615, as the House has already taken off a part of the tax on soft drinks. I realize that this is a rather hard thing for you to look at just now in the face of the necessary money that you must have to balance the Budget.

Senator GORE. How much revenue would we lose?

Mr. VERNOR. About $3,000,000.

Senator REED. That is just about 3 hours deficit at the present rate of spending.

Mr. VERNOR. If I could just give you a little picture.

The CHAIRMAN. Will you direct yourself along this line? The House did take the tax off of the fruit juices, I believe.

Mr. VERNOR. Yes.

The CHAIRMAN. First, whether or not that affects your business, and what effect the beer situation has on your business. Give us your arguments so we can get a picture of it.

Mr. VERNOR. Taking off the tax on fruit juices certainly brings into competition with us allied drinks that are not taxed, and while we are about it, I will confine my remarks to that. I do not

think there is any necessity for me to say very much about the effect of the repeal of the Prohibition Act, and the effect that that will have upon this industry. It is obvious without my saying a word about it. While it will have what it already has had and will continue to have.

The soft-drink industry took quite a jump at the time the Prohibition Act was enacted, and it is going to take a like slump in its repeal.

There are one or two other things that I would like to give you if I would have the time. I will make them just as short as I can if you will allow me.

The CHAIRMAN. Go ahead.

Mr. VERNOR. The industry in itself has had a terriffic shrinkage in volume and in numbers. We started out in 1921 with about 14,000 members in the industry.

Senator WALCOTT. May I ask a question. When you speak of the soft-drink industry, do you include soda-water fountains?

Mr. VERNOR. No, sir; I am speaking of the bottled carbonated beverage industry. No reference to soda fountains at all.

Senator WALCOTT. Thank you.

Mr. VERNOR. At the time we took the first census of this industry, when the code went into effect, we had 7,100 of that 14,000 left, and when we took another census just a few weeks ago, just before appearing for our final hearing before the code authorities, we had 6,635, having lost 500 in the last few months. Naturally, the mortality is of the smaller units of the industries first rather than the larger ones. The smaller industries are the ones being crowded out at the present time.

Senator GORE. That is not due to the code.

Mr. VERNOR. Oh, no. That will have some effect, because we have operated under reduced hours and increased expenses.

Senator COUZENS. What is the volume of your business?

Mr. VERNOR. My personal business?

Senator COUZENS. Your company.

Mr. VERNOR. We did do a business of about two and a half million, but that has shrunk very materially from that figure at the present time. I might tell you, Senator, that our company, just speaking individually, paid $30,000 in this excise tax since it was enacted in June of 1932, and I am a good deal like Ringlings Circus, our losses were greater than that $30,000, so that it has already been taken out of the surplus.

Senator GORE. You mean you had a surplus of the losses after that?

Mr. VERNOR. We had a surplus of losses; yes.

Senator BARKLEY. Has the eighteenth amendment been repealed long enough to know what effect it is going to have on the bottled-drink industry?

Mr. VERNOR. Yes; I believe it has. We had a very immediate effect on the coming back of beer. Of course that was very serious for a short time, and very much more serious than its lasting results, but it is going to have a considerable lasting result, although the effect was immediate. It almost stopped the soft-drink industry

for about 3 weeks. Just about brought it to a standstill for about 3 weeks.

The CHAIRMAN. Have you reduced the price of soft drinks since we put on this tax? Or increased it, or reduced the size of the bottle?

Mr. VERNOR. Ninety percent of our industry is covered with a 5-cent roof. Ninety percent of the soft drinks are sold for 5 cents. Any increase in that price is absolutely fatal, as was demonstrated when it was necessary to increase those prices in 1921, when the prices of sugar went so high, and as has also been demonstrated in several States where they have put a special tax on, which crowded the price from 5 to 6 cents. The minute that price changed from 5 to 6, the volume drops at a tremendous figure.

Senator COUZENS. Did you reduce the size of the bottle?

Mr. VERNOR. That is absolutely impossible. That is one thing which we have no help from, like the candy industry. I do not want to pick on them, but like other industries, our bottles are about 33⅓ percent of our investment. We have about $50,000,000 in the industry. We can not junk those bottles, or reduce them in size. We cannot reduce the size of the package and we cannot increase the price.

The CHAIRMAN. Have you gone into the N.R.A.?

Mr. VERNOR. Yes, sir.

The CHAIRMAN. Has that increased your costs?

Mr. VERNOR. Yes, sir. We have had a public hearing on the code. We have a temporary code. We had a public hearing last week and we expect to have the code completed some time in April.

Senator COUZENS. You were in business a long time before we had prohibition?

Mr. VERNOR. Yes, sir.

Senator COUZENS. When did your business first start?

Mr. VERNOR. In 1868.

Senator BARKLEY. You did not start it?

Mr. VERNOR. My dad started it, and Senator Couzens knew him very well.

The CHAIRMAN. Was there something else you wanted to say?

Mr. VERNOR. There are several other things. I do not know how much time you want to give me. I know you want to get rid of me as soon as possible.

Senator REED. Have you received any benefits from the code?

Senator WALCOTT. You do not have the code yet?

Mr. VERNOR. It just depends on what the code will do as far as purchasing power is concerned.

Senator WALCOTT. You have no code yet in your industry?

Mr. VERNOR. We have not a finished code, yet; no, sir.

The CHAIRMAN. But you have increased the wages under your temporary agreements?

Mr. VERNOR. We had to do that; yes, sir. There is one point I want to bring up and that is the fact that we are the only industry that is taxed under the excise tax today that has been absolutely unable to pass on that tax either by increasing the price or reducing the size of the package. The only one of the 15, 16, or 17, and I

would be very glad to go into detail on that with you as to how that has been accomplished. Not only does this industry absorb all of the tax that it pays, but it is a large buyer of many things like gasoline, automobiles, tires, tubes, refrigerators, and things of that kind, and it has to pay the tax that is passed on from those excise taxes and absorb those also.

Senator McAdoo. To what extent do agricultural products enter into your industry?

Mr. Vernor. Sugar especially.

Senator Gore. You just specialize in the taxpaying industries.

Mr. Vernor. I think the Senator will agree that I have kept about as far as anybody in the world from things like this.

Senator Couzens. Do you know what your revenues were to the Government from these 14,000 members in the last year? The revenues from the excise tax?

Mr. Vernor. Yes, sir. The Government revenue from this excise tax—in the fiscal year that ended June 30, 1933, we paid about two and a quarter million of excise taxes, and there was another $824,000 collected from soda fountains.

Senator Couzens. That is for the whole industry?

Mr. Vernor. Yes, sir.

The Chairman. $3,000,000 for this last year?

Mr. Vernor. That included the grape juices and things like that, but this tax was removed in 1924 and exempted from the House Committee report, which showed that that tax was removed for two reasons. The first was that the industry had no earning, and that it was practically a capital levy, and the second was that it was so burdensome and expensive to collect. There are only 6,600 left of us, so in order to make the tax equitable, you have to spread it over 100,000 drug stores and confectionery stores, so you have over 100,000 tax returns to come in if they all report once a month for 12 months, or 1,200,000 returns to get a little over $3,000,000. You may say that there is not any burden thrown on us. But remember that 6,600 of us pay the big majority of that, and the little soda fountains do not pay very much.

I have a little brief in support of what I have said here, which I would like to file, and I also have a brief here that I would ask to hand in from the Carbon Dioxide Institute bearing on this same subject.

The Chairman. They will all go into the record.

Mr. Vernor. And I have an excerpt here from the House report that I spoke of a minute ago, and I would like to file that also.

The Chairman. Thank you very much.

Senator Lonergan. Have you found it cost you more money to do business under the N.R.A.?

Mr. Vernor. It even costs us more money under the temporary N.R.A.

Senator McAdoo. You mean on the form promulgated by the President?

Mr. Vernor. Yes, sir.

Senator McAdoo. How much does that increase it?

Mr. VERNOR. I could not answer that figure. I would like to give you the facts and not guess work.

Senator GORE. How much has your business picked up?

Mr. VERNOR. We have felt no effect on it up to the 1st of February, but in February we got quite a little bit of benefit from it. I should imagine an increase of 10 or 15 percent in the month of February. How lasting that is, I cannot tell you.

Senator COUZENS. Your business is largely in the summertime.

Mr. VERNOR. Yes, sir; it is.

(The documents above referred to are as follows:)

BRIEF OF MR. JAMES VERNOR, JR., DETROIT, ON BEHALF OF THE AMERICAN BOTTLERS OF CARBONATED BEVERAGES

H.R. 7835

Title IV. Excise Taxes (page 231) section 601: This section repeals part of the section 615, Tax on soft drinks of the Revenue Act of 1932. We submit that this section should be repealed in its entirety, and that Section 601 should be amended to read as follows:

Title IV. Excise Taxes—Section 601. Tax on soft drinks.

Section 615 of the Revenue Act of 1932 is repealed.

The tax on soft drinks repealed by the Revenue Act of 1924 was restored by the Revenue Act of 1932, with the proviso that no sale after June 30, 1934, should be taxable, but as one of the emergency features of the National Industrial Recovery Act the date of termination of the tax was extended to June 30, 1935.

Section 615 imposed:

(1) A sales tax of 1¼ cents per gallon on cereal beverages.

(2) A sales tax of 5 cents per gallon on unfermented grape juice containing 35 percent or less of sugars.

(3) A sales tax of 2 cents per gallon on (*a*) unfermented fruit juices (except grape juice) intended for consumption as beverages with the addition of water or water and sugar, (*b*) on imitations of such fruit juices, and (*c*) on soft drinks made without the use of a finished or fountain syrup.

(4) A sales tax of 2 cents per gallon on still drinks except mineral water and table waters and apple cider.

(5) A sales tax of 2 cents per gallon on mineral and table waters sold at over 12½ cents per gallon.

(6) A sales tax of 5 cents per gallon upon bottlers' sirups and a sales tax of 6 cents per gallon upon soda-fountain sirups.

(7) A sales tax of 4 cents per pound upon carbonic-acid gas "sold to a manufacturer of carbonated beverages or to any person conducting a soda fountain, ice-cream parlor, or similar place of business", and upon such gas used by the manufacturer in the preparation of soft drinks.

Receipts during the fiscal year 1933, according to the records of the Bureau of Internal Revenue, were:

(1) Cereal beverages	$588,775.10
(2) Grape juice	114,920.58
(3) (*a*) Fruit juice	93,633.77
(*b*) Carbonated beverages	57,325.41
(4) Still drinks	98,002.59
(5) Mineral and table waters	144,947.12
(6) (*a*) Bottlers sirups	1,149,810.52
(*b*) Soda-fountain sirups	824,917.37
(7) Carbonic acid gas	1,114,114.57

H.R. 7835 repeals only the tax on grape juice and the tax on fruit juices.

Soft drinks were originally selected as a basis for special taxation as a means of restoring in part the revenue from liquor taxes lost to the Government during the era of prohibition. This source of revenue is now restored, and repeal has created new competition for the soft-drink industry not existent at the time these special sales taxes were originally imposed nor existent at

the time of the enactment either of the Revenue Act of 1932 or of the National Industrial Recovery Act of 1933.

Ninety percent of the soft-drink business is done in nickel drinks, not in the high-priced beverages sold in night clubs, hotels, and cafes. Five cents is the roof price of the industry. Past efforts to raise the prices to the consumer above 5 cents have been disastrous. The result is that the tax falls upon the bottler. He cannot pass it on.

The decrease between 1921 and 1933 in the number of bottlers of carbonated beverages from 14,000 to approximately 7,000, and the decline in collections of the tax on carbonic-acid gas from $2,071,008.24 in the fiscal year 1924 to $1,114,-114.57 in the fiscal year 1933, demonstrate, we submit, that the soft-drink industry is no longer an attractive source of revenue through excise taxes.

The average per-pound sales price of liquid carbon dioxide for use in soft drinks during the years 1931, 1932, and 1933 was not more than approximately 7½ cents, and the average selling price of solid carbon dioxide for use in soft drinks was not more than approximately 5 cents during the same period. The tax of 4 cents per pound amounts to more than 53 percent of the sales price of liquid and to 80 percent of the sales price of solid gas. The tax in the last analysis has been paid by the aproximately 7,000 bottlers of soft drinks and the approximately 100,000 soda-fountain proprietors.

The high rate of tax and the cost to the manufacturer of colecting it on each sale from a large number of customers results in added cost to the bottler and to the soda-fountain proprietor for this indispensable ingredient of his carbonated beverages greatly in excess of its normal untaxed cost. In fact, the bottler is now paying an average of from 11 to 12 cents per pound for liquid carbonic-acid gas which, without the Federal excise tax, would not sell for more than 5 cents per pound.

The sirup-tax collections, including both bottlers' sirups and fountain sirups, for 1924, were $4,146,461.71. These collections for the fiscal year ended June 30, 1933, dropped to $1,974,727.89.

Even in its present depressed condition, the bottled soft-drink industry gives employment directly to approximately 80,000 persons. Discriminatory and oppressive taxation affects their livelihoods, together with the welfare of their employers.

If there was ever a time when soft drinks were a proper subject for special taxation, that time expired with prohibition and there is no justification now for the continuance of a special sales tax on the ingredients of carbonated soft drinks.

All persons liable to pay these soft-drink taxes must register with the Collector of Internal Revenue in his district and must make 12 returns to the Government, 1 each month, with a check attached. In handling these returns, the district collector's office first must issue a permit and then handle 12 monthly reports and checks. These again must be handled and checked in Washington, and a large number of field men are kept busy continuously checking the taxpayers' returns and records.

Consideration of these facts leads to the conclusion that the cost of collection of these taxes is wholly out of proportion to the revenue produced.

We submit, therefore, that section 601 of the bill H.R. 7835 should be amended to repeal all of section 615 of the Revenue Act of 1932.

Excerpt from Report of House Ways and Means Committee on H.R. 6715 (Revenue Bill of 1924)

The tax levied by sections 602 and 603 of the Revenue Act of 1921 upon cereal beverages and other soft drinks, and carbonic-acid gas, imposes a tremendous burden upon industries already weakened and struggling for existence.

The tax in most instances cannot be paid out of the profits in the industry but must be paid out of capital and to that extent constitutes a capital levy.

The tax imposed by those section on fountain sirups is largely collectible from the proprietors of soda fountains who make relatively small quantities of fountain sirups for their own places of business. This tax is a burdensome one and one of the most difficult to collect.

The difficulty and cost of administration in collecting the taxes imposed by these sections, the inconvenience caused by these taxes to taxpayers, and the burden which these taxes places upon the industries affected, justify the repeal, and the committee so recommends.

BRIEF OF THE CARBON DIOXIDE INSTITUTE, NEW YORK, N.Y.

To the Finance Committee, United States Senate.

Petition of the Carbon Dioxide Institute, Inc., New York City, for repeal of the per-pound tax of four (4) cents upon carbonic-acid gas sold to manufactureres of carbonated beverages or used by the manufacturers in the preparation of soft drinks.

I. THE INSTITUTE

The institute comprises 17 manufacturers of carbon dioxide (carbonic-acid gas) operating 52 plants for the production and distribution of carbon dioxide in liquid and/or solid form. In 1933, members of the institute produced more than 90 percent of the total volume of liquid carbon dioxide and more than 85 percent of the total volume of solid carbon dioxide.

II. CARBON DIOXIDE AND ITS USES

Carbon dioxide is produced by segragation from a mixture of gases through an absorption medium, purified by chemical treatment, liquified under pressure, and then either forced into steel cylinders or solidified by refrigeration and wrapped in paper bags. Liquid carbon dioxide, as put out by the manufacturer, is ready for use in the carbonization of beverages by bottlers or soda-fountain proprietors. Solid carbon dioxide must be converted into liquid form by passing through a liquifying machine before it can be utilized for this purpose. Each pound of solid carbon dioxide, when liquified, produces a pound of liquid carbon dioxide. There is no substitute for carbon dioxide in the carbonization of beverages. This, however is not its only use.

Carbon dioxide is used for refrigeration, the preservation of other food products, for spray painting, for fire extinguishers, fumigation, and for pressure purposes. In these fields it comoetes directly with ammonia, oxygen, nitrogen, other chemicals, electric refrigeration, and water ice.

The following table shows the volume and the value of solid and liquid carbon dioxide sold annually during the past 3 calendar years for use in the carbonization of beverages:

Volume and value of carbon dioxide used in the carbonation of beverages

Year	Liquid	Solid
1931:		
Pounds	49,098,788	911,034
Dollar value	$3,927,903	$45,551
1932:		
Pounds	45,886,718	2,024,520
Dollar value	$3,448,503	$101,226
1933:		
Pounds	48,181,053	3,844,137
Dollar value	$3,572,673	$182,206

III. THE TAX

The Revenue Act of 1932, section 615 (a) (7), provides as follows:

SEC. 615. Tax on soft drinks:

(a) There is hereby imposed

(7) Upon all carbonic acid gas sold by the manufacturer, producer, or importer, or by a dealer in such gas, to a manufacturer of any carbonated beverages, or to any person conducting a soda fountain, ice-cream parlor, or other similar place of business, and upon all carbonic acid gas used by the manufacturer, producer, or importer thereof in the preparation of soft drinks, a tax of 4 cents per pound.

Section 629 of the same act provided that no sale after June 30, 1934, should be taxable, but as one of the emergency features of the National Industrial Recovery Act, approved June 16, 1933, the Revenue Act of 1932 was amended by striking out "1934" and inserting in lieu thereof "1933", thus extending to June 30, 1933, the sales tax of 4 cents per pound on carbonic acid gas.

IV. ARGUMENT

The average per-pound sales price of liquid carbon dioxide for use in soft drinks during the years 1931, 1932, and 1933 was not more than approximately 7½ cents, and the average selling price of solid carbon dioxide for use in soft

drinks was not more than approximately 5 cents during the same period. The tax of 4 cents per pound amounts to more than 50 percent of the sales price of liquid, and to 80 percent of the sales price of solid gas. The tax in the last analysis has been paid by the approximately 7,000 bottlers of soft drinks and the approximately 100,000 soda-fountain proprietors.

The high rate of tax and the cost to the manufacturer of collecting it on each sale from a large number o ustomers results in added cost to the bottler and to the soda fountain proprietor for this indispensable ingredient of his carbonated beverages greatly in excess of its normal untaxed cost, which we submit seems unjustified by the revenue it produces.

During the fiscal year ended June 30, 1924, a similar tax imposed at the same rate by the Revenue Act of 1921, and which was repealed by the Revenue Act of 1924, the total collections reported by the Bureau of Internal Revenue amounted to $2,071,008.24, but the total revenue reported under the Revenue Act of 1932 for the fiscal year ended June 30, 1933, amounted to only $1,114,114.57.

Mistakenly conceived at the time of its enactment in 1921, as a means of restoring revenue lost to the Government as a result of prohibition, and revived prior to repeal of the Eighteenth Amendment as an emergency measure, the removal of this added cost to the makers of soft drinks, in the face of increasing competition, would be of substantial assistance to an industry which, according to statistics published by the American Bottlers of Carbonated Beverages, is operating at less than 30 percent of its productive capacity.

Although intended as a tax upon gas used in the preparation of soft drinks, the Revenue Act of 1932, like the Revenue Act of 1921, is so worded as to make the tax depend "upon the kind of business in which the purchaser is engaged, and not upon the use to which the gas is is subjected by the purchaser" (sales tax Ruling 6558, Bureau of Internal Revenue, December 1, 1933). Sales of carbonic acid gas are taxable if made to a manufacturer (bottler) of carbonated beverages or to a person conducting a soda fountain, ice cream parlor, or other classification, the seller of the gas is liable for the payment of the tax, irrespective of the use to which the purchaser puts it.

The peculiar language of the act complicates the task of collection and has presented many problems for official interpretation. The Bureau of Internal Revenue recognizes that the tax is extremely difficult to administer. It is a nuisance both to the taxpayer and to the Government.

V. CONCLUSION

We submit, therefore, that the 4 cent per pound tax upon carbonic acid gas should be repealed for the following reasons:

(1) The tax is exorbitant because it amounts to more than 50 percent of the sales price of liquid carbonic acid gas and to 80 percent of the sales price of solid carbonic acid gas.

(2) The tax increases the cost of an important and indispensable ingredient of the class of carbonated beverages known as soft drinks to an extent far greater than is justified by the untaxed sales price of carbonic acid gas.

(3) The increased cost, due to the tax, of carbonic acid gas to the soft-drink industry is wholly out of proportion to the revenue derived from the tax by the Government.

(4) The soft-drink industry is faced with new competition due to the repeal of the eighteenth amendment which was not existent at the time the tax was imposed.

(5) Revenue from the liquor taxes, which this tax was designed to replace in part, has now been restored.

(6) The decline of approximately 50 percent in revenue during the fiscal year 1933, as compared with the revenue derived during the latest prior fiscal year (1924) when an equivalent tax was effective, shows that this special sales tax falls upon an industry little able to sustain it.

(7) The tax upon carbonic acid gas sold for use in the manufacture of beer and wine amounts to double taxation.

(8) The tax is discriminatory because it imposes a tax on sales of carbonic acid gas which is not imposed upon the sales of manufactures generally.

Respectfully submitted.

THE CARBON DIOXIDE INSTITUTE, INC.,
GEORGE M. PETTEE, *President.*

W. PARKER JONES,
Washington, D.C., Counsel.

TAX ON ADMISSIONS

STATEMENT OF JOHN M. KELLY, REPRESENTING THE RINGLING BROS.-BARNUM & BAILEY COMBINED SHOWS, INC.

Mr. KELLY. Mr. Chairman and Senators, I am appearing for the circus industry as a whole, and I am the only person that will appear for the industry, and I cannot present the views in 5 minutes, but I will confine myself as closely as I can.

The CHAIRMAN. We hope, Mr. Kelly, that you will proceed. We are trying to show you some consideration. You can elaborate your views in a brief, but try to finish.

Mr. KELLY. We appreciate that, and I will try to cover the points that I do not express here by a brief, if I may have that privilege.

The CHAIRMAN. Yes; you may.

Mr. KELLY. The subject has been presented by the college people who appeared today. I am addressing myself, Senators, to this admission tax, which is a tax that has gone by default ever since it was enacted. It came into being as a war-time measure. It was reenacted with the presumption generally, in and out of Congress, that it was temporary in character and would not live long. I did not appear 2 years ago in opposition to the bill.

What was its object? To raise revenue, evidently. Now, I am here to suggest that the amount of revenue raised by that bill at the present time is inconsiderable compared to the harm that it does to constituted American business, and that it fails to raise revenue, it fails to accomplish the objects that it was wrtten in the books for.

The CHAIRMAN. How much do we get out of it?

Mr. KELLY. You got $388,000 last year, which represents that amount in the red. The admission tax today, if continued and imposed this year, will drive the circus industry out of existence. I do not believe that either the Senators or Congress realize what this bill means, and that admission tax as imposed upon the circus industry. One of the oldest industries in America, and today we have but 1 circus virtually, the Ringling Bros.-Barnum & Bailey combined shows, with 2 subsidiaries, the Hagenback show and the Barnes shows, as railroad shows in this country. In 1929, and thereabouts, we had two dozen shows that flourished in this country. The depression drove them down to three, and let me tell you that the circus cannot survive, as an industry, the imposition of this admission tax.

Why? Because first it is indefensible in principle and ruinous in operation. Second, you do not accomplish the collection of revenue that it was intended to achieve.

I would like here in a few minutes briefly to explain to you how, if revenue collection is a part of that bill, you can do it without driving an industry out of business and without putting a burden upon the pockets of those who contribute. A circus may be insignificant compared to steel and other big industries, but it may mean more to the public in general than you realize. The Ringling Bros. started 50 years ago and have just celebrated their fiftieth anniversary. These men developed that show—you all know about it—as

clean, wholesome entertainment, and it is a sad commentary that it is the admission tax that is imposed now that is going to drive not only 1 circus and 1 unit, but the industry out of existence. Hard times, yes—you can say that it closed this corporation and that corporation, but——

Senator McAdoo (interrupting). What is the alternative you propose? You say you can tell us how to impose a tax that will not drive you out of business.

Mr. Kelly. Yes.

Senator McAdoo. What is it?

Mr. Kelly. I will get to it. I do not want to be defeated in my object in saying what this circus may mean to the American people.

Senator McAdoo. We all know about the circus. We want to know how we can meet the situation.

Mr. Kelly. I propose an amendment, and in the alternative I propose 2 or 3 amendments. I think, for the interests of this committee, as well as for Congress that is enacting this law, that the Revenue Bureau's report is very pertinent at this time. I say this is a tax that has gone by default. Nobody has analyzed it.

The amendment I propose is this:

Preceding paragraph 1 of section 500 of the revenue act there shall be enacted this:

> There shall be a tax of 1 cent paid by all persons admitted to the following regularly constituted amusements, to wit: Motion-picture theaters, including dramatic, musical and vaudeville, circus, and nonprofessional scholastic sports and entertainments.

What does that mean? Since I have come to town this morning I have begun to gather some figures. I say you are driving an industry out of existence, and under a pretense of collecting revenue that does not accomplish the objects that you had in mind.

Strike out Hawaii, those excess profits, and the roof gardens, and the amount collected under this bill in the last fiscal year, according to this report is $14,600,000, and you are not collecting the tax that the Government thought to collect.

How many have read this report? The internal revenue collections of the fiscal year.

You have as one of the provisions of this tax, roof gardens and cabarets, but they are not paying the tax. We all acknowledge that New York is the great emporium of entertainment, and if a farmer were to go into New York tomorrow he would have to drive in a herd of cattle and sell them for one night's entertainment. Here we have in the city of Chicago, the next largest city, that tax on roof gardens last year they collected $430,000. How much do you suppose they collected in New York on that? Where they charge high prices, where they have night life, where the world centers for that degree of entertainment? They collected $94,000. That is all. In other words, we are not getting results.

Senator Connally. You mean they are not actually collecting the tax?

Mr. Kelly. That is all that was collected in the city of New York and in Chicago of $430,000, according to the Revenue Bureau report.

Senator McAdoo. How do you explain that? Are they honest in Chicago and dishonest in New York?

Mr. KELLY. That is for your conclusion. I think the presentation of the report calls for an analysis and investigation.

Senator GORE. Your plan is to make the consumer pay the tax? A penny on every admission?

Mr. KELLY. Yes, sir. Just let me get down to this. I am trying to help rather than obstruct.

The CHAIRMAN. Let me get your suggestion. It was 1 cent for every admission?

Mr. KELLY. Yes, sir.

The CHAIRMAN. Irrespective of whether you paid 10 cents or $2?

Mr. KELLY. Right. Let me tell you what that would mean. The movie people tell me that there were 22,000 movies in the United States. Through information of a friend, here in the city of Washington, he tells me I am mistaken and that there are 40,000 sound moving-picture houses in the United States, and 60,000 altogether; but let me take the information that came from the movie people of 22,000. I have it on authority that there are only 300 movie theaters of all of that number that are paying this admission tax. The circus cannot pass that on to the public—it must absorb it, and it is driving us out of the business. The other industries, those from whom you contemplated the production of the tax, are avoiding it by having admission below the estimated tax price of 40 cents.

The CHAIRMAN. Let me tell you. Those of us on this committee are pretty familiar with the facts, and the controversy that we have had on admissions, and we have had some pretty sharp ones, as to whether we would put the limit at 30 cents, 40 cents, or 50 cents, and they won out by a big majority not to tax below 40 cents on admissions.

Mr. KELLY. How about 1 cent?

The CHAIRMAN. What is that?

Mr. KELLY. How about 1 cent on all?

The CHAIRMAN. They would not put on the tax below a 40-cent admission.

Mr. KELLY. Let me explain what this means. Just half a minute.

The CHAIRMAN. Go ahead.

Mr. KELLY. Twenty-two thousand movie theaters here, with an attendance of 6,600,000 people at the lowest estimate every day attending movie theaters. That means $6,000 at 1 cent. At 350 days a year, making a liberal allowance, at 1 cent, represents $23,000,000 a year on that low estimate of admission tax. On the basis of 11,000,000 in attendance a day, which are corrected figures, it would represent from one unit alone of a penny, $38,000,000. If this amendment were adopted, it would mean that the revenue from this measure would exceed $150,000,000 a year, while all you are collecting now is $14,600,000, and you are driving a whole industry out and wiping it out. Yes, wiping it out.

I take it that you are interested in hearing how this applies to the circus, but I know that you feel that you do not have the time to give me to have that explained, and it is hard for me to take a cross-cut.

Senator GORE. What is the average admission charge to children in the circus?

Mr. KELLY. The average admission is 50 cents for the children under 12, and 75 cents is the regular price, standard for a generation. Reserved seats and general admission.

The CHAIRMAN. It catches the circus all the way up, because they are above 40 cents admission.

Mr. KELLY. Yes, it does; and we cannot raise the price and we cannot reduce the price and live, and we just have to absorb it.

The CHAIRMAN. Mr. Kelly, you would be in a stronger position if you based your suggestion upon exemption of the circus rather than to ask us to put a 1-cent tax on all admissions, because Congress is not going to do that if they follow what they have done in the past.

Mr. KELLY. I have discussed this with several of the theatrical people, and I have this offer to make as an amendment. That section 500 (a) (1) be amended, to wit:

Except that the rate shall be one half cent for each 10 cents or fraction thereof of the amount paid for admission to theatrical, dramatic, and vaudeville shows and entertainments, moving pictures, circus performance, and nonprofessional scholastic and collegiate sports entertainments, except that where the amount paid is less than 78 cents, no tax shall be paid.

That is another amendment for your consideration.

The CHAIRMAN. How much would we lose by virtue of that in revenue?

Mr. KELLY. Not a great deal. The circus is paying $383,000, and only 300 movies are taxed now.

Senator BARKLEY. That statement about 300 movies is evidently inaccurate. There are almost that many in Washington that pay that tax. It is ridiculous to say that only 300 movies in the United States pay this tax.

Mr. KELLY. It looked like that to me, but I got it on reliable authority.

Senator BARKLEY. I do not think it is reliable.

The CHAIRMAN. There are a great many movies in the small places that do not charge over 40 cents. Of course they pay no tax. They are exempt. And I do not suppose many of the movies charge more than 40 cents.

Mr. KELLY. Very true.

Senator BARKLEY. It is 40 cents and over. They do not charge a tax in the morning, because they let the patrons in for a quarter, but at night and on holidays and on Sundays they do make the full charge and they collect the tax.

Mr. KELLY. That is true. I think in connection with this last amendment I proposed, I have something that will interest you. The night-life places like the garden clubs and prize fights and dance halls and marathons are not amusements. They are ventures. They only meet at the points at times when they can gather in the dough, and they have no capital invested in these things. The features that they announce and exhibit are merely subordinate to their regular business. In that last amendment I propose that on all other entertainments, the exemption be reduced to 25 cents. So that you understand me, Senator, now, every theater, every movie, circus, and scholastic sports and entertainments, go in free up to 76 cents, and that all other institutions, like prize fights, professional

prize fights and wrestling matches, marathons, dance halls, garden clubs, and so forth, pay on everything above 24 cents.

Senator GORE. You say they have no capital invested?

Mr. KELLY. I do not think the time has come in this business period when it is necessary in order to collect a very small revenue, less than 1½ percent, that we should drive out and wipe out an entire industry that has built itself up in the country. I will tell you this. You can destroy our industry and keep up all of us off the road, but that is not all when you have a circus. The theater may close the door and the real estate stands. What have we got? We have got over a thousand horses, the finest picked specimen horses in the world collectively. What are we going to do with them? You wipe this circus out, and this generation won't know what a horse is in the flesh, in a short time. We have over 100 elephants. We have over 100 lions and tigers. What are you going to do with them when we quit? Turn them loose?

The CHAIRMAN. Will you place in the record the attendance of these organizations that you represent, in a period over the last 10 or 15 years?

Mr. KELLEY. Yes, sir; I will be glad to. And how they have gone down and out.

The CHAIRMAN. If that shows the picture.

Mr. KELLY. It means a loss of over $6,000,000. Last year the Sells-Floto Circus retired with a loss of a capital of $1,000,000.

Senator BARKLEY. How many circuses are left?

Mr. KELLY. Ours is the only railroad circus left, and a few scattered, motorized circuses. It has come to that in the circus business.

The CHAIRMAN. Are they making money now?

Mr. KELLY. No. Let me tell you how much they made last year. I am glad you asked that, Senator. Forty-four percent of all of the circuses' income, all that they take in, goes to labor, 16 percent is expended for supplies in different communities visited, 35½ percent goes for taxes, licenses, and miscellaneous, and 4½ percent remains. which is all that remains for depreciation as a net return.

Senator MCADOO. What did that amount to in dollars last year?

Mr. KELLY. The depreciation?

Senator MCADOO. The 4½ percent. Was that profit?

Mr. KELLY. No; that was not profit. That is what remains before depreciation is taken, and the circus uses itself up every year.

Senator MCADOO. What profit did you make? Did you make any?

Mr. KELLY. No. We had tremendous loss.

Senator MCADOO. How much?

Mr. KELLY. More than we paid in admission tax.

Senator MCADOO. How much was that?

Mr. KELLY. $388,000. And our books are open for your inspection.

Senator GORE. What were your gross receipts?

Mr. KELLY. Somewhere between two and a half and three million. I am guessing at that, but approximately it is correct.

Senator BARKLEY. Over the same period of time, the chatauqua, which used to be a very popular form of entertainment, has almost gone by the boards. Is there any connection between the reasons that affected the demise of the old time chatauqua and the decline of the circus?

Mr. KELLY. The movies may have contributed something to the chatauqua, but they do not with the circus, because the circus today is the only institution on earth going to the country people with a big educational zoo, and that is presenting clowns and actors and skilled performers, in the flesh. It is the only entertainment going out to the country people today that does that. It gives them clowns and a big outdoor day, and we are going to kill it if this tax is perpetuated as intended.

Senator REED. If your gross income was only two and a half million, you only had about 5 million admissions last year.

Mr. KELLY. I do not think there would be five million admissions. It would be way below that. I have to think quickly on that, but I am quite sure.

Senator WALCOTT. If this were modified to suit your wishes, would you feel that you could make a profit with conditions as they were last year and break even?

Mr. KELLY. Yes, break even if we had what we paid the Government in taxes. Just about that. We are hopeful that the times will pick up a bit, but I will tell you that the circus is not a bankable proposition. We cannot finance it. I do not like to disclose these statements here, but I will tell you that they had to go into the savings of the children and grandchildren in order to put that show out this year. I did not appear here 2 years ago because we hoped that this was a temporary matter for relief. It has come now where, gentlemen, if this is maintained as it is, the circus is wiped out of existence.

The CHAIRMAN. We hoped that it was a temporary matter, too. We were in hope of being able to remove it before now.

Mr. KELLY. I know, Senator, you have your problems.

The CHAIRMAN. Will you file in the record any further elaboration upon your statement that you care to?

Mr. KELLY. May I ask you how soon I will have to file that?

The CHAIRMAN. Just as soon as you can.

Mr. KELLY. Two or three days?

The CHAIRMAN. I would put it in by tomorrow.

Mr. KELLY. I will try to do that, Senator, and I am very grateful to you all. I want to say, Senator, that I am most earnest in my appeal to this committee for some relief, and I believe that what I have proposed here as amendments, if adopted as an alternative, that it will give us relief and yield more revenue to you.

(The brief referred to is as follows:)

BRIEF, THE CIRCUS, IN RELATION TO ADMISSION TAX

The undersigned respectfully petition that section 500 (a) (1) revenue act be amended:

1. By substituting 25 cents for 41 cents as the same appears in the fifth line; and

2. By adding, after the word "imposed" in the fifth line of subdivision (1) of said section 500 (a) the following:

"Except that the rate shall be ½ cent for each 10 cents or fraction thereof of the amount paid for admission to theaters (including dramatic, stock, musical, and vaudeville shows) motion pictures, circus, and nonprofessional scholastic sports entertainments; and where the amount paid for admission in the entertainments recited in this clause is less than 76 cents no tax shall be imposed."

The effect of the foregoing amendments will be to tax professional prize fights and wrestling bouts, dance halls, cabarets, and roof gardens at the present rate of tax on all admisions above 24 cents; and to reduce the rate of tax one half present rate on regular established forms of amusements plus lifting the exemption to 76 cents.

This amendment will constitute a more equitable tax; and will, it is hoped, enable the circus now in a struggle for existence, to carry on.

The established price of admission to the circus is 75 cents and for reserved seats 75 cents so that, under the amendment the circus will still be taxed above one half of the amount presently imposed.

Since 1929 three railroad shows—Sparks, Robinson and Sells-Floto have passed out with loss of over a million dollars investment.

So that in the season of 1933 there were but the following railroad circuses in the United States on the road: Ringling Bros.-Barnum & Bailey Shows, Hagenbeck-Wallace Circus, and Al. G. Barnes Circus.

These three circuses represent a capital investment of over four and one half millions.

The Ringling-Barnum Circus operated with fair profit up to 1933. This circus suffered such severe loss in the 1933 season, that it cannot survive under the present tax imposed.

Casual analysis of the Bureau's report for the fiscal year 1933, reveals that the admission tax collected is wholly out of proportion to the damage inflicted on American business.

It is the duty of Congress to either adjust or repeal the admission tax enactment for the following reasons:

First: Insufficient return of revenue is obtained to justify it.

Second: As written, the act allows the majority to escape tax by reducing prices.

Third: It puts the circus industry in a squeeze, and if continued will destroy it, with forfeit of over six millions of investment.

Gross receipts of the circus are very small, relatively, when compared to the business returns of motion pictures, theaters, baseball, prize fights, and horse racing.

Yet, three railroad circuses in the United States which operate but 7 months of the year, collected one thirty-eighth of all the admission taxes in the United States.

Excluding Hawaii and admission taxes on dance halls and garden clubs, the total amount of admission taxes collected, fiscal year 1933, is $14,600,000.

The Ringling Circus alone in 7 months of the past year collected the equivalent of one twentieth of all the admission taxes collected in the New York theatrical district.

The Ringling Circus alone in 7 months' operation collected more admission taxes than were collected throughout the year in 16 States, to wit:

Arizona, Arkansas, Delaware, Idaho, Kansas, Mississippi, Montana, Nevada, New Mexico, North Dakota, South Carolina, South Dakota, Utah, Vermont, West Virginia, and Wyoming.

The application of the admission tax as written spells the destruction of every railroad circus in the country.

Even when "wiped out" the circus picture is different from other units of industry that may fail. You may drive, by this admission tax, the owners of the circus into bankruptcy; you may destroy capital invested; you may take away from millions of people of the country districts their only big outdoor amusement, presenting skilled performers in the flesh and bringing to their very doors a great, wondrous, educational menagerie—all these things the maintenance of this tax will accomplish and yet there still survive:

The world's greatest collection of choice horses—over 1,000; a herd of over 80 elephants; over 100 lions, tigers, and other animals of the jungle; giraffe, and other rare specimens; 7 hippopotami.

When the circus folds up, its income destroyed, and 6 to 8 solid railroad trains of equipment thrown into discard, what becomes of the menagerie?

It is, too, to be sacrificed on the altar of tax expediency? Shall we shoot the horses and feed them to the lions? Shall we turn the elephants loose? Twice daily the mouths of the hippopotami open wide and the food shoveler must be on hand.

TAX BURDENS

Upon no other business in the country is imposed relatively the tax that the circus is compelled to bear. Other amusements bear the tax imposed in their State of location. But the circus, traveling from State to State, becomes annually subject to the taxes in nearly every State in the Union.

PUBLIC INTEREST IN CIRCUS: GENERAL WELFARE

The public at large has a profound interest in the circus. There are millions of children today who, at the circus, can see fine-quality horses. There are millions of children in the country districts of the United States to whom the great menagerie and zoological department of the circus is education and entertainment alike. To millions of families in the United States the circus is a wholesome holiday. It is clean fun. It is traditional in the American spirit. It drives dull care away. It is the show of the common people.

During the World War the circus, at great sacrifice, carried on as a recognized wholesome influence in a period of national peril. Now the circus is in peril, striving for existence.

The circus traveling menagerie involves tremendous overhead in upkeep. It is an educational feature of especial importance to American children. There is nothing more sacred or essential to humanity than the laughter of children. Destroy the great American circus institution and civilization slips a notch in reverse.

The circus alone features and presents clowns on a large scale; brings to the very door of the country people a great, wondrous educational menagerie; stands alone in presenting on a large scale performers and artists in the flesh. It is an American institution. It ought not, in times of peace, be crushed by burden of unjust taxes.

THE CIRCUS IMPORTANCE TO LABOR

Of the total receipts from the circus, there is the following distribution: 44 percent goes to labor; 16 percent is expended for supplies in the different communities visited; 35½ percent goes for taxes, licenses, and miscellaneous; 4½ percent is all that remains before depreciation taken, as net returns.

It requires no argument to establish the financial loss entailed in this picture. It exceeded the amount of $388,000 paid the Government in admission taxes.

Not less than 40 millions of dollars have been paid to labor by the Ringling Circus in its eventful career under a single family ownership. Millions have been spent in advertising. Its goodwill is a property right, established Nationwide with rich and poor alike.

WELFARE AND FUTURE OF PERFORMER AND CLOWNS DEPENDENT ON CIRCUS

Artists and performers find employment with the circus in what is known as the "off" season, when the theater is closed. If the circus should pass out, the professional artist and performer go with it.

It is but a few years since the movies closed the stage door to vaudeville. The vaudeville artist is gone from American amusement life. The circus today stands as the last school for the development and presentation of the professional artist, performer, and clown.

CIRCUS PERIL DISTINGUISHED FROM ALL OTHER AMUSEMENTS

It is common knowledge that in the theatrical and movie field various units have failed through insolvency or otherwise. But refinancing was possible. While a unit may fail, the industry is able to carry on.

This distinction should be noted. In the circus field it is not a case of one circus dropping out or going to the wall. The entire circus industry is threatened with extinction, and the last surviving world-famed unit is at the end of its rope.

The very life of the industry is at stake in this hour. For half a century, at enormous cost, the Ringling-Barnum Circus has been building goodwill. We believe it is the aim and policy of this administration to protect and lend encouragement to the circus industry by reason of the following:

(*a*) The public interest in the fact that the circus is the only entertainment bringing on a large scale to the country people, high-class acts, performers, and clowns in personal appearances.

(*b*) The circus is the only unit in America today with a menagerie that comes to the very door of the people in small cities and towns and the poor people of the country.

(*c*) The circus entertainment is clean, wholesome, and refreshing.

(*d*) The right and interest of labor in having the circus carry on—the Ringling Circus family alone having paid to labor in the building of their circus over 40 millions.

(*e*) The performer and the clown depend on the circus for their livelihood, their future, and school of development.

(*f*) Six millions of investment in a going concern that pays to labor 44 percent of its receipts.

We respectfully urge that our petition be granted.

RINGLING BROS.-BARNUM & BAILEY COMBINED SHOWS,
By JNO. M. KELLEY.

The CHAIRMAN. Thank you very much. Mr. George L. Schein, representing the Community and Civil Concert Association, has a statement to present, and it will be placed in the record. Give it to the stenographer.

BRIEF IN SUPPORT OF PROPOSED AMENDMENTS TO TITLE V, TAX ON ADMISSIONS AND DUES, SECTION 501, SUBSECTION (A) (C) AND SECTION 500 (B) SUBSECTION (B), REVENUE ACT OF 1926, TO SENATE FINANCE COMMITTEE AT PUBLIC HEARING MARCH 14, 1934

I. PROPOSED AMENDMENTS

(a) Section 501, Title V—Tax on admissions and dues, Revenue Act of 1926.

(a) There shall be levied, assessed, collected and paid a tax equivalent to 10 percent of any amount paid—

(1) As dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of $25 per year; or

(2) As initiation fees to such a club or organization, if such fees amount to more than $10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of $25 per year:

(b) Such taxes shall be paid by the person paying such dues or fees.

(c) There shall be exempted from the provisions of this section all amounts paid as dues or fees to a fraternal society, order, or association, operating under the lodge system, or to any local fraternal organization among the students of a college or university (or membership dues, fees, admissions or subscriptions in any nonprofit organization or society conducted solely for the purpose of maintaining a concert series or course). In the case of life memberships a life member shall pay annually, at the time for the payment of dues by active resident annual members, a tax equivalent to the tax upon the amount paid by such a member for dues or membership fees other than assessments, but shall pay no tax upon the amount paid for life membership.

(d) As used in this section, the term "dues" includes any assessment irrespective of the purpose for which made; and the term "initiation fees" includes any payment, contribution, or loan required as a condition precedent to membership, whether or not any such payment, contribution, or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed, or loaned.

(b) Section 500 (b) (1), title V. Tax on admissions and dues, Revenue Act of 1926.

(b) No tax shall be levied under this title in respect of: (1) Any admissions all the proceeds of which inure (A) exclusively to the benefit of religious, educational, or charitable institutions, societies, or organizations, societies for the prevention of cruelty to children or animals, or societies or organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions, or of improving any city, town, village, or other municipality, or of maintaining a cooperative or community-center moving-picture theater (or concert series or course)—if no part of the net earnings thereof inures to the benefit of any private stockholder or individual; or (B) exclusively to the benefit of persons in the

military or naval forces of the United States; or (C) exclusively to the benefit of persons who have served in such forces and are in need; or (D) exclusively to the benefit of National Guard organizations, Reserve officers' associations or organizations, posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private stockholder or individual; or (E) exclusively to the benefit of members of the police or fire departments of any city, town, village, or other municipality, or the dependents or heirs of such members;

The proponents of these amendments to the revenue act constitute a committee of public-spirited prominent citizens actively interested in the promotion of culture and art appreciation through the presentation of music concerts by great musical artists in smaller communities of the United States. Two hundred and fifty organized civic and community groups throughout the United States present approximately 875 concerts annually. These organized civic and community groups are non-profit, cultural organizations consisting of citizens of smaller communities in the United States who have banded together for the purpose of hearing famous artists at concerts presented in the community under the auspices of the community. These 250 organized civic and community groups spend approximately $500,000 annually for artists, and the concerts presented by these civic organizations serve the musical needs of approximately 12,500,000 people in the smaller communities of the United States who are vitally interested in finer music.

Under the present revenue act and under the rulings of the Bureau of Internal Revenue, an admission tax has been assessed upon the concert-goers in the various communities of the United States. It is submitted that this admission tax, amounting to 10 percent of the price of admission, is a penalty assessed against the interests of music, a penalty which has operated effectively in a great number of instances to make it impracticable for communities to arrange these concerts, and has by increasing the difficulties forced numerous communities in the United States to give up the giving of these concerts and to forego the opportunity of listening to the finer music conveyed by the greater artists.

It is submitted that the theory of the Bureau of Internal Revenue under which admission tax has been imposed is impolitic and against the best interests of the music lovers in the smaller communities of the United States. In order to obtain the necessary talent it has been necessary for smaller communities to contract with an agent in the music center of the United States, namely, New York, to furnish the services of the great musical artists. Naturally, in order to obtain the service of these agents, they have required a flat rate to be paid by the communities for the service of the artist, and out of this flat rate they have required a flat rate to be paid by the communities for the service of the artist, and out of this flat rate they have obtained a commission. The fact that the booking agent in New York has obtained a commission has seemed to the Bureau of Internal Revenue to mean that a concert given in a small community, say Butte, Mont., is part of a profit-making scheme under which the New York agent makes profit and thereby the concert-goer in Butte, Mont., has been required by the Bureau of Internal Revenue to pay an admission tax. This ruling of the Bureau of Internal Revenue is not only unfortunate as being an erroneous conception of the relationship of the music lovers of the smaller communities to the business affairs of the artists, but inimical to the interests of culture in the United States.

It is further submitted for the consideration of the Senate Finance Committee and in support of the proposed amendments that the assessment of an admission tax upon nonprofit musical organizations in the smaller communities of the United States is paradoxical in view of the policy of the administration in general at the present time. On the one hand, the President, through his recovery program, is endeavoring to create more employment for the people of the United States, among which are artists and musicians. Musicians have to a greater extent than the rest of the population suffered from unemployment during depression. To penalize the giving of concerts in the United States is to minimize the opportunity for employment to the musicians. In addition, the operation of the National Industrial Recovery Act has caused and is causing shorter hours for workers. Shorter hours for workers necessarily means a greater amount of leisure time for them. It is altogether fitting and proper

that this leisure time be applied to improving the artistic and cultural outlook of the population. The giving of concerts of this nature, music of the highest order and by the finest artists, is probably the highest possible means of devoting leisure time. The penalty imposed by the admission tax also penalizes the opportunities for betterment which ought to be inherent in any program that gives to the population of the United States more leisure time—time, we submit, which ought to be devoted to betterment and to the enrichment of artistic appreciation.

Respectfully submitted.

GEORGE L. SCHEIN, *Esq.*,
Counsel for a Committee of Community and Civic Concert Associations.

Committee of Community and Civic Concert Associations: Rev. Thomas S. Roy, Worcester, Mass.; Mr. George T. Livingstone, York, Pa., co-chairmen; Mr. Paul Bedford, Wilkes-Barre, Pa.; Prof. W. P. Bigelow, Amherst, Mass.; Mr. Victor L. Brown, Milwaukee, Wis.; Judge James I. Brownson, Washington, Pa.; Mr. George W. Cassell, Rome, N.Y.; Mr. Lewis Ensign, Boise, Idaho; Mr. Solon Farrnbach, Baton Rouge, La.; Mr. Frank H. Gifford, New Bedford, Mass.; Mr. Theodore B. Griffith, Indianapolis, Ind.; Mr. Alf. C. Kremer, Butte, Mont.; Mr. L. J. Ollier, South Bend, Ind.; Mr. Rufus Parks, 222 Law Building, Norfolk, Va.; Mr. Frank Picard, 500 Cedar Street, Saginaw, Mich.; Mrs. C. A. Pickard, Jamestown, N.Y.; Mr. Eli Sanger, Dallas, Tex.; Mr. E. S. Van Olinda, Albany, N.Y.; Mr. J. T. Ward, Nashville, Tenn.; Mr. J. J. Weadock, Jr., Lima, Ohio.

The CHAIRMAN. Thank you very much. I understood Mr. Simpson wanted to present a resolution on the part of his organization. Is he in the audience? (No response.)

The CHAIRMAN. He is not here. Mr. Eisner, the committee will give you 5 minutes. I understand you want to leave very soon.

Mr. EISNER. Yes, sir.

The CHAIRMAN. Let me say with reference to these various so-called "nuisance" taxes that the committee must, of course, when we come into executive session, conclude some policy with reference to the reduction or elimination or nonelimination with respect to them. The committee is familiar with these items. The committee wants to take them off if possible, but whether or not they can is a question of revenue.

STATEMENT OF MARK EISNER ON BEHALF OF PUBLIC SERVICE TICKET OFFICE, NEW YORK, N.Y.

Mr. EISNER. I am not asking, Senator, to take off any tax. I am merely asking in this connection for relief from an inequity in connection with a certain business in New York.

I represent the Public Service Ticket Office in New York, with which many Senators, I believe, may be familiar. This concern purchases from theaters entire blocks of tickets in the rear of the orchestra and in the balcony, which it sells to the public at less than half the price.

In the Revenue Act of 1932, there were some Congressmen who felt that when people went to prize fights and to boxing and wrestling matches, that it was rather unjust to find in front of them in the favored seats, people sitting who had obtained passes or tickets at a nominal rate, whereas they had paid the full rate, and therefore they put into section 500 of the law, a provision that where passes are issued, free admissions given, or tickets sold at reduced rates, that the reduced rate or the pass would have to pay the tax that the regular admission for that place would pay. And therefore what has happened in the case of this particular concern is that

whereas you may go there and buy a ticket that sells at the box office for $3, you pay $1 for it, and you have to pay 30 cents in tax, because it would be 10 percent of the regular price.

The importance of this concern, so far as the theaters of New York are concerned, is this. It sells in good years at least $4,000,000 worth of tickets, and in bad years, such as we have had for the last 2 or 3, over $1,000,000. A play will open in New York City and because it is not a success immediately, and because theatrical managers are not well financed at the present time, would close in a week or 2 weeks. Then this public service ticket office comes along and buys blocks of the tickets 4 or 5 or 6 weeks in advance, and sells them to the public at half price or less, and by thus financing the theater, keeps the play going, keeps the actors, the musicians, the stagehands, the carpenters, the electricians, the box-office people, in their jobs, and very often a play which would have been a failure is turned into a success by the doors being kept open, and an adverse newspaper criticism converted into a successful production by reason of the mouth-to-mouth reports by those who have seen it.

What has happened since this new law came into effect is this. People walk in and they want a ticket. It costs them $1. They are told that the tax is 30 cents, and they immediately walk out and say, "We won't pay a 30-cent tax on a $1 ticket", and they will go to some moving-picture house or whatnot, with the result that our business has been crippled very seriously indeed. We may have to close up.

And the business of the theaters, consequently, is adversely affected. What we want to do is to be placed in the position where we were before the act of 1932, namely, for us to pay 10 percent tax to the Government on the price that we pay to the theater, and for us to charge to our customer 10 percent of the excess that we charge him over our price.

Senator REED. It is easier to change the tickets than it is to change the law, isn't it?

Mr. EISNER. We cannot change the tickets, because the tickets are the same as those that are sold generally at the box office for $2.50 or $3. In other words, the whole orchestra is, let us say, $3. We buy the last five rows. Those tickets will be marked $3 and always have been.

Senator REED: Couldn't you stamp "$1" on them?

Mr. EISNER: If $1 was stamped on them and we did not buy the entire section and the theater wanted to sell the ticket at its regular price, they could not do it. In this way we come in and actually finance the theater and keep the productions going.

We made a tabulation, if it please the Senators, that in 1933 because the Treasury Department ruled that this tax affected us, in the latter part of 1933 we figured it on the first 6 months of 1933, and this is what the result was. We kept 16 theaters open that otherwise would have closed. They were ready to close if it had not been for the buys that we made.

Senator COUZENS. You made a profit on your buys, didn't you?

Mr. EISNER. We do not contend that we did not make a profit on our buys, Senator; but what we do say is this, that now that they want to tax us 30 cents on a ticket that we sell for a dollar, instead

of 10 cents, we cannot sell them. The people simply do not want to buy it. They revolt against it, and ever since we have had an admission tax, we have been paying a tax based on 10 percent of our selling price or our purchase price.

Senator COUZENS. I thought you were posing as a philanthropist of the theaters in keeping them open. That is the point I was trying to make.

Mr. EISNER. The effect of our being in business, Senator Couzens, is to keep the theaters open, because we kept 16 theaters open in the beginning of 1933. They kept open a total of 172 weeks that they would otherwise not have been open. Two thousand one hundred and thirty-four people were kept in employment, and they would have lost it otherwise. The total salaries were $78,700, paid each week during the time that we kept the theaters open.

Senator COUZENS. But I am trying to make the point that you made money in keeping them open, did you not?

Mr. EISNER. Yes, indeed. I do not deny that.

Senator COUZENS. You were not philanthropists then in keeping all of these theaters open. That is the point I was making.

Mr. EISNER. I say that the effect of our making these buys, any way you want to put it, the effect of our making money was to enable other people to retain employment.

The CHAIRMAN. You want to pay an admission tax based upon the price that you pay for the ticket?

Mr. EISNER. Correct. We want to pay to the theater 10 percent of what we pay to the theater, and we want to pay the Government beside 10 percent of the amount that we receive for the tickets when we sell them.

The CHAIRMAN. If you want to elaborate your statement, you may file a brief.

Mr. EISNER. I have it here.

Senator CONNALLY. The purchaser would have to pay both of those taxes.

Mr. EISNER. Yes, sir; but now he has to pay from 20 to 30 percent of the admission price, which he does not want to pay.

Senator REED. The tax is 10 percent of the amount stated on the ticket?

Mr. EISNER. Yes, sir.

Senator REED. For the life of me, I cannot see why you could not get a rubber stamp and stamp "$1" right under the $3 or whatever is printed on the ticket.

Mr. EISNER. I do not think that we would be permitted under the law or the regulations to change the established price. We would like to do it, but the law now says, Senator, that is the point, the law says that anyone who buys the ticket at a reduced price must pay the same tax that anyone else would have to pay at the theater for the same accommodation; so we are bound by the law on that.

Senator CONNALLY. Let me ask you a question there. You sell these tickets at cut rates. Although it is stamped at $2.50, you sell it for $1 or $1.50.

Mr. EISNER. For $1.

Senator CONNALLY. If anybody buys it at the theater, he has to pay $2.50.

Mr. EISNER. He cannot buy the same seat.

Senator CONNALLY. I know that. But if he buys a similar ticket at the theater, he pays $2.50 or $3 for it.

Mr. EISNER. He would; yes, sir.

Senator CONNALLY. But you want to sell, through this arrangement with the theater—it is a sort of an overflow proposition. They sell the public all of the tickets that they can at the theater, and then sell the overflow a $1 or $1.50. The man that buys it at the theater pays the 30 cents.

Mr. EISNER. It does not work out that way. As a matter of fact, what we really do is to buy the entire section so that from the practical standpoint if you went to the theater you could not get it, because you would have to get it and pay the reduced price.

Senator CONNALLY. I do not sympathize with that at all.

The CHAIRMAN. The object, largely, is to make a success out of that particular play, isn't it?

Mr. EISNER. Yes, sir.

The CHAIRMAN. And you want to get a credit there?

Mr. EISNER. Yes, sir. And they would go out of business if we do not have it.

Senator WALCOTT. Is not one of the greatest drawbacks to the legitimate theater today the ticket speculator?

Mr. EISNER. Yes, sir; but we are not the ticket speculator. We do not sell that in advance.

The CHAIRMAN. We have a provision in here for the ticket speculators.

Mr. EISNER. Yes, sir; but we are not in that class, because we sell at a reduced price.

Senator BARKLEY. The effect of your suggestion would be that those who have the advantage of getting a cheaper price for a seat will value the ticket as compared to that which is paid by those who buy at the ticket office, would also obtain an additional advantage by paying less tax.

Mr. EISNER. That would be correct, Senator——

Senator BARKLEY (interposing). That is the sum and substance of it.

Mr. EISNER. It would be if it were not for this fact. Everybody in New York City and everybody that comes to town knows that for the accommodations in the back of the orchestra and in the balcony the place to get the tickets is at Forty-third Street and Broadway. Nobody goes to the box office and will pay the full price for tickets. Practically, it is not done.

Senator BARKLEY. I think it is incorrect to say that nobody will do that, because that is usually what I do when I go to New York.

Mr. EISNER. You know better now, Senator. [Laughter.]

Senator BARKLEY. I may try to take advantage of that.

Senator CONNALLY. Let me ask you a question. If that is true, why do the theaters not classify those seats and sell them at $1.50 or $1?

Mr. EISNER. There is one very practical reason why they cannot. When those shows open in New York, they do not know it is going to be a failure. The tickets are all stamped and marked. At the end of a week or 2 weeks' time they find they are not getting the people

there, and they have to do something to give them oxygen, and this concern gives them oxygen.

Senator CONNALLY. They only give oxygen to certain of the attractions. Any that they can high-jack into paying $3, they stick them.

Mr. EISNER. This does not happen with us. Let us take this concern that I am speaking of. We do not make a profit by any means on every purchase that we make, because we take considerable losses through buying in advance, and being stocked ourselves with a great many tickets, and it is a tremendous investment of thousands of dollars every week.

The CHAIRMAN. Thank you, very much.

Senator BARKLEY. You say Forty-third Street and Broadway is your address?

Mr. EISNER. Yes. [Laughter.] An officer of the company is here. He would like to say one word.

STATEMENT OF MATHEW ZIMMERMANN, NEW YORK, N.Y.

Mr. MATHEW ZIMMERMANN. I just wanted to correct Mr. Eisner's statement to Senator Couzens. We do not make a profit on our deals or our guarantees. We just guaranteed Earl Carroll's Vanities for the term of 16 weeks at $13,500 a week. We lost $32,000 of that guarantee. On every guarantee we have made this year since we put the extra tax on, we have lost, and we cannot stay in business. We must go out of business. We cannot stay in business. We have lost on every guarantee.

Before I left for Washington, a man with tears in his eyes had to close his show tonight, called "Broomsticks" that we cannot guarantee. We cannot lose any more than we have lost. We have reached our limit.

Senator CONNALLY. You do not pick the right shows, apparently.

Mr. ZIMMERMANN. Well, here is the condition of the theater. There are a hundred producers in New York, and only 10 of them have the money to produce a show. I can read to you shows that we kept running for 23 weeks, employing a great many people that would have closed tight.

Senator COUZENS. You are in business to make money.

Mr. ZIMMERMANN. We are, but we are not making it.

Senator COUZENS. That is true of other concerns.

Mr. ZIMMERMANN. But we can make money, and we can pay plenty of taxes. I guaranteed a show last Saturday night that was closing, called "All the King's Horses", guaranteeing it for $30,000 for four weeks.

The CHAIRMAN. I would suggest if you want to elaborate the proposition, you can elaborate it in the record. Thank you, very much.

(Brief of the Public Service Ticket Office, by Mark Eisner, attorney, follows:)

MEMORANDUM SUBMITTED ON BEHALF OF PUBLIC SERVICE TICKET OFFICE, INC., IN SUPPORT OF AMENDMENT TO SECTION 500 (a) OF THE REVENUE ACT OF 1926, AS AMENDED

To the Honorable, the Members of the Senate Committee on Finance:

It is intended by this memorandum to present in the most concise form the reasons why justice and sound policy demand the acceptance of the amendment here proposed.

1. *The purpose of the amendment.*—The act now purports to tax admissions sold at reduced prices at the rate for nonreduced prices, the object originally being to reach favored persons who received complimentary passes to prize fights, wrestling matches, and the like. (See Congressional Record 75, part 7, p. 7145, Revenue Act of 1932.) It was not intended to affect the Public Service Ticket Office, Inc., and it certainly should not.

The Internal Revenue Bureau rules in the latter part of 1933 that Public Service Ticket Office, Inc., would be required to collect a tax based upon the price printed on the ticket, despite the fact that Public Service Ticket Office, Inc., sold the ticket at a price *not to exceed one half* such price. Thus, a ticket having a printed price of $3 and sold by the Public Service Ticket Office, Inc., for $1 would, under the present ruling, carry a 30-cent tax or 30 percent of the purchase price.

2. *The nature of the business of the Public Service Ticket Office, Inc.*—This concern is located in the city of New York and is well known as occupying the corner of Forty-third Street and Broadway. It buys from theaters blocks of tickets for rear sections of orchestras and balconies, making such purchases for weeks in advance and paying a reduced price. These tickets are sold to the public at a small advance over the cost but still not in exces of one half of the regular admission price.

The extent of its business may be judged from the fact that with an average selling price of $1, the company has done from considerably over a million to 4 million dollars in a single year.

3. *The customers of the Public Service Ticket Office, Inc.*—Obviously, people who can afford box-office prices for preferred seats do not patronize this company. Its business is derived from those citizens who can afford to spend no more than a dollar for a seat and who otherwise would not attend the theater. If an average year is selected, over 2 million seats are purchased at the Public Service Ticket Office.

The Public Service Ticket Office has no branches, and many thousands of people use its facilities daily. The business of the company has been sharply cut through the necessity of collecting the tax on the full price, because an additional 10 percent per ticket marks the difference between the average man's ability to go to a theater and the enforced alternative of a movie, where, in most instances, there is no tax at all paid for admission.

4. *What the Public Service Ticket Office has accomplished for the theater, the Government, the city, and the public.*—Obviously, if a play fails to attract box-office sales, it must close unless other help is available. Since 1929 the failure to meet expenses after a week or two means the end of the road for many producers and ordinarily they must close because there is very little capital behind the average production. In such cases the Public Service Ticket Office insures salvation because by purchasing large blocks of tickets in the rear of the orchestra and the balcony for weeks ahead it finances the production and thereby keeps in employment hundreds of actors, stage hands, carpenters, musicians, electricians, ushers, and box-office people. The theater obtains an income from which interest to the mortgagee and taxes to the municipality may be paid.

It very often happens that a play is not a success when first produced but, given a month's life, will "catch on", so to speak. In hundreds of instances the fact that the Public Service Ticket Office by its purchase of tickets has financed the production, so that it might survive a month or 6 weeks, has turned many an apparent failure into a success. A successful long run in New York means road companies and employment not only for more actors and related employments, but also to the railroads, hotels, and theaters outside of New York.

We could carry the sequence much further, such as demonstrating how a successful performance in New York means value to the motion-picture rights and added revenues and employment in the motion-picture industry.

It must be clear to this honorable committee that the mere fact that the theaters are kept open, instead of being forced to remain dark, insures revenues to the Government not only from admission taxes but also from income taxes.

It may interest the Senators to know that when the bank holiday was declared in 1933 the Public Service Ticket Office, Inc., kept many of the theaters open. It can safely be said that if this concern is put out of business the theater business of New York goes with it. It is most seriously threatened now by drastic taxation.

A tabulation was recently made showing the effect of the operations of the Public Service Ticket Office, Inc., in sustaining the theatrical business of New York during the first half of 1933. (This was before the Internal Revenue Bureau had ruled that under the amended act Public Service Ticket Office, Inc., was required to collect a tax based upon the price printed on the ticket.) The figures showed that through the agency of this concern alone 16 theaters were kept open that otherwise would have closed; that a total of 172 weeks was added to their runs; that 2,134 people were given work who otherwise would have lost it; that $78,700 was the total of salaries paid each week during the time the Public Service Ticket Office kept the theaters open.

The average weekly receipts thus added were $134,900; the total approximate additional salaries were $791,500 and the total additional receipts on which the Government collects its taxes were $1,378,000.

It is therefore respectfully urged that the following amendment be inserted in the act:

At the end of second full sentence of section 500 (a), after the period following the word "time" insert the following:

"In the case of any person regularly engaged in the business of buying at reduced rates admissions for the purpose of resale, the tax shall be 1 cent for every 10 cents or fraction thereof of the amount actually paid by such person for such admissions; and if such admissions be resold at a price in excess of that previously paid therefor, there shall in addition be collected by the seller and paid a tax equivalent to 10 percent of the amount of such excess."

Respectfully submitted.

PUBLIC SERVICE TICKET OFFICE, INC.,
By MARK EISNER, *Attorney*.

The CHAIRMAN. Before the committee recesses, there are three gentlemen here who are interested in the tax on athletic admissions. How much time would it take?

Senator REED. Is Mr. Harrison here?

The CHAIRMAN. There are Messrs. W. D. Harrison, Frank McCormick, and C. M. Updegraff.

Senator CONNALLY. There are some gentlemen here who want to appear on the gasoline tax. Can we have them heard now?

The CHAIRMAN. There have been requests to be heard on that. We have not many on the gasoline tax here.

Senator CONNALLY. The American Trucking Association has a representative, and I understand the petroleum interests have a representative. Could we give them about 15 minutes on that?

The CHAIRMAN. I think we can, and they can at least file their briefs. We will go ahead and finish this athletic proposition. We are going to have a session in the morning. I hope no one will leave, because we may call on someone else after this.

STATEMENT OF FRANK McCORMICK, REPRESENTING THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Mr. McCORMICK. Mr. Chairman and members of the committee, we are here representing the entire body of colleges and universities in America, that is, the National Collegiate Athletic Association, which is a group which conducts the athletics in the colleges and universities. We have here on this committee Mr. C. P. Miles, athletic director of the V.P.I., Mr. W. D. Harrison, director of athletics of Pittsburgh, representing the eastern intercollegiate, and Mr. Arthur Berkman, director of athletics, and Mr. Murphy, director of athletics at Georgetown.

Years ago the National Collegiate Bar formed a committee to make a study of athletics—of the financing and the admission tax, and the effect it was having. We found that there had been a great change in athletic set-ups over the country.

A few years ago there were outside bodies running the athletics through student organizations or outside alumni organizations, while today they are integral parts of the institutions, with the title to all athletic plants and property, stadiums, and so forth, within the institution. Most of the coaches and the directors have faculty rank the same as professors and instructors in these institutions.

We find at the present time, contrary to the public's belief, that the athletics in the colleges and universities are in very bad and critical financial condition. The departments are financed in three ways—from school college funds, from athletic fees charged to the students when they register, and from receipts from athletic contests. Practically the bulk of the receipts come from football. In a few schools, basketball is a paying sport and runs up to large-sized crowds, but the majority of the money comes from football games.

In the present condition, we find that 40 schools, colleges and universities report an indebtedness of $13,546,500.00, an average of over $300,000 of indebtedness for an institution. Seventy-one percent of the colleges and universities over the entire United States last year operated on a financial loss, therefore increasing their indebtedness. This indebtedness comes from the building of plants, stadiums, and purchase of grounds, and also from operating losses of the past few years, since 1929.

To give you some idea of the loss in the particular States, we picked the States of the universities and colleges of this committee, and we find that 1 college in Mississippi reports a $65,000 indebtedness, 1 college in California, $350,000; Colorado, $390,000; 1 institution in Connecticut, $500,000; 4 institutions in Texas, $734,000; 1 institution in Utah, $90,000; 3 institutions in Virginia, $146,000; 2 institutions in Michigan, $1,000,000.00; 4 institutions in Pennsylvania, $5,933,000; 2 institutions in Georgia, $82,500; 1 institution in Kentucky, $62,000; 2 in Missouri, $528,000.

Senator REED. You have gone through the list of States of the Finance Committee?

Mr. MCCORMICK. Yes, sir; because I thought you would be more familiar with your own institutions. We have it for the entire United States.

One from North Carolina, $40,000; 1 institution in Oklahoma, $40,000; Rhode Island, $25,000; and 2 from Wisconsin, $495,000.

The institutions will be forced to pay this indebtedness.

The tax being put on, the exemption which was withdrawn in the 1932 Act, the first year of operation the colleges added that on to the ticket prices. In most places they were forced, because of the financial conditions to absorb that tax. Although they paid it, they are absorbing it in an interesting way, thereby reducing the receipts. The smaller groups of colleges which used to get 75 cents and $1 for admission have reduced it below the exemption of 40 cents, thereby taking 50 to 100 percent of their revenue and decreasing it in one lump.

We have the following results that have occurred in the institutions. It has become mandatory to reduce their budgets. Eighty-five percent of the colleges attribute the necessity for drastic reduction of ticket prices to the admission tax, and 75 percent report the tax responsible for decrease in revenue. Sixty-five percent of the institutions in the United States reduced their personnel, 72 percent reduced salaries, 35 percent curtailed physical education, 40 percent curtailed intercollegiates, and 30 percent suspended debt and interest payment upon their indebtedness.

We feel that it would be a great help to the institutions, universities and colleges and to education, as physical education and games and recreation is part of the educational program in our institutions. We feel that this would relieve them of a great burden and a great load by not only giving back to those institutions that money they are now paying for taxes, but also to increase their revenues, because these smaller institutions can put their prices up from 40 cents, where it now is, to 75 cents.

Senator REED. If we raised the exemption from 75 cents to $1, wouldn't that give substantial relief?

Mr. McCORMICK. That would give relief to a great majority of the smaller institutions. It would not give relief to some of the institutions which have the large indebtedness, which are the larger institutions.

Senator REED. In drawing the 1932 tax bill, the committee was influenced by the contract between these large crowds of prosperous people going to football games and the starving people in the streets. We thought if they could afford to go to a football game they could afford to pay a tax.

Mr. McCORMICK. There are about six institutions which are at the present time in good financial condition because of the large football crowds. But the eastern institutions, which formerly drew large crowds, are in very bad financial condition at the present time.

Senator WALCOTT. Do you think the tax is the chief factor in that?

Mr. McCORMICK. I should say the general economic condition is the chief factor, but the tax is also a factor.

Senator WALCOTT. Your idea is a complete exemption?

Mr. McCORMICK. A restoration of the exemption as in the 1926 act.

The CHAIRMAN. If you want to elaborate on anything, Mr. McCormick, you may in a brief.

Mr. McCORMICK. I would just like to also say briefly that this is not only the athletic directors, but the college presidents as well are very vitally interested, and I would like to quote briefly from a letter from Dr. Clapp, president of the University of Montana, giving their situation, written to one Member of Congress, from their State:

THE UNIVERSITY OF MONTANA, STATE UNIVERSITY, MISSOULA,
January 26, 1934.

HON. JOSEPH MONAGHAN,
House of Representatives, Washington, D.C.

MY DEAR MR. MONAGHAN: I understand an effort is to be made to introduce into Congress a provision in the new proposed revenue act restoring the original provision exempting colleges and universities from the burden of the Federal admission tax.

Although the great need for federal revenue is recognized, yet the burden of the tax placed on an educational program that is already suffering from greatly reduced income is unjust and does have a detrimental effect.

Practically all admission charges assessed on this campus are for what is called extra-curricular activities. These activities are permitted and fostered because of their direct or indirect educational value. Profit to an individual or to several individuals is not the motive for the admission charge. Any added burden that is placed on these activities does have a tendency to decrease the educational benefits. The amount of the tax representing the larger part of the burden is supplemented by clerical expense in accounting for the tax and also by reduced patronage, if the tax is passed on to the public. Funds that should be available for retiring indebtedness or for furthering these educational activities are considerably reduced.

As far as this campus is concerned, physical education and athletics bear the heavier burden of the tax, yet there are instances where the tax as applied is very unreasonable. For instance, an organization in staging an entertainment in honor of another organization or group of individuals admits the public if a admission charge is paid. (The public is admitted on this basis in order to help the sponsoring organization "break even" on the affair.) According to local interpretation of the tax law, the tax assessed against the buying public must also be paid for the guests. When the receipts are totaled, the organization finds that from 30 to 50 percent of the total amount received must be paid out as a tax.

Aside from the question of the constitutionality of the tax imposed on our State-supported educational program, the Federal Government has demonstrated many times its willingness to assist in supporting and promoting education in the States. It is not inconsistent to give financial aid to State educational programs and then impose a tax burden of this character.

Anything you may do in support of the effort to restore to the colleges and universities an exemption from admission tax will certainly be appreciated by this institution.

Yours sincerely, C. H. CLAPP, *President.*

The CHAIRMAN. The committee is in sympathy with what you want done. It is a matter of revenue.

Mr. McCORMICK. It would amount to about $900,000.

DATA SUBMITTED BY MR. FRANK McCORMICK, NATIONAL COLLEGIATE ASSOCIATION SUPPLEMENTING ORAL PRESENTATION

Colleges and universities believe that the physical well-being of students is a vital function in education. Just now it is more than ever essential that the youth of the nation be physically fit. This end is attained by programs in athletics, physical education, and health services.

In 70 percent of the colleges, football receipts pay not only for that sport and all other athletic games, but also, wholly or partially, for physical education and health services. Because colleges have found it necessary to cut admission prices and to absorb the admissions tax this year and last, 71 percent are operating athletics at a loss. These deficits are made up by borrowing or by appropriations from general educational funds.

Not only are 71 percent of the colleges operating athletics at a loss, but 40 percent of them show indebtedness against their plants of $13,546,500. This indebtedness in increasing, because deficits are increasing. For instance, 7 typical eastern colleges report as follows:

	1932	1933		1932	1933
College A	[1] $5,877	[2] $45,680	College E	[2] $9,356	[2] $25,000
College B	[1] 20,000	[2] 15,000	College F	[2] 4,000	[2] 11,700
College C	[2] 25,293	[2] 40,000	College G	[2] 53,000	[2] 37,000
College D	[2] 42,072	[2] 10,000			

[1] Surplus. [2] Deficit.

In spite of the fact that the times call for increased employment and wages, 65 percent of the colleges have been forced to cut athletic personnel: 72 percent have cut salaries; and 80 percent have suspended payment on debts and interest.

Eighty-five percent of the colleges attribute the necessity for drastic reduction of ticket prices to the admissions tax; 75 percent report the tax responsible for decrease in revenue.

Briefly, then, the burden imposed by the admissions tax on college athletics is staggering. The Government, however, according to a conservative estimate, will receive this year an income of slightly less than $900,000 from this source. Of this amount, 23 percent is paid by eight colleges or universities. Six of the eight are operating athletics at a loss, and seven have a heavy debt on their plants.

The restoration of the exemption from admissions tax on intercollegiate athletic contests, as in the 1926 Revenue Act, will increase income by millions of dollars, with a considerable increase in employment, increases in salaries, greater purchasing power for necessary equipment, and a resumption of interest and debt payments. Contrary action will eliminate intercollegiate competition from scores of colleges and further curtail athletics, physical education, and health services in all such institutions.

TAX ON CLOCKS

The CHAIRMAN. Senator Walcott, you said that Mr. Ferguson wanted to get away, and would like to be heard. We will hear him now.

STATEMENT OF SMITH F. FERGUSON, REPRESENTING CLOCK MANUFACTURERS ASSOCIATION OF AMERICA

Mr. FERGUSON. I appear before you as an ex-president and now as chairman of the committee on taxation of the Clock Manufacturers Association of America, the members of which association we estimate manufacture not less than 90 percent of the clocks produced in this country.

The Revenue Act of 1932, title IV, section 605 "Tax on jewelry" imposes a 10 percent tax on all clocks sold for $3 and over, and also on parts of clocks and parts thereof for the following reasons:

CLOCKS NOT JEWELRY

This law, by specifically mentioning clocks in the jewelry paragraph (sec. 605) endeavors to classify them as jewelry, with the implied meaning that they are a luxury. We contend that clocks are not jewelry and, in support of this contention, submit the facts that only a relatively small number of clocks are sold through jewelry channels, i.e., jewelers, and that a majority of clocks are sold by other dealers, such as hardware stores, drug stores, department stores, electrical dealers, stationery stores, furniture, stores, and so forth.

Jewelry consists of articles worn for personal adornment. It is obvious that clocks are not in this category.

CLOCKS NOT A LUXURY

We also contend that clocks are not a luxury, as they perform the very important function of telling time, and almost everything man does in life is based on time.

CLOCK'S HOUSEHOLD FURNITURE

We also submit that clocks, particularly those selling at $3 and above, should be more properly classified as household furniture, and are very generally so considered when purchased by the public.

In this connection may we point out that articles of household furniture, such as pictures, rugs, chairs, carpets, and even expensive bric-a-brac ornaments are not taxed, therefore, is it not a proper and equitable question to ask why clocks have been singled out and included in a law which is frequently designated as the "luxury or nuisance tax"?

TAX ON CLOCKS HAS PRODUCED SMALL REVENUE

We have had reports from practically all the principal companies who manufacture clocks in this country and who are subject to this tax since the law went into effect June 1932. These reports show that this tax on clocks has produced for the Government the following very relatively small amount of revenue:

From the beginning of law to Dec. 31, 1932	$61,605.55
For the full calendar year 1933	112,976.52

Based on our knowledge of the clock industry we feel confident that these figures represent a very close estimate and certainly are within 5 to 10 percent of the actual amount this tax has produced. These figures represent the gross amount of tax the Government would receive, therefore, after the cost to the Government of collecting and supervising this tax is deducted, the net amount it produces would be a much smaller figure.

It is furthermore our understanding that the revenue the Government has actually received from this tax on clocks is very much less than was expected it would produce.

Since this tax was put into effect the production and sale of wood-cased clocks, and all clocks selling for $3 and over, has shrunk to almost nothing. The depression has, doubtless, played a small part in the bringing about this condition but all members of our industry are thoroughly convinced that this 10 percent tax has been by far the greatest factor in bringing about a very deplorable condition within the clock industry.

In support of this may I tell you that one very old and large clock company has been compelled to completely close down that portion of its factory which, for many years, produced a large quantity of wood-case clocks. Six other clock companies who formerly were large manufacturers of wood-case clocks now maintain relatively few employees for the production of that type of clock. Employees engaged in this part of the industry are quite largely specialized cabinet makers, and this type of labor is not usable in other departments. The result has been that a large number of this class of employees have either been entirely out of a job, or have been on a very greatly reduced schedule for the past year or more.

Several of these are very old companies, some having been in business for over a hundred years, and we can state without fear of contradiction that never in the history of this very old American

industry has it suffered in the relation to production and sale of wood-cased clocks as much as it has during the past 2 years, and it has passed through many previous depressions. This leads us quite definitely to the conclusion that this 10 percent tax has been the largest factor in reducing employment in the clock industry.

We trust you will not consider us out of order if we suggested how the present law could be amended to accomplish to the relief we desire and so much need. We quote that part of the law that covers clocks, as follows:

"1. There is hereby imposed upon the following articles sold by the manufacturer, producer, or importer, a tax equivalent to 10 percentum of the price for which so sold: All articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semiprecious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical instruments or silver-plated ware, or frames or mountings for spectacles or eyeglasses); watches; clocks; parts for watches or clocks sold for more than 9 cents each; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars. No tax shall be imposed, or any article (other than watch parts or clock parts) sold for less than $3.

We suggest that on line nine the word "clocks" and also on the same line the words "or clocks" be eliminated. On the last line the words "or clock parts" also be eliminated.

In closing, permit me to say that our industry does not ask for the elimination of this tax with a desire to escape taxation, for we have a sincere desire to contribute our share of any equitable tax toward the cost of Government operation. We feel confident, however, that if this tax is repealed the volume of our business will be much increased; more people restored to work; and hope and expect that the Government will receive more income derived from profits of the industry than this excise tax has produced. Profits in this industry have been conspicuous by their absence for the past few years.

This is unquestionably a tax that is a hardship and injury to an old and established business without doing the Government any real good.

There are present in this room two experienced men in this industry—Mr. Edward Ingraham, president of the E. Ingraham Clock Co., Bristol, Conn., and Mr. C. E. Davis, an executive of the Warren Telechron Clock Co., Ashland, Mass., which company manufactures electric clocks. They, I am sure, will be glad to answer any question you may wisk to ask them. I am an executive of the Seth Thomas Clock Co. and will also be happy to endeavor to answer any of your questions.

Senator REED. Mr. Ferguson, do you want to take the tax off clocks entirely?

Mr. FERGUSON. Yes.

Senator CONNALLY. How much revenue do we get from the tax?

The CHAIRMAN. About $115,000.

Senator WALCOTT. I woul like to ask you a question. The percentage of your employees is very high in skilled labor?

Mr. FERGUSON. Yes, sir; they are specialists.

Senator WALCOTT. Thank you.

TAX ON FURS

The CHAIRMAN. Now, the representatives of the fur manufacturers. You want to leave tonight, Mr. Ellis?

Mr. ELLIS. Yes sir.

STATEMENT OF EMIL K. ELLIS, REPRESENTING THE NEW YORK FUR TRIMMING MANUFACTURERS ASSOCIATION

Mr. ELLIS. Mr. Chairman and Senators, I am an attorney and I represent the New York Fur Trimming Manufacturers Association. Our organization is composed of some 450 manufacturers in the city of New York and vicinity. These manufacturers engage in the manufacture of what are known as fur trimmings, that is, collar and cuffs, that go on to a cloth coat and make an entire-trimmed garment.

While I am going to address myself to that particular feature of the business, I do not want from the stand here, or argument, to be interpreted as any militation against the general code—against the tax on furs, because the industry stands united in opposing what we characterize as an oppressive burden.

It would serve no purpose for me to say that this tax is a burden on our industry, and ask you to put it upon the industry of another fellow when you take it off of ours. I realize the difficulty and the handicap that we are under when we come here and say, "Tax the other fellow." I cannot supply you with any ideas as to how you can raise revenue to take the place of the revenue which is no longer there if you take this tax off.

I want to submit certain facts which I believe have been overlooked by the committee at the time the tax on furs was written into the law.

The CHAIRMAN. It gave us a great deal of trouble when we put it on.

Mr. ELLIS. I am very sorry.

The CHAIRMAN. We heard you at that time, did we not?

Mr. ELLIS. Yes, sir. But evidently my mission was not quite as successful as I hoped it would be.

Senator BARKLEY. We heard you but did not heed you.

Mr. ELLIS. The point I want to bring home to the committee is this: The fur manufacturer as a rule is a very small manufacturer. He has very little capital in his business. I think I am quite accurate in stating that the average capital employed in this business is about $5,000; that is, the business of the manufacturer, on which he does a normal annual volume of about $50,000. That is 10 percent on his sales price total volume, which amounts to $5,000. Equal to his entire capital.

These men who manufacture furs are former workers. They have formerly been cutters, nailers, and operators, working on the bench, and when they have saved up a little money, they call themselves capitalists, and they open up a shop with three partners; the nailer, the cutter and the operator, and they employ very little labor.

The situation with regard to the manufacturers is simply this: They manufacture a variety of furs that sell from $1 a set, $1, including a collar and two cuffs—from $1 to $10, which would be the

average within that range. Those furs are known as "dog furs." They really are not domestic dogs. They are Manchurian and Chinese, and we have got dog fur and rabbit fur and coneys and other similar cheap furs.

In 1918 when this tax was first thought of, furs were generally regarded as a luxury and enjoyed only by the wealthy. At that time when anybody used the word "fur", immediately there came into your mind the spectacle of a woman handsomely attired with ermines, sables, and minks. They never thought of cats and dogs.

Senator REED. That would be a funny mixture, if she were wearing ermine, sables, and mink.

Mr. ELLIS. I used it in a separate sense. That would be rather a conglomerate mixture. But we always regarded furs in those days as a luxury, but modern methods of chemistry have made it possible for cheap furs to be so processed as to resemble higher-priced furs, with the result that we are able to manufacture a collar and two cuffs and sell it for a dollar, including the cost of the skins, the dressing, the dyeing, the labor, and the profit to the manufacturer and the dealer. The average prices of these fur sets are from $1 to $10. The average fur coats that are also made are in these smaller brackets. From $50 down is the average fur coat made from muskrat and similar furs. And there are fur jackets sold as low as $5 and $10.

So that when the committee is given the idea that they are taxing a luxury, they are given a mistaken idea, because in 1918 when they first imposed this tax on furs, these cheaper furs were not thought of. As a matter of fact, fur trimmings were not even in use then. You never saw a fur-trimmed coat at that time. At that time the fur-trimming business was just starting, and it started of necessity, because furs were so expensive that people could not afford to get entire fur garments made of furs entirely. So there sprang into existence the fur-trimmed coat—a cloth coat with collars and cuffs on it.

Certainly we all know that the fur-trimmed coat is not a luxury. You can look all over the city of Washington and you will see fur-trimmed coats from $8 to $15 sold in the store, which includes the retailer's profits and the dealer's profit and the labor and everything all the way through. And the shop girl and the girl in the office and even a maid will buy that coat, and she won't be classed as buying something that is a luxury.

I want to drive home to this committee that in taxing furs, you are not taxing a luxury. In that way we suffer from the inclusion in that general class of furs that we named before, those of the higher brackets—minks, sables, and Russian Caracul—but they constitute such a small percentage of the furs actually manufactured and sold for years throughout the entire country that it is a rather unfair comparison——

Senator GORE (interrupting). About what percentage of the furs are these cheap furs?

Mr. ELLIS. The percentage of the small-priced furs are about 80 percent of all of the furs sold in the entire country.

Senator GORE. What was the revenue raised last year?

Mr. ELLIS. The revenue raised last year was about $7,000,000. The Revenue Department originally estimated $20,000,000, and revised it to $15,000,000, and realized about $7,000,000. It has cost the Government more to collect that $7,000,000 than it ever anticipated.

What I want to say is this. I do not know whether or not this committee has considered the question of classification, but it strikes me that when you tax a fur collar and cuff, and tax a fur jacket that sells for $5 and $10, and you are getting strictly into the class of wearing apparel, because you do not tax silk evening gowns, you do not tax the high-priced silk hats, you do not tax the high-priced shoes, you do not tax any other article of wearing apparel; yet what reason can there exist for taxing an entire fur-trimmed coat, with fur collar and cuffs that does not cost more than an average of $1 to $10 and sells in the store for not more than an average of $15? And you will find that out of the total fur trimmings sold, that 90 percent are in the lower bracket figures.

Senator GORE. What is your idea of that classification?

Mr. ELLIS. I do not want to take up too much time in giving you what I consider it should be.

The CHAIRMAN. Have you any concrete suggestion that you can make in that connection?

Mr. ELLIS. To be frank with you, I do not dare stand here as a representative of an industry and say, "Do not tax me and tax the other fellow." I must leave that up to you.

The CHAIRMAN. Can you make constructive suggestions as to classifications?

Mr. ELLIS. I will.

The CHAIRMAN. It has bothered the committee and the experts. It is a very difficult matter to write, and we will take and consider your suggestions.

Mr. ELLIS. I will put that in the brief. This question of tax evasion. It was merely a prophecy when we appeared here in 1932. We said then that the cloak manufacturer being faced with a tax imposed on the collar, and which he in turn passed on to the coat manufacturer, would soon seek means to try and evade this tax. This is what he has done. I can give you a list of them, and I have in fact complained to the Cloak and Suit Trade Authority that there are over 40 of the largest manufacturers of cloaks and suits in New York that manufacture furs on their own premises and take away that business from the legitimate fur manufacturers, and in addition to that they do not pay a tax, because they buy furs direct from the dealer. They are not selling the fur and they do not pay a tax unless that fur becomes the chief component article of value in the cloth coat.

Senator GORE. Would that meet the situation if that was made the line of demarcation?

Mr. ELLIS. If what were made the line of demarcation?

Senator GORE. Whether fur constitutes the principal element of the value.

Mr. ELLIS. That is in the law today.

Senator GORE. I knew we discussed that before.

Mr. ELLIS. We sell a fur collar and cuff for $3. That article is taxed at the source, that is, the source of the sale. When the manu-

facturer sells it, it is taxed. It is not a finished product. It is the only unfinished product that is taxed under this revenue bill. We pass it on to the cloak manufacturer, and it may not become the article of chief value in the coat, and yet we have to pay a tax on it. There is no reason for it at all.

Senator GORE. You mean it is taxed once before it gets there?

Mr. ELLIS. Exactly.

The CHAIRMAN. The present law does not provide that the fur has to be the principal component?

Mr. ELLIS. No. Your tax is on us, you tax us and you tax the cloak man in the event that that fur becomes the article of chief value in the coat.

Senator GORE. What I am talking about is these little coats and dresses that you talking now, not skins, but collars and cuffs. The fur is not the chief ingredient there, is it?

Mr. ELLIS. The Treasury Department holds it is the chief ingredient in what is known as the set, and they have interpreted the act to mean, and we have paid on the basis of interpretation, that since the collar and cuff is finished in that state, that it is a fur collar and cuff and it is the chief article, although it is primarily intended for use upon another garment.

Senator GORE. And is to be attached to another garment?

Mr. ELLIS. It is to be attached to another garment, and has no salability value or utility in a form by itself, and that is their present interpretation.

Senator GORE. Suppose you take the finished product and require the fur to be the principal component of value, that would meet your point?

Mr. ELLIS. Partially. Mr. Fillmore, who is to follow me and represents the coat manufacturers, has just as strong a case for the elimination of this tax as I have. I do not want to be misunderstood. The condition in this fur industry, the coat industry, is this. Between 1921 and the present time, there were over $47,000,000 of insolvency in this industry, representing almost 15 percent of the volume of business done. There is such a tremendous mortality so far as commercial savings is concerned, that the capital is wiped out overnight in a single failure.

The coat manufacturers, the manufacturers of small dressed coats and jackets that sell for $10 and $15. Some of them not more than $50—I would say most of them are not more than $50, yet they have to pay the tax on the entire amount equal to the entire amount of their capital.

And I have had occasion to recognize the existence of such wholesale evasions that I have complained to the Federal Internal Revenue Department time and time again, and I have taken it upon my own shoulders to hold mass meetings in the Industry and warn our very members that I will prosecute them if I can find there is evasion. I have had the occasion to complain to the cloak and suit authorities. But you cannot stop it. Paraphrasing the old adage as reflected in this situation, "Necessity is the mother of evasion." In this particular industry they cannot meet this tax, and they are evading it so steadily and so continuously and so broadly that it is an imposition upon the legitimate manufacturer. He cannot stay in business to

meet that competition. They sell furs without bills. The coat man says, "I will give you a little receipt. Don't make out a bill." Why? Because he has to pay the tax if that fur becomes a component article of chief value, so they prefer to buy without a bill, and they do that every day in the year, and the legitimate manufacturer cannot meet that competition.

The CHAIRMAN. We estimate $15,000,000 on this tax and only got $7,500,000.

Mr. ELLIS. Yes, sir.

The CHAIRMAN. Thank you, very much. And you may file those suggestion you have in the record.

Mr. ELLIS. Within 48 hours?

The CHAIRMAN. Get them in as soon as possible.

(The suggestions referred to are as follows:)

MEMORANDUM SUPPEMENTAL TO ORAL ADDRESS BEFORE SENATE FINANCE COMMITTEE IN OPPOSITION TO FUR TAX

This memorandum is submitted by permission of the chairman of the committee to supplement the remarks made by the undersigned in his appearance before the committee on Wednesday afternoon, March 14, 1934.

The undersigned called attention particularly to the fact that the taxation of furs as a luxury was predicated upon a misconception of the various grades and values of furs, and called attention to the fact that the manufacturers of fur trimmings, to wit, collars and cuffs, which are later affixed to cloth garments, sell these sets from prices ranging from $1 a set to $15 a set. A set which sells at $15 is considered a very high-priced set, as it goes on to a cloth coat which later sells for about $37.50.

The vast majority of fur sets are sold much below that figure and it would be a fair estimate to state that the average fur set sold in this country is of the approximate value of $10 or less. These low-priced sets predominate in the American market and are affixed to cloth coats which sell complete at retail for from $7 to $25. These furs generally consist of dog, cat, rat, coney, opossum, vicuna, and similar cheap furs.

Certainly such a fur is not a luxury and it does violence to common sense to argue that this class of merchandise is anything more than an article of wearing apparel, for the cuffs are used as a muff, and the meagre fur on the lapel supplies warmth. A cloth coat without some fur trimming is hardly any protection in cold weather, as might well be understood. Cloth coats without fur trimmings are hardly used in the market, and the average female servant or factory worker buys a coat trimmed with these cheap furs.

Yet the tax is imposed upon fur irrespective of its class or value, and thus a heavy tax is placed directly upon the consumer who can ill afford to pay it, for the tax is passed along by the furrier to the coat manufacturer and by him in turn to the public. In view of the very small capital of the fur manufacturer, it is impossible for him to absorb the tax because a tax on the gross volume exceeds his total capital in the vast majority of cases.

The tax in its present form was taken verbatim from the 1918 revenue bill, but at that time furs were indeed a luxury, for the only type of furs which were then known to this country were expensive types and the only garments made of fur at that time were the fur coat and scarf. In the last 15 years however, the necessity for a cheaper garment, not made wholly of fur, but merely a trimming of cuffs and a collar, has substantially replaced the fur coat and is commonly worn as an article of cheap wearing apparel by considerably more than 90 percent of all wearers of winter coats. Any store window in the city of Washington or elsewhere will reveal the average price of these coats with cheap fur trimmings on them.

Since the excise taxes do not affect any other article of wearing apparel, why should it be imposed on this cheap class of fur which can lay no boast to even a bowing acquaintance with the word "luxury."

There is no tax upon dresses or gowns which sell for very high prices or upon high priced millinery, shoes or hats, which sell for many times the value of the entire fur-trimmed coat.

The questions of the committee revealed a misunderstanding as to the imposition of this tax. Senator Gore remarked that if the fur did not become the article of chief value in the coat, it was not taxable. That, unfortunately, is not accurate, as the tax is imposed in the first instance on the fur manufacturer who sells the fur, irrespective as to whether or not it later becomes the article of minor or chief value in a coat. If, however, it later becomes an article of chief value in the coat, the coat manufacturer pays a tax on the entire garment and obtains a refund as to any tax theretofore paid by the fur manufacturer.

But in any event, the tax is imposed on every type of fur no matter how cheap and of course this tax is paid ultimately by the consumer.

Chairman Harrison inquired as to what classification might be made to bring about a more equitable result. As stated before the committee, however, the undersigned is unwilling to discriminate against other branches of the industry which may be taxable in the event any exemption or modification is made. But for the benefit and guidance of the committee, if the tax is ultimately to be retained in any event, why is it not fair to exempt articles made of fur which sell for less than the sum of $15? If a collar and cuffs are sold for $15, to be put upon a cloth coat, which because of the low value of the fur cannot sell for more than $37.50, why should a tax be imposed on the theory that that coat is a luxury?

Does not every man pay more for his suit of clothes? Why penalize the girl who buys a cheap fur trimmed coat? These coats are bought by the humblest and poorest of the consuming public. I am not talking of the high priced furs or the fur coats which sell for hundreds of dollars. I am talking of the average coat and jacket purchased by the poor person, a class who can ill afford the imposition of this tax, and a tax which cannot possibly be reconciled with the policy of the committee to avoid excises on articles of wearing apparel. If the fur tax is inevitable, why not retain it only upon the furs which are indeed a luxury?

It is perhaps futile to recite the desperate condition of this industry and the paralyzing effect which this tax has had upon the small manufacturer. This industry, already demoralized by an excessive rate of mortality in insolvencies, already stagnated by credit restrictions, has little indeed to hope for with this tax ladened upon it.

The exemption, however, of the cheaper classes of furs by fixation of value, which in the minds of the committeemen, is far below the classification of a "luxury" would bring some ray of hope to them and amount to a genuine boon.

In this industry, where unionism is strong and workers receive as high as $1.42 an hour under the code, its contribution toward recovery justifies this committee in seeking even a partial means to alleviate its burden. The amount to be derived by the Government, considering the wholesale evasion and cost of enforcement and the consequent penalization of the legitimate manufacturer by such unfair competition, is very small indeed in relation to the injury.

The Government might indeed fare better if it gave this small industry a chance to revive itself and pay more to the Government in increased profits taxes than by retarding its recovery by this burdensome tax.

Respectfully submitted.

EMIL K. ELLIS,
Attorney for New York Fur Trimming Manufacturers Association, Inc., New York City.

STATEMENT OF MR. EDWARD FILLMORE, REPRESENTING FUR COAT AND TRIMMING MANUFACTURERS

Mr. FILLMORE. Mr. Chairman and gentlemen of the committee, I represent both the coat and the trimming manufacturers. We are here to oppose and request that the Senate give us some relief regarding the excise tax on furs. I concur in everything that Mr. Ellis said regarding this tax.

My main argument, however—and it will be very brief—is on the point that furs are the only garment of wearing apparel that

is being taxed. We feel that not sufficient consideration has been given to that phase of this situation.

In 1918 furs were taxed, but we contend that at that time possibly there was some justification in enacting this tax, because it was the intention of Congress at that time to tax unessentials. We protested the tax at that time, and we also protested it in 1932. We feel that this tax is wholly discriminatory and unjust. There is no sense and justice in taxing one industry and making them pay the governmental expenses against another. A suit of clothes that you pay $100 for requires no tax whatever, whereas a fur coat at $10 is held taxable. It is unscientific, it is unfair, it is unjust.

I appeared before the Ways and Means Committee, but it seems, judging from the bill they passed, that there was no intention of punching the excise taxes at all. Now we come before you with the request for some relief to be given, because this tax is really very disastrous. It has very disastrous results on the industry.

Senator REED. You would prefer a uniform manufacturers' sales tax?

Mr. FILLMORE. Absolutely. We have in 1919 and 1920 advocated the sales tax. I think it is more uniform and it is fairer. Let all industries pay the governmental expenses, but it is not fair to make me pay the expenses for the other fellow.

The CHAIRMAN. Do not take that suggestion so seriously.

Mr. FILLMORE. I realize that Senator Reed is in favor of the sales tax, and I advocated it away back in 1918 in the same way. All of the selective industries advocated it at that time, and it seems strange that the Ways and Means Committee, democratically controlled 2 years ago, has offered it to the House, but it has disappeared, because some people did not think it was proper, and they thought that possibly the poor would have to pay it. We do not agree with that proposition.

Senator GORE. Too many votes against it.

Mr. FILLMORE. I hope there will be enough votes to carry through this proposition eliminating the tax on furs.

Senator GORE. Can you lay down some line of demarcation as to the value, where it would be practical to manufacturers of those fur coats, which really reflects the ability to buy?

Mr. FILLMORE. If you are taxing furs on the basis that it is a luxury, then I would say tax a fur above, let us say, $200 to $500, and after all, I think we all know that what may to one be a luxury may be a necessity to another. One who can afford to pay a higher price—to him the fur is a necessity and not a luxury. I cannot see how in the world this subject of luxury ever got into the minds of Congress, because after all, while it may be down at Miami no luxury to wear a fur coat, but would be ridiculous, up in the North where the fur garments are required to protect them against the weather, it is an absolute necessity. Furs always have been more or less of a necessity, and why Congress should think it is a luxury I cannot see.

The CHAIRMAN. Thank you very much. Put in your brief.

Mr. FILLMORE. Thank you, gentlemen. I hope you will give it the proper consideration.

(The brief referred to is as follows:)

MEMORANDUM IN SUPPORT OF REQUEST TO REPEAL SECTION 604 OF TITLE IV OF THE REVENUE ACT OF 1932, IMPOSING A MANUFACTURERS EXCISE TAX OF 10 PERCENT ON ARTICLES MADE OF FUR, SUBMITTED TO THE SENATE FINANCE COMMITTEE ON BEHALF OF THE MEMBERS OF THE ASSOCIATED FUR COAT & TRIMMING MANUFACTURERS, INC., AND THE UNITED FUR MANUFACTURERS ASSOCIATION, INC.

Under the Revenue Act of 1932 (title IV, sec. 604) there was imposed a manufacturers excise tax on all articles made of fur or of which fur is the component material of chief value. The section reads as follows:

"Sec. 604. *Tax on furs.*

"There is hereby imposed upon the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to 10 percent of the price for which so sold: Articles made of fur on the hide or pelt or of which any such fur is the component material of chief value."

Practically the entire fur-manufacturing industry affected by this excise tax, individually and as represented through their respective trade organizations, appeared before the Ways and Means Committee last December and petitioned Congress to relieve the industry from this unjust and discriminatory tax. The new proposed revenue act of 1934, however, as passed by the House, offers no relief to the fur manufacturers, as the tax on furs seems to have been retained by the House. Therefore, we venture to submit to the Committee on Finance our earnest appeal that in considering the new proposed revenue act of 1934, as passed by the House, that it be amended by inserting therein a section to repeal section 604 of the Revenue Act of 1932.

The subject of our appeal with reference to the excise tax on furs and our contentions are not new to this Committee, as we appeared before it in the spring of 1932, at which time the entire fur industry strongly protested the imposition of this discriminatory excise tax, and all the arguments advanced at that time against this tax on furs still hold and apply with greater force at this time.

The fur trade was at that time and still is in the most deplorable condition, and the imposition of the extraordinary heavy tax of 10 percent on furs has greatly retarded the progress to normal financial recovery. It has been and still is a most serious handicap to the industry due to the decided sales resistance set up thereby.

The fears of the fur industry as expressed to this Committee in 1932, as to the injurious effects of the imposition of this unjust and discriminatory tax on fur manufacturers were only too truly prophesied, for ever since this law went into effect, sales have very materially fallen off. While no accurate statistics are available to give a complete picture of the business position of the fur industry, its relative position may be indicated by the sales reports of a skin dealers association, through whose hands a large part of the raw material of the industry passes. The sales reported by it are as follows:

Year	Sales
1927	$170,000,000
1928	134,000,000
1929	125,000,000
1930	70,000,000
1931	60,000,000
1932	29,000,000
1933	29,000,000

It will at once be seen that the sales in 1933 are approximately $140,000,000 less than they were in 1927. Since there is that tremendous difference in the sales of raw products, it naturally follows that the manufactured product, upon which this 10 percent tax is based, has correspondingly fallen off about in the same proportion as the sales of the raw product here indicated.

Due to the depressed business conditions, extraordinarily large amount of failures occurred since 1928 in the fur industry, with the result that bank credit and ordinary commercial credit have been greatly curtailed, and the capital invested in the industry has shrunk to a negligible amount.

The conditions of the fur manufacturing industry may best be illustrated, to prove its inability to stand this extraordinarily large discriminatory 10 percent tax, by the great unemployment that has existed in the fur manufacturing industry for the last 3 years. It is a well-known fact that New York City is the largest fur center in the United States. Fully 85 percent of the total furs used in this country are manufactured in or about New York City. There

are approximately 10,000 skilled fur workers in the fur industry, but due to the depressed conditions, at no time during the last 3 years was the industry able to employ one third of the 10,000 workers. The labor representatives of the fur workers at a recent code hearing before the N.R.A. Administrator testified to the fact that the average employment in the last 3 years has been approximately 2 months, and certainly not more than 4 months, during the entire year. We cannot think of anything more persuasive as an argument in favor of the repeal of this additional burden of an excise tax on the fur manufacturer than the great unemployment now existing in the fur trade, and the entire fur industry is of the strong belief, that if the 10 percent excise tax on furs were immediately repealed, the strong sales resistance now existing would disappear and the industry would be able to absorb a great amount of the unemployed.

The fur industry craves and is entitled to equal opportunity with the continuance of this 10 percent tax, which is highly discriminatory and unjust, as among all the great number of lines of wearing apparel, fur-wearing apparel is the only wearing apparel that has been singled out by Congress to bear a tax, while all other lines of wearing apparel such as silks, woolens, and different kinds of cloth that compete with fur-wearing apparel, bear no tax whatever, A suit of clothes made of wool or a coat or dress, made of like material, for $100 and upwards bears no tax under the present revenue law, while a coat, trimmings, or similar article made of fur, at any price, even as low as $1 must bear a tax. That this is neither fair nor just is obvious, and required no further comment.

About the only excuse that there can exist for having this tax on furs imposed is the fact that in the Revenue Act of 1918 there was a similar tax imposed on furs, in the same discriminatory manner as in the present existing law. There may have been some excuse during the war period for the imposition of such a tax because the Government's policy then was to impose taxes on unessential industries, so as to release manpower therefrom; but that condition does not exist now; we are not now at war. If, on the other hand, it is contended that the tax is imposed because intended as taxing luxuries, then we strongly protest that such contention is a fallacy, and that there is no basis for it. A fur coat is no more a luxury than a coat made of wool, and a majority of the fur coats produced are less expensive than a coat made of wool. The greatest portion of furs consumed is priced at less than $100, and may be bought for as low as $10. Yet, a person who needs a fur coat for $10 must, under this law, be punished with a tax of 10 percent or $1, while a woolen coat at the same price would be free of taxation.

The Treasury Department in 1932 estimated that on a basis of 10 percent excise tax on the fur industry there would be realized approximately $15,000,000 per year. That the Treasury Department was wrong in its estimate is proved by the fact that the returns show that the Treasury Department did not collect from the fur industry more than approximately 50 percent of that amount in 1933.

Quite naturally, the imposition of a 10 percent tax on manufactured furs has added an extraordinary hardship to a struggling industry. An additional 10 percent added to the sales price of the fur article has met and still meets with the strongest kind of resistance not only from the retailer but from the buying public as well. The situation has led to methods by which the payment of this tax is evaded. Innumerable methods and devices have been and are still resorted to to evade the tax. This condition places the law-abiding decent manufacturer who pays the tax at a great disadvantage with those that yield to temptation and evade the tax.

The fur industry has always paid and still pays its share of taxes to the State and Government. It paid more taxes during the war period through the imposition of the 10 percent excise tax than the other wearing apparel lines, and there exists no good, logical reason why a fur manufacturer should be discriminated against now, in these distressing times, and be required to pay in addition to all other taxes a 10 percent excise tax while other clothing manufacturers and wearing apparel lines are free of this burden.

The fur business is a one-season business, and the greatest portion of the furs are sold on long-term credit. Under the existing revenue law the manufacturers are required to pay the 10 percent excise tax the month following that in which the sale is made, and before it is sold to the consumer. Naturally, the manufacturer must pay the tax, whether or not he is reimbursed by the customer. He, of course, has the right to pass the tax on to the retailer, if sold at wholesale,

but the retailer does not want to buy plus tax, and instead insists upon buying tax included, thus forcing the manufacturer to absorb the tax wherever he can so effect it. The retailer, however, in selling the garment to the consumer, does not collect the exact tax which he paid, but, on the contrary, adds it in his cost price. In that manner, the consumer pays more than the tax levied on the manufacturer.

Aside from the law being an injustice to the consumer as well, it takes from the already impoverished manufacturer the little capital he has left in his business, it impedes his progress, because it may be many months before he can be reimbursed, if he is reimbursed at all.

What we have already stated, we believe, should prove amply the injustice, the unfairness and the highly discriminatory and un-American nature of this 10 percent excise tax on fur manufacturers, and, we believe, that we have conclusively shown our right and need to have this excise tax on furs repealed at this session by Congress, in order to place the fur business on an equal footing with other lines of wearing apparel in its struggle for existence.

The amount of revenue obtained by the Government in 1933 from the tax on furs is approximately $7,500,000. What it cost the Government to collect this amount is at best but a guess. But of one thing we are certain, that the amount received by the Government is insignificant as compared to the destructive influence this 10 percent tax has on the industry. Whatever the net amount received by the Government may be, it is insufficient to justify the retention of this discriminatory tax in view of the industry's deplorable condition.

In our previous appearances on the subject of the repeal of this tax, we have indicated our approval of a small sales tax, should the Government require legislation to find additional revenue, providing, however, that such a sales tax be imposed upon all industries alike; but we are unalterably opposed to and hereby strongly protest against the retention of this extraordinarily heavy, selective excise tax of 10 percent on articles made of fur. The fur industry should not be required to contribute more taxes than any other industry towards governmental expenses.

This appeal is made not only on behalf of the 800 fur manufacturers, members of the respective associations submitting this memorandum, but also on behalf of all fur manufacturers in the entire fur industry in the United States, who are praying that section 604 of the Revenue Act of 1932, imposing a 10 percent tax on furs, be repealed at this session of Congress.

Respectfully submitted,

EDWARD FILLMORE, *Counsel.*

TAX ON COMMODITY FUTURES

STATEMENT OF PAUL J. CHRISTIAN, REPRESENTING THE NEW ORLEANS COTTON EXCHANGE

Mr. CHRISTIAN. Our case is thoroughly set forth in the brief which I have just submitted to the reporter. We wish especially to point this out, Mr. Chairman, that increasing this tax from 1 cent to 5 cents has practically driven the small speculator out of the cotton market, and has left the trading that is done on the futures exchange, dealing in cotton, almost entirely to the mill trade. They are naturally interested in getting their cotton as cheap as possible, and I think it is the opinion of the Department of Agriculture and of all of the authorities who have studied the subject that until the small speculator returns to the market there can be no increase in prices comparable to those following the World War, and that the cotton farmer is left at the mercy of the milling interests who are naturally interested in securing their supplies as cheap as possible.

We have in this brief the records of the crop years from 1916–17 through 1927–28, when cotton averaged about 18 cents a pound or more. During those years the trading in cotton futures on the com-

modity exchanges averaged from 144 millions in 1916 to 170 millions in 1927-28. In the last 3 years, Mr. Chairman, these figures show that the dealing has been practically half of that—73 millions, 67 millions, 76 millions. It simply shows that the speculator has been driven out of the market, and it has been left, as I say, very largely in the hands of this highly organized and financially powerful milling group, who are trying to get their supplies as cheaply as possible.

Another thing, Mr. Chairman, that we want to stress is this—that cotton is the only fiber that now has to pay this futures tax, and in addition has to pay the processing taxes that have been provided by the recent legislation looking to industrial recovery. To that extent the cotton industry is at a disadvantage and is subjected to double taxation.

Now, Mr. Chairman, I won't detain you any further, but we will submit this brief.

The CHAIRMAN. All right. Put that brief in the record and the committee will give it every consideration.

(The brief referred to is as follows:)

STATEMENT ON BEHALF OF THE NEW ORLEANS COTTON EXCHANGE

The petition of the New Orleans Cotton Exchange with respect represents: That the stamp tax now imposed on the sale of cotton for future delivery, as provided in schedule A4 of title VIII of the Revenue Act of 1926, amended by section 726 (a) of the Revenue Act of 1932 and section 212 of the Industrial Recovery Act, passed at the last session of the present Congress, is not only uneconomic, discriminatory, and unjust, but operates directly to depress the farm price of cotton and should be repealed.

All students who are in a position to speak with authority are agreed that there can be no active, healthy market assuring profitable prices to the cotton farmer in the absence of the speculator, as now regulated by the Cotton Futures Act. He stands between the farmer who produces and the spinner who consumes the crop. If he is eliminated the farmers are placed at the mercy of the highly organized, efficient, and wealthy spinning industry. That conclusion was stressed in the report to Congress on cotton exchanges made by the commissioner of corporations in 1908. It was amplified 6 years later in the reports of the two committees of Congress that formulated the Smith-Lever Act to regulate trading in cotton futures; and the position taken in these cotton classics has since been approved by every Secretary of Agriculture who has been asked to report upon this question.

There are attached hereto as appendices, a few brief extracts from the report of Commissioner of Corporations, Herbert Knox Smith, made in 1908; from House Report 765 of the 63d Congress, entitled "Trading in Cotton Futures", which resulted in the passage of the Smith-Lever Act; from a letter under date of January 25, 1924, from Henry C. Wallace, Secretary of Agriculture, to the chairman of the Senate Committee on Agriculture, and an extract from the testimony taken by the Senate Committee on Agriculture when the Caraway bill was under discussion in 1922. All of these documents stress the value and necessity of public speculation as conducted under Government supervision on the commodity exchanges.

TAX DEFEATS ITS OWN PURPOSE

The provision in the existing law which places on every contract for future delivery made on exchanges a tax of 5 cents for each $100 in value of the merchandise covered, not only defeats its own purpose in that it yields a mere bagatelle of revenue, but it results in keeping out of the market thousands of speculators who would join the present depleted ranks of the traders and stimulate the demand for cotton if the excessive cost of such trading due to this tax did not deter them.

The law as originally enacted in 1914 provided for a tax of 1 cent, or one fifth of the present rate, for each $100 in value of future contracts. Three years later, in 1917, it was raised to 2 cents and continued at that figure until 1924, when it reverted to 1 cent and was so maintained until the present rate of 5 cents was fixed in the act of June 6, 1932.

When the present rate was fixed the country was in the grip of the recent depression. Cotton was selling at the lowest price in history. At points in the South it brought less than 5 cents a pound and at such a figure the tax upon a hundred-bale contract amounted to $1.25, which the cotton trade cheerfully undertook to pay in view of the crisis that then confronted the country. It should be remembered, however, that under the provisions of the Revenue Act of 1932, the 5-cent rate was only to remain in effect until the end of the current fiscal year, June 30, 1934. Beginning July 1, 1934, the 1-cent rate was to be restored.

The abnormal rate of 5 cents per $100 value of contracts was extended, however, for another year by the Industrial Recovery Act of 1933, and has generally been charged by the trade with contributing to the dullness of the market and with having had a depressing effect upon prices. The tax automatically increases its burden as the price of cotton advances and whereas it amounted to approximately $1.25 per 100-bale contract, when cotton sold around 5 cents a pound; with cotton selling at 12 cents it has now mounted to $3, and if 20-cent cotton is to be realized under the present plans of the administration, it would mean a tax of $5 per contract every time a hundred-bale is traded in. The burdensome effect of such a tax can be better understood when it is remembered that in the passage from the farm to factory the same cotton is ordinarily "hedged" five or six times.

The irony of the situation lies in the fact that this tax operates directly to thwart the efforts of the administration to help the cotton farmer through the processing tax and serves to retard a recovery of high prices that would result from a more active market. It has driven the small trader and speculator out of the market and has largely restricted operations on the futures exchanges to "hedging" or price insurance on the part of the spinners and other members of the trade, who are primarily interested in buying as cheaply as possible. The official figures furnished by the Agricultural Department showing the size of the crop and the figures of the Treasury Department for the same year showing the volume of future trading would seem to prove this conclusively.

HIGHER PRICES RESPOND TO ACTIVE TRADING

Whenever there has been active trading on the futures exchanges prices generally have been more satisfactory for the producer. Here are 2 tables showing the size of the crop, the average price on the 10 designated spot markets, and the volume of future trading. The first table covers the crop years from 1916–17, through 1927–28, when with two exceptions the price of cotton was well over 18 cents. The second table covers the period of depression from which we are just emerging, from the crop year 1929–30 through 1932–33, when average annual prices ranged from 15.79 down to 5.89. An examination will show that future sales were greatest when prices were highest, and smallest when prices were lowest.

The striking contrast between these two tables is the enormous decline in the volume of future trading during the period of depression following the crop year 1930–31.

Year	Size of crop	Average price, 10 designated markets (cents)	Volume of futures (in bales)	Year	Size of crop	Average price, 10 designated markets (cents)	Volume of futures (in bales)
1916–17	11,450,000	18.96	144,130,100	1924–25	13,628,000	24.22	156,254,100
1917–18	11,302,000	29.02	111,997,300	1925–26	16,104,000	19.68	119,033,035
1918–19	12,041,000	29.76	104,865,100	1926–27	17,977,000	14.40	113,228,725
1919–20	11,421,000	38.34	124,454,920	1927–28	12,955,000	19.72	170,363,540
1920–21	13,440,000	16.66	107,685,130	1929–30	14,828,000	15.79	105,521,950
1921–22	7,954,000	18.09	120,694,090	1930–31	13,932,000	9.61	73,677,460
1922–23	9,755,000	25.83	170,021,560	1931–32	17,096,000	5.89	67,489,620
1923–24	10,140,000	30.14	185,758,110	1932–33	12,994,000	7.15	76,562,010

It is unfortunate that the proceeds from the tax on future cotton transactions are not available. The Treasury Department consolidates the receipts from all futures transactions, but the vast majority of the tax is derived from transactions on the cotton and grain exchanges.

The Treasury reports that the receipts from this tax during the past four years were as follows:

Year	Receipts
1930	$3,599,875.58
1931	1,682,680.56
1932	959,319.64
1933	4,206,597.74

The big increase in receipts for the year 1933 was due to the fact that the act of 1932, increasing the rate from 1 cent for each $100 to 5 cents for each $100, went into effect on June 21, 1932, and did not result from a pronounced increase in the volume of business on the exchanges.

OPERATION OF THE PROCESSING TAX

Now, with respect to the processing tax, which is fixed at 4.2 cents per pound on cotton: The Agricultural Adjustment Administration reports that the collections under this tax from August 1, 1933, to January 31, 1934, has amounted to $94,655,601.02. Investigations by the Department of Agriculture have shown that cotton is being subjected to very keen and costly competition by the paper, flax, and other fibers which are not traded in on the futures exchanges and therefore are not subjected to that taxation. For this reason, the cotton industry has in fact been compelled to pay double taxation since the processing tax has been added to the tax on futures. The tragedy of it lies in the fact that both of them must finally be borne by the producer, for all taxes and charges are finally reflected back in the price that is paid on the farm.

March cotton was quoted on the New Orleans Exchange yesterday at 12.19, for convenience call it 12 cents. By referring to the Department of Agriculture's detailed explanation of Future Trading, printed in the Year Book for 1921, it will be seen that the usual contract traded in, calls for 100 bales of 500 pounds each, or 50,000 pounds of cotton. Therefore, at the price of March, mentioned above, as approximately 12 cents, such a contract represents $6,000. Under the existing law this calls for a tax of $3 every time it is "hedged."

That same article in the Year Book for 1921 explains that every time this consignment of cotton changes hands in the passage from the primary market to the mill a new "hedge" must be placed in order to conform with "sound banking." Every time that operation is repeated it means a further imposition of this tax, in this case amounting to $3. While the volume of hedging has varied from year to year, we have seen that for the year 1932-33 it was approximately six times the size of that year's crop, which would mean at current prices that every hundred bales of cotton would be subjected, in addition to other taxes and charges, to a "futures" tax of approximately $18, which would be reflected back to the farmer. In the days of active trading, as shown by the first table, the number of hedges placed was much higher, averaging 10 or 12 times the size of the crop.

A summary in tabular form of the various acts imposing a tax on future trading is given herewith, and is convincing proof that Congress never intended that the existing high rate should be continued beyond a period of emergency.

Summary of legislation taxing futures

[Tax payable by documentary stamp on memorandum, bill or other evidence of sale on exchange, board of trade, or similar place]

Act	Effective	Tax
Oct. 22, 1914	Dec. 1, 1914-Sept. 8, 1916	1 cent for each $100 in value and 1 cent for each additional $100 or fractional part thereof in excess of $100.
Oct. 3, 1917	Dec. 1, 1917-Mar. 31, 1919	2 cents for each $100 and 2 cents for each additional $100 or fraction.
Feb. 24, 1919	Apr. 1, 1919-Dec. 31, 1921	Do.
Nov. 23, 1921	Jan. 1, 1922-July 2, 1924	Do.
June 2, 1924	July 3, 1924-Mar. 28, 1926	Same rate as under 1914 act.
Feb. 26, 1926	Mar. 29, 1926-June 20, 1932	Do.
June 6, 1932	June 21, 1932-June 30, 1934	5 cents for each $100 and 5 cents for each additional $100 or fraction.
[illegible]	July [illegible]	1 cent and 1 cent additional.

In conclusion, we wish to stress that while some of the principal competitors of cotton are being subjected to the processing taxes, they escape the tax on future sales, for which reason the tax on cotton futures might well be regarded as double taxation.

But in a broader sense the tax on futures should either be repealed outright or restored to its original rate of one cent, because it operates to narrow the market and deter active trading, with the inevitable result that it makes for lower prices. The amount that it yields in augmenting the national revenue is comparatively insignificant and its continuance is inexcusable, as it operates as an obstacle in the current of trade, and in the last analysis adds to the burden of the farmer.

The depression which was responsible for the increase in this tax to five times its original rate, has passed. Heroic efforts are being made to secure a return to post-war prices for cotton. The paralyzing effect of this tax should not be allowed to slacken or defeat those efforts.

No more practical step in the direction of recovery throughout the Cotton Belt could be taken than to terminate this tax now, or at least to return to the original rate of 1 cent as Congress intended should be done at the end of the current fiscal year.

Respectfully submitted.

THE NEW ORLEANS COTTON EXCHANGE,
By PAUL J. CHRISTIAN.

APPENDIX

[Doc. no. 949, 60th Cong., 1st sess.]

REPORT OF THE COMMISSIONER OF CORPORATIONS (VOL. 1, P. 54)

Importance of purely speculative operations.—While hedging transactions are thus a very important feature of future dealings in cotton, they constitute only a portion of such dealings. In addition to hedging operations there are, as already stated, a vast number of purely speculative transactions. Such speculative operations have frequently been condemned by both the cotton grower and the merchant, and also by the spinner, on the ground that they seriously interfere with their business. It is not intended, in this report, to enter into a general discussion of the merits or evils of speculation. It may, however, be stated that it is the normal business of speculators, as a class, to anticipate conditions which may affect the price of a commodity, and to bring about a readjustment of the price to such conditions.

* * * * * * *

The justification of speculation is that it performs an actual service to trade. The facilitation of hedging in part illustrates the service which purely speculative operations can thus render. In order that such service be properly rendered, however, it is imperative that speculative operations deal with conditions arising as the result of natural causes. If, instead, speculation is concerned with artificial and arbitrarily created conditions which tend to complicate the interpretation of natural conditions, its proper function becomes perverted.

[Rept. no. 735, 63d Cong., 2d sess.]

TRADING IN COTTON FUTURES

[To accompany S. 110]

It is the opinion of the committee that the abolition of the cotton exchanges would result inevitably in the monopolizing of the entire cotton crop into the hands of a very few powerful interests with the force and means to fix the price at which the farmer would be compelled to sell his cotton. Fully 75 percent of American produced cotton leaves the hands of the producer during the four months of September, October, November, and December. It takes no stretch of the imagination to foresee how utterly helpless the farmer, as a class, would be in his present disorganized condition as a factor in fixing the price of his own products, as against the organized genius and money of the spinners and powerful spot cotton dealers.

The fundamental principle of trade is that the buyer always buys at the lowest possible price while the seller always sells at the best possible price to be had. With this principle in mind, and with the economic conditions surrounding the southern farmer not overlooked, it does not take a prophet to foretell what must be the result of a contest between the farmer on the one hand and the spinner and big spot cotton dealer on the other in a struggle for fixing the price of cotton. The farmer can not hope to survive in such an unequal contest. He would be forced to peddle his cotton upon the streets and to take such prices for it as had been agreed upon, secretly perhaps, by these big interests. He would be absolutely at their mercy without even the law of supply and demand to aid him.

Any legislation, therefore which eliminates from the cotton trade the element of legitimate speculation and legitimate speculators must, in the opinion of the committee, result disastrously to the producer, especially at that season of the year when the bulk of the crop is moving from him into the channels of commerce. Cotton exchanges properly regulated in their operations in that they afford opportunities for legitimate speculation, may be made to be of real benefit to farmers, merchants, and spinners. The legitimate speculator, operating through the exchanges, is the only buffer standing between the helpless producer and the powerful buyer of his product. It is the presence in the future market for cotton of this class that is always ready to buy and to deliver at the market price that has served to relieve the trade of the risk of violently fluctuating values.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., January 25, 1924.

Hon. G. W. NORRIS,
Chairman Committee on Agriculture and Forestry,
United States Senate.

DEAR SENATOR NORRIS: * * * During the past 50 years, many bills have been introduced in Congress which would prohibit the sale or purchase of contracts for the future delivery of grain or cotton not providing for the actual delivery thereof. None of these drastic bills passed, because evidently Congress reached the conclusion that such legislation would substantially impair, if it would not actually destroy, the valuable hedging facility which is furnished by the making of the vast number of contracts on and through the exchanges in which deliveries are contemplated rather than actually assured. In rejecting these bills, it seems that Congress wisely refused to deprive the producers, the merchants and the manufacturers of these farm products of the benefit of this insurance against price fluctuations. * * *

I am convinced that the insurance facility is of great value and is largely dependent for its existence upon public speculation in grain and cotton contracts, and this hedging privilege should not be destroyed until these industries find some better way to insure themselves against price fluctuations. * * *

Sincerely yours,

HENRY C. WALLACE, *Secretary.*

HEARINGS ON COTTON FUTURES ACT, SENATE COMMITTEE ON AGRICULTURE, 1922

Perhaps the nature of these transactions, and the necessity for their great number in the aggregate, as compared with the size of the crop, was never more forcibly illustrated than by Mr. Sidney Y. West, a prominent cotton merchant of Little Rock, Ark., in appearing before the Committee on Agriculture and Forestry of the Senate in the Sixty-seventh Congress. The committee had under consideration the bill S. 399, to prevent the sale of cotton and grain in future markets, known as the Caraway bill, and Mr. West in the course of his testimony in defense of the exchanges (p. 43) said:

"We are attacked about this 100,000,000 bales traded in when only 10,000,000 bales are raised. You take the matter of fire insurance on that same number of bales and you will find it relatively about the same number as the 100,000,000 bales they speak of being traded in on the future exchanges, because every time I move a bale of cotton from one warehouse to another—buy it, for instance—when it is moved out of the warehouse, that insurance policy is canceled out and when it gets to my warehouse my policy covers it. On being moved, when

it gets to the depot my policy is canceled out, and another one takes effect when it gets on the railroad. Then when it arrives at the compress at Little Rock the railroad policy is canceled out and another policy takes effect at Little Rock. Then when I sell that cotton, if it goes on the railroad again I cancel my Little Rock insurance and another policy takes it up, and so on, and it is carried right through. Each bale is insured on an average against fire about 6 different times. There are 10,000,000 bales of cotton and 60,000,000 bales insured against fire."

BRIEF OF BUCKLEY & BUCKLEY, WASHINGTON, D.C., RELATIVE TO THE TAX ON COMMODITY FUTURES

MARCH 3, 1934.

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

SIR: Our Government through its Departments of Commerce and State, and through the Reconstruction Finance Corporation, expends millions of dollars annually to secure foreign customers for our products. By our tax laws and through their administration the fruits of years of effort and untold expenditure may be nullified within a month.

Our present revenue act taxes all gains from "hedges" against actual spot purchases of agricultural commodities. The Treasury Department has long recognized that the true "hedge" against actual cash or spot transactions, is not entered into as an independent transaction, but is, in fact, only an incident to the main purpose, the marketing of the physical commodity. It is not speculative in character; on the contrary it is the only method through which the dealer in cotton or grain can eliminate the element of speculation and confine his operations within the scope of the true merchandising field.

In the case of the domestic dealer in cotton or grain, "hedges" closed out within the year automatically reflect their true character in that the net result is an offset to the rise or fall of the market upon the physical commodity between the dates of its purchase and sale; that is, in the case of a rising market, the speculative profit on the commodities' sale is exactly offset by a corresponding loss on the "hedge". The reverse is true in the case of a falling market.

Where the domestic dealer has open future contracts (hedges) against actual spot or cash transactions, at the close of the taxable period, the Treasury Department has, for the past 14 years, held substantially as follows:

"Applying the above principles to the case at hand, it is the opinion of this office that where the taxpayer has made forward sales which are hedged by concurrent forward purchases or where a forward sale is offset by "spot" cotton, that the profit or loss indicated thereby may be taken into income or deducted therefrom as the case may be at the close of the taxpayer's fiscal year." (S.R. 5084, C.H. IV-2, 120.) See also A.R.M. 100 C.B. 3, 66 and S.M. 5693 C.a. V-2, 20.

The foregoing gives to the "hedge" its proper place in the computation of income of domestic dealers.

The commodity dealer from foreign shores who comes to us as a customer for our surplus agricultural products is extended no such consideration. Because of the fact that the cotton or grain purchased by him in our markets is sold abroad and without the jurisdiction of our Government, our taxing authorities give no effect whatsoever to a loss incurred through such sales. It does, however, tax, or attempts to tax, all of the apparent income that accrues to the foreign merchant through his purchase from our institutions of a "hedge" contract.

The result of the foregoing has been productive of but a comparatively small amount of revenue for the reason that it is almost invariably true that foreign houses engaged in the business of purchasing from us only, have no property in the United States, and hence the tax is uncollectible. It has resulted however, in these houses, when they find that we are attempting to collect large sums as taxes on what they regard as purely fictitious profits, withdrawing so far as conditions permit from our market, thus depriving us of trade revenues far in excess of the amount of taxes which we seek, unsuccessfully, to collect.

The Honorable Charles E. Hughes while engaged in private practice had occasion to make the following statement:

"It is obvious that foreign cotton merchants, whose profits are confined by competitive conditions in this country to their commissions of approximately 1 percent on turnover, would literally be taxed out of existence if they were called upon to pay progressive income tax rates upon their hedges in utter disregard of the complementary part of their transactions which show corresponding losses. In some years, 1927 for example, such artificial gains from hedges might be equivalent to more than 100 percent of the entire original value of the cotton or contracts bought as hedges. This, in itself is sufficient to demonstrate the fundamental fallacy of a position which would result in treating hedged gains in the cotton business as profits subject to income tax under the Federal revenue act."

Therefore as the representatives of a foreign house, whose purchases of agricultural products in our markets, have for the past 10 years averaged in excess of $20,000,000 per year, it is suggested that section 22b and section 116 of the proposed revenue act of 1934 be amended by adding thereto provisions in substance as follows:

22 (b) (7). Income from true "hedge" purchases or sales of agricultural commodities on recognized exchanges within the United States.

116 (h) *Hedges of agricultural products.*—Gain or loss from "hedges" on recognized exchanges in the United States of actual purchases or sales of agricultural commodities shall not be recognized but the cost or sales price of the actual commodity "hedged" shall be increased or decreased as the case may be, by the amount of the said profit or loss.

Opportunity to be heard orally will be highly appreciated.

Respectfully yours,

BUCKLEY & BUCKLEY,
By DAVID A. BUCKLEY, Jr.

MISCELLANEOUS

STATEMENT OF MORRIS L. ERNST, OF COUNSEL TO SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK

Mr. ERNST. I represent the superintendent of insurance of New York. We have the following problem in New York State. There are a mass of guaranteed mortgage companies which have issued two billion of dollars of guaranteed mortgages, one billion thereof in the form of bonds, bond issues where the mortgage has been split up into various certificates. Some of the issues involve only $10,000 and some run up to $30,000,000. Some involve a few certificate holders and some involve 10,000.

We are asking for an amendment, or consideration of an amendment of section 801, which refers to the stamp taxes in connection with the transfers of these certificates and the subsequent issue of debentures or stock in a corporation to be formed.

Under laws enacted in New York State, which are consistent with the new section 77 of the Bankruptcy Act, and also consistent with the National Banking Act, these mortgages, which are under the insurance department, are being either liquidated or rehabilitated, and in connection with such process, these mortgages or the properties resulting from the foreclosure of the mortgages, are being turned back under our reorganization laws of the State, to the certificate holders, and the certificate holders under court proceedings are forming corporations on the theory that the self-interest of the investors themselves, now that the company has been washed up or mainly washed up, will be best to preserve the equities.

The CHAIRMAN. You are asking for elimination of the tax?

Mr. ERNST. Yes, sir. That is consistent with the present provisions of the law which give exemptions to ditch companies, irriga-

tion companies, building and loan associations, and cooperatives, and also consistent with your recent enactment with respect to the reorganization of the railroads.

The CHAIRMAN. What is the revenue involved?

Mr. ERNST. The revenue that might be involved, if each one of the mortgages, each one of the issues, was incorporated, would be approximately a million dollars. There is a question of law even today as to whether there would not be an exemption from the stamp tax under the present law. I have a memorandum here which I will file with the secretary of the committee.

The CHAIRMAN. Thank you very much.

(Brief of Mr. Morris L. Ernst follows:)

STATEMENT OF MORRIS L. ERNST, COUNSEL TO GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, RECOMMENDING THE ADOPTION OF AN AMENDMENT TO THE FEDERAL STAMP ACT

This statement is offered on behalf of the superintendent of insurance of the State of New York as rehabilitator of 14 title and mortgage companies. The superintendent seeks the incorporation into the Federal stamp tax law of an amendment specifically exempting from the incidence of the tax certain transactions involved in the reorganization of a particular branch of the business of these companies.

1. The title companies now in rehabilitation were formerly engaged in the business of marketing to the public guaranteed whole mortgages and guaranteed shares of mortgages. It is only with the second branch of their business that this statement is concerned.

2. There have been issued and are now outstanding, in the form of 22,000 particular issues, about $1,000,000,000 in face amount of guaranteed mortgage participation certificates. Under the terms of these instruments, the companies guaranteed the payment of interest and principal on the underlying mortgage collateral, at the same time transferring to the insured an undivided coordinate share of the mortgage collateral. In consideration of the companies' promise of guaranty, and in consideration further of the companies' promise to act as agent of the insured in "servicing" the mortgages, enforcing payment, etc., the insured undertook to permit the companies to retain a stated premium, which in most cases was one half of 1 percent of the face amount of the mortgage loan.

"Certificated issues" were of two kinds: Split interests in a single specified bond and mortgage; or split interests in a group of specified bonds and mortgages. In some cases the companies reserved a privilege to substitute mortgage for mortgage in the underlying collateral.

3. In August 1933, it became apparent that the companies, which had functioned for a generation with remarkable success, were unable to meet their promises of guaranty as the respective liabilities accrued. Accordingly, on or about August 4, 1933, the superintendent of insurance, acting in pursuance of comprehensive State legislation specially enacted for the purpose (New York Insurance Law, article XI), threw the affected companies into rehabilitation—a form of receivership paralleled by the conservation of national banks (P.L. 1, 73d Cong., title II [1933]). Various steps have been taken, subject to the approval and supervision of the Supreme Court, to safeguard the interests of the numerous investors stricken by the collapse of the Title Companies. With respect to guaranteed whole-mortgages, reorganization has been worked out within the framework of article XI.

As to certificated issues, the problem is more complex and required additional legislation. Under Article XI, as supplemented by the Schackno Act (New York Laws 1933, chap. 745), it is possible for 66⅔ percent in amount of certificate holders to assert control of the mortgages underlying particular certificated issues. A plan of reorganization—which may involve a termination of the agency of the company, extension or modification of the underlying mortgages, etc.—may be promulgated by the superintendent of insurance, or by a special statutory body acting for the certificate holders (Insurance Law, art. II), or by 33⅓ percent in amount of the certificate holders in any particular issue. The plan, as proposed, is entirely subject to court approval. In addition,

as has been noted, it must be ratified by 66⅔ percent in amount of the certificate holders in the applicable issue. Once so approved and ratified, the plan is binding upon all the holders.

THE CORPORATE PLAN OF REORGANIZATION AND LIQUIDATION

4. One of the suggested plans of reorganization takes the following form: Under and pursuant to the Schackno Act, the certificate holders in any particular issue may be incorporated. The group is then in a position to deal with the underlying collateral as full and unqualified owner. It may adjust or modify the mortgage debts, negotiate with the superintendent as representative of the insolvent company, and, in brief, act as a wholeowner. The mechanics of reorganization follows the provisions of the Schackno Act as to promulgation, approval, and ratification. Each certificate holder exchanges his guaranteed mortgage certificate for income debentures (which take up in par value the full amount of the participation) and no-par shares of stock in the "Reorganization Corporation." Apart from the initial assurance of fairness supplied by intimate court supervision and approval of the plan, elaborate safeguards are set up in the charter and bylaws of the reorganization unit to protect minorities against manipulation while the unit is a going concern. The powers of the corporation are explicitly confined to reorganization and ultimate liquidation of the collaterals in the benefit of the investors.

5. The corporate plan has received widespread approval as the only feasible means of handling the vexatious problem of certificated issues. (See Interim Report of the Superintendent of Insurance to Governor Lehman, November 11, 1933, p. 8.) In net effect, it provides a democratic machinery for the administration of properties held by hitherto inarticulate, scattered co-owners. The design and effect is to create mutual cooperative units. Subject to the determination by the courts of New York of certain basic legal questions, now under scrutiny, it is believed that reorganization can proceed with the utmost rapidity to the satisfaction of responsible governmental officials and the many members of the public grievously affected by the break-down of title companies. When it is remembered that outstanding participation certificates aggregate about one billion dollars in face amount, spread over 22,000 separate issues, it becomes clear that the public interest is vitally concerned with the rapid consummation and success of the corporate plan.

THE CORPORATE PLAN AND THE FEDERAL STAMP TAX

6. As stated above, the corporate plan invites the turn-over by certificate holders of their guaranteed mortgage participation certificates, and the issuance in exchange therefor of debentures and no-par shares of stock. Under the provisions of the present Federal Stamp Act, the transaction would be taxed three several times:

(a) Under schedule A-9, the transfer of, or exchange of legal title to, guaranteed mortgage participation certificates is taxed 4 cents per $100 face value. See *Lawyers Mortgage Co.* v. *Anderson*, 333 C.C.H. Federal Tax Service, par. 9586, reversing 1 Fed. Sup. 462; *Title Guaranty & Trust Co.* v. *Bowers*, 333 id., par. 9587.

(b) Under schedule A-2, the issuance of each no-par share of stock by a reorganization corporation would be taxed 2 cents. This is so despite the fact that, apart from voting rights, the shares will represent no, or a small, equity.

(c) Under schedule A-1, the issuance of debentures by a reorganization corporation would be taxed 10 cents per $100 face value.

7. The proposed amendment to the Stamp Act, the adoption of which the Superintendent of Insurance of the State of New York urges upon this honorable committee, would exempt the described transaction from all three schedules. Section 801 of the Revenue Act of 1926 (as amended by sec. 441 of the act of 1928) would be revised to include the italicized language in the quotation which follows:

SECTION 801 OF THE REVENUE ACT OF 1926 (AS AMENDED BY SECTION 441 OF THE ACT OF 1928) SHALL BE AMENDED TO READ AS FOLLOWS:

"There shall not be taxed under this title any bond, note, or other instrument, issued by the United States, or by any foreign government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or

municipal or other corporation exercising the taxing power; or any bond of indemnity required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States (or to secure a duplicate for, or the payment of any bond, note, certificate of indebtedness, war saving certificate, warrant, or check, issued by the United States); or stocks and bonds issued by domestic building and loan associations, substantially all the business of which is confined to making loans to members or by mutual ditch or irrigation companies; or stocks and bonds, and other certificates of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in paragraph (12) of section 231; *or the delivery or transfer of participations in one or more bonds and mortgages, in connection with the rehabilitation, liquidation, or reorganization of an insurance or other moneyed company, solely in exchange for stocks, bonds, or other instruments of indebtedness of a corporation which is formed in connection with such rehabilitation, liquidation, or reorganization for the purpose of cooperative control of said bonds and mortgages and the capital of which upon the consummation of the exchange consists solely of such participations; or stocks, bonds, or other instruments of indebtedness issued by such a corporation solely in consideration for such an exchange.*" (New matter italicized.)

8. The proposed amendment is carefully restricted to corporate reorganizations in pursuance of the Schackno Act or similar legislation, and could not be used for colorable evasion of the general provisions of the Stamp Act. Thus, (1) the exemption is confined to transactions connected with the rehabilitation, liquidation, or reorganization of moneyed companies; (2) the delivery and original issuance must be the mutual and only quid pro quo's; (3) the purpose of the transaction is rigidly restricted to the cooperative control of the underlying collateral; (4) the capital of the reorganization unit upon consummation of the exchange must consist solely of the participations.

9. There is ample social justification for the proposed amendment.

The economic crisis has frozen the real-estate market in the city and State of New York. It has rendered destitute a large percentage of the small investors who, on the faith of title-company representations, had plunged their life savings into mortgage certificates. Against $1,000,000,000 of outstanding certificates the stamp tax may impress a liability of $1,000,000 or more. The sum is substantial, and particularly so when it is noticed that the fee, insofar as fastened on the reorganization corporations (A-2, A-1), must come out of payments by mortgagors—in many cases the only source of these investors' current income. Insofar as fastened directly on the certificate holders (A-9), the incidence of a stamp tax would mean direct expense to persons quite as grievously affected by the depression as any comparable group in the community. In addition, the exaction of a tax in whatever amount interposes a psychological barrier to the quick and harmonious consummation of the many reorganizations now in process of elaboration under the Schackno Act. Time is distinctly of the essence.

10. Exemptions already contained in the body of the Federal stamp act, as well as exemptions from stamp-tax fees which have been adopted by the Congress in connection with other legislation, are quite similar to the exemption which is now sought by the superintendent of insurance of the State of New York.

(*a*) Lately the Congress has provided in new section 77 of the Bankruptcy Act for the reorganization of railroad corporations (P.L. 420, 72d Cong.). As incident to this major purpose it has enacted that the issuance, transfer, or exchange of securities and the filing of conveyances to make effective any plan of railroad reorganization under section 77, should be exempted from the Stamp Act.

It was doubtless believed that this exemption would facilitate the conversion of securities in pursuance of the plans of reorganization.

Of like import is—

(*b*) Under a proviso contained in schedule A-9 itself, there is exempted from the Stamp Act the delivery or transfer of bonds or other certificates of indebtedness in connection with a reorganization (as defined in sec. 112 of the revenue law) if any of the gain or loss involved in the transaction is not recognized under the income-tax law applicable to the year in which the delivery or transfer is made. (See also arts. 29-d, 29-f of reg. 77.)

If the transfer of certificates under consideration (as distinguished from the issuance of debentures and stocks) is not covered by this proviso, it is because

it is questionable whether the corporate plan of reorganization falls technically within section 112 of the Revenue Act in the manner required.

Section 801 of the Stamp Act, which is itself sought to be amended, exempts the securities of several mutual cooperative establishments from the requirements of the act.

Thus—

(*c*) Securities of mutual ditch companies are exempted. (Sec. 801.)

(*d*) Securities of mutual irrigation companies are exempted. (Sec. 801.)

(*e*) Securities of farmers' or fruit growers' or like associations, organized and operated on a cooperative basis, are exempted. (Sec. 801.)

(*f*) Securities issued by building and loan associations whose business is substantially confined to making loans to its members, are exempted. (Sec. 801.)

As has been shown above, the corporate plan has for its central purpose the setting-up of mutual cooperative corporations to assist in the reorganization and ultimate liquidation of the collateral securing certificated issues. Exemption would accordingly fall in with the philosophy and scheme of the Stamp Act. Appended hereto as exhibit A is an unofficial ruling of Hon. Baldwin B. Bane, chief of the Securities Division of the Federal Trade Commission, holding the issuance of securities by reorganization corporations organized in pursuance of the Schackno Act an exempt transaction under section 4(3) of the Securities Act of 1933. Mr. Bane's ruling will be found interesting on the considerations of policy now in issue.

11. There is now pending before the Legislature of the State of New York a bill exempting reorganization corporations created in pursuance of the Schackno Act from the requirement of the State franchise tax (except for a nominal fee to cover filing and other purely formal expenses). The bill was introduced at the instance of the superintendent of insurance and its adoption was recommended by Governor Lehman. One house has already passed it and its final adoption is expected very shortly.

The governor has recognized the urgency of effecting the reorganization and ultimate liquidation of certificated issues; and the dire distress of these investors furnishes an additional reason for gentle tax treatment.

For like reasons of policy your honorable committee should recommend the adoption of the amendment in support of which this statement is offered.

Respectfully submitted.

MORRIS L. ERNST,
Of counsel to George S. Van Schaick,
Superintendent of Insurance of the State of New York.

NEW YORK CITY, *March 13, 1934.*

EXHIBIT A

COMMUNICATION FROM HON. BALDWIN B. BANE

DECEMBER 19, 1933.

GREENBAUM, WOLF & ERNST,
285 Madison Avenue, New York, N.Y.

GENTLEMEN:

This is with further reference to the memorandum dated November 23 submitted by you on behalf of the superintendent of insurance of the State of New York, and to your letter of November 28, 1933. I shall confine myself to a consideration of the application of the Securities Act (1) to the securities issued by "reorganization corporations" organized in Schackno Act proceedings, and (2) to any securities issued by a corporation organized pursuant to a reorganization plan for any mortgage guaranty company subject to rehabilitation proceedings undertaken under the provisions of article XI of the New York insurance law.

I shall discuss the second problem first. The question is whether the second clause of section 4 (3) of the Securities Act provides an exemption for the issuance of such securities. Specifically, are such securities issued "in the process of a bona fide reorganization (of a mortgage guaranty company) under the supervision of any court"? It seems clear that any reorganization effected as a result of a rehabilitation proceeding will be under the supervision of a court. Such rehabilitation proceedings are commenced by an order of the Supreme Court on the application of the superintendent of insurance. They

are terminated likewise by a court order on the application of the superintendent. Section 402, article XI of the New York insurance law provides that "no such order (of termination) shall be granted except when, after a full hearing, the court shall determine that the purposes of the proceeding have been fully accomplished." One of the clearly contemplated purposes of rehabilitation proceedings is the reorganization of the mortgage guaranty company whose business is temporarily taken over by the superintendent. Any plan of reorganization for such a company, proposed as a method of terminating the difficulties which necessitated its rehabilitation, must, therefore, have the court's approval before it can be put into effect. Clearly, the issuance of any security in accordance with such a plan would be entitled to the exemption provided by section 4 (3) of the Securities Act.

The application of the Securities Act to securities issued by a "reorganization corporation" requires a consideration of the procedure under which such a corporation is to be organized. It is proposed that the organization of these corporations be effected through proceedings under the Schackno Act. One of the conditions under which such proceedings are available is that a mortgage guaranty company have been taken over by the superintendent for rehabilitation or liquidation (N.Y. Laws 1933, c. 745, sec. 3). Such proceedings have thus been authorized by the New York legislature as a possible part of a process of rehabilitation of a mortgage guaranty company. If it is proper to consider the process of rehabilitation provided in the New York insurance law as equivalent to the "process of * * * reorganization" referred to in section 4 (3) of the Securities Act, it would seem that any securities issued as a part of that process would be exempt under the provisions of the section referred to.

As I have stated above, one of the purposes of rehabilitation proceedings is the reorganization of the mortgage guaranty company whose business is temporarily taken over by the superintendent. It is, of course, possible that any particular rehabilitation proceeding will be terminated simply by restoration of the company to its former management or by liquidation of its assets. Is it enough, therefore, that the "process" in the course of which the securities are issued may result in a reorganization? To take the other point of view would greatly restrict the operation of the exemption provided by section 4 (3). I think it is clear that Congress intended to exempt more than the final issuance in accordance with the plan of reorganization; for if it had had the narrower intention, the clause might have been more simply expressed as "the issuance of securities * * * in accordance with a plan of reorganization of a corporation approved by a court."

The division has taken the position that ordinarily the solicitation of deposits by a reorganization committee is a step in anticipation of the "process of reorganization." But where the court to whom the plan of reorganization must eventually be submitted takes jurisdiction of the deposit agreement before solicitation, we have considered that no registration of the certificates of deposit is necessary. The theory is that the court's action makes the solicitation of deposits part of the process of reorganization. In the case of the issuance of securities by a reorganization corporation formed in accordance with Schackno Act proceedings, the court must approve the plan providing for the organization of such a corporation, including the issuance of its securities, before the issuance can be made. Not only does the court thus recognize the issuance of such securities to be a part of the process of reorganization of the mortgage guaranty company in rehabilitation, but also the legislature, in authorizing such a procedure, has recognized this fact. I conclude, therefore, that the issuance of such securities will be an exempt transaction under section 4 (3) of the Securities Act.

I shall not discuss at this time the application of the act to any securities issued by The New York Guaranteed Mortgage Protection Corporation. If you have any inquiries relating to this problem, I shall be glad to give them consideration.

Yours very truly.

BALDWIN B. BANE,
Chief of the Securities Division.

STATEMENT OF HON. JOHN Q. TILSON, WASHINGTON, D.C.

Mr. TILSON. Gentlemen of the committee. I appear directly for a brother attorney practicing in the city of New York, who represents a clientele, I know not how many. What I have to say does not only interest my brother attorney and his clients, but I think it is of very general interest, especially to the Treasury, and I submit to the committee an idea which is not a new—I claim no novelty for it—but an idea which if formulated into an amendment and put into this bill will, in my judgment, bring in more revenue than all of the rest of the bill put together.

The CHAIRMAN. That is what we are looking for.

Mr. TILSON. In order that I may not stray, may I read just a very brief statement which I will leave with the committee.

It will be one tax that is paid willingly, that would put no one out of business and, besides, will help, psychologically, to make better citizens. In a nutshell, it is a proposal to extend, for a limited period of time, amnesty so far as pains and penalties are concerned, to those who, for one reason or another, may have failed to report and pay income taxes due prior to 1933.

At first blush, it might appear that this is a proposal for the benefit of a law-breaking class, but such an assumption would be far from being correct. It is in fact for the benefit of every man, woman, and child in the United States, and the only persons whom it would cost anything would be those who had previously failed to comply with the law. It may be that a few of these will be ultimately caught and punished, as they deserve to be, but it is certain that the proportion of those who are caught will be small, indeed almost negligible, compared with the total number.

We have been passing through unusual times during the last 15 years. A great governmental experiment was tried, having for its primary purpose the changing of the habits and daily living of great numbers of people. The Constitution was amended and laws were enacted in pursuance thereof to enforce prohibition, but no power on earth could enforce them, because public opinion would not support them. The experiment failed, leaving behind it an accumulated train of consequences not pleasant to contemplate. The failure was not due to lack of penalties imposed upon law violators, many of which were severe out of all proportion to the enormity of the crime. Many people did not respect or obey these laws, but realized the importance of escaping detection, and so it came to pass that other crimes, more easily concealed, were committed in order to prevent detection and punishment as violators of the prohibition laws. Many violators of the prohibition laws made considerable sums by way of income which they should have returned as income subject to tax, but an honest return would have disclosed violations of the prohibition laws, thereby subjecting the taxpayer to heavy fines or imprisonment. The disregard of one law naturally, and often necessarily, leads to the disregard of other laws. Such is the facility of the "Descent to Avernos."

Although the courts severely punished, public opinion did not so seriously, if at all, condemn violations of the prohibition laws; but no opinion worthwhile condones tax dodging. A man with

a conscience does not feel comfortable in the position of a tax evader, although by silence, he may never be found out. Many, very many, there are who would seize the opportunity to redeem themselves, now that they would be free from the penalties of the prohibition laws; but lo and behold, the mere passage of time required to get rid of prohibition has made them criminals under the income tax laws. Faced with such a situation, what are the alternatives presented?

First. By the expenditure of much effort and huge sums of money, a comparatively few may be ferreted out and punished;

Second. Another few would probably come forward voluntarily and offer to pay, but it is relying upon the fact that most men and women are human to say that very few of this class will voluntarily place their necks in a noose ready to be drawn.

Third. If no reasonable escape is provided, the result will be that in the great mass of such cases nothing whatever will happen, except that these violators of the law will continue to conceal the unhappy truth, trusting that their guilty secret may be kept and that they may at least not go to jail.

I propose a way out, by saying to everyone who has failed to file a return for any year or years prior to 1932, "Come, make your return anytime within six months, or prior to March 15, 1935, and no pains or penalties will attach for the failure to file returns at the proper time."

Senator King. Does that only apply to liquor?

Mr. Tilson. No; that applies to anyone who wanted to come in and start over again.

The Chairman. In most cases it would be liquor cases?

Mr. Tilson. That is what I had in mind largely, as the committee will see.

When the people of the country finally came to the conclusion that prohibition was doing more harm than good, besides losing a very considerable revenue, they rose up in their might and wiped it out. It was well known that during the prohibition era, the lost revenues were largely going into the hands of those willing and bold enough to violate the law; but it is believed that most of them would have paid their share of taxes on incomes received, if it had not been a practical certainty that the proper return of such incomes would have subjected them to indictment and punishment under the harsh prohibition laws in the frantic effort to enforce them.

The nub of what is here proposed is that it will enable such persons to wipe out old scores and start anew, to the great advantage of the Treasury and society.

What is here proposed is not in any sense a new idea. It is simply meeting in a common-sense fashion, a situation now confronting us that has arisen from unusual, it may be said abnormal, circumstances. The problem involved is in some degree analogous to our bankruptcy laws, where the debtor, although he has failed to make good his obligations, is nevertheless given a discharge and permitted to go out unhampered to again engage in legitimate business. It is not unlike the principle underlying the Mosaic Law, providing for the seventh year of release, and especially of the "Jubilee Year." Such

legislation cannot become a harmful precedent because it is quite safe to preduct that for 7 times 7 years, the period of a Jubilee, there will not be another situation like the present one.

Let us suppose that a few, and there would be very few, who might be tracked to their lairs, and sufficint evidence of guilt discovered to indict and convict them, should escape punishment. Even as to these can we be certain that society will not be better served in the long run by permitting them to make complete restitution to the Government they have wronged and to start anew with a clean slate?

I believe that the number of persons who would avail themselves of the privilege of such a law would prove to be legion so that the result would be a very substantial increase in governmental revenues and a lasting benefit to society in addition to the benefits that may come to those acting directly under such a provision.

Senator REED. What reason have we to think that bootleggers' consciences are so tender that they would want to pay back taxes?

Mr. TILSON. I think our knowledge of humanity, that there is some good in the worst of us and that there is a very different attitude on the part of a great many persons who were violating the income-tax laws and the prohibition laws.

The CHAIRMAN. We thank you for the suggestion, and we can assure you that the committee will consider it, and we may get the benefit of the views of the Treasury Department on that.

Senator WALCOTT. Have you suggested any exact or precise wording?

Mr. TILSON. No; I have not done that. Knowing the ability of this committee and its drafting service, I am sure that the idea is all that was necessary, and if it is the opinion of the committee that it should be formulated, that it would be done much better than I could do it.

The CHAIRMAN. I ask that the following letters received by Senator Walsh be inserted in the record at this point.

THE BOSTON HERALD,
Boston, Mass., February 1, 1934.

Senator DAVID I. WALSH,
Senate Office Building, Washington, D.C.

DEAR SENATOR WALSH: I am informed that the Ways and Means Committee of the House is considering certain changes in the present income tax law, affecting owners of any interest in oil- and gas-producing properties.

As you know, the present Federal Income Tax Law provides for a depletion deduction of 27½ percent of the gross income, not to exceed 50 percent of the net income derived from oil and gas properties (sec. 114B-3).

The subcommittee has recommended a 25 percent reduction in percentage depletion allowance, as well as a similar reduction of cost depletion and depreciation of physical equipment. The Treasury Department has recommended the entire elimination of the 27½ percent depletion allowance; that is, complete elimination of sections 114B (2), (3), and (4).

Congress has recognized and approved the economic principle upon which this section rests since 1918, when discovery-value depletion for wasting industries was written into the act. In 1926, to simplify the matter, it was changed to percentage depletion for oil and gas wells, and Congress continued to recognize the basic economic principle as essential to the equitable distribution of the tax burdens as between different classes of taxpayers.

If either of the above recommendations is adopted, the production of oil would again be burdened with the inequitable taxes which the section was enacted to remove. This would apply particularly to the smaller and individual operators and to royalty owners.

I should appreciate anything that you might be able to do, in seeing that the fair and reasonable provisions of the present law be left undisturbed.

Yours very truly,

L. J. RYAN.

WAUNA, OREG., *February 12, 1934.*

Subject: Section 115 Revenue Act 1934.

Senator DAVID I. WALSH,
Senate Office Building, Washington, D.C.

DEAR SENATOR WALSH: The above bill is due to reach the Senate this week and will doubtless be referred to you as a member of the Senate Finance Committee.

We write to protest as grossly unjust the House approval of section 115 which taxes pre-March 1, 1913 earnings. It is unjust for these reasons:

(1) It is a tax on capital, not earnings or profits.
(2) It discriminates between stockholders of the same kinds of corporations.
(3) It discriminates between natural resource industries and all other industries.
(4) It discriminates between individuals who since 1916 have had their dividends on pre-March 1, 1913 earnings, and individuals who have not had the dividends but have left them invested with and for the benefit of industry.

We hope you see the fairness of our contention and will use your influence to sustain it in your committee. When the revenue acts of 1928 and 1932 were drafted by the House the intent was the same as now from section 115, but in both of those years the Senate insisted that the House change their position and restore exemption from tax for earnings made prior to March 1, 1913. So now, we ask the Senate to change the 1934 act in the same way.

We would appreciate hearing from you.

Yours very truly,

CROSSETT WESTERN CO.,
By C. H. WATZEK, *Manager.*

FOREIGN TAX CREDIT

STATEMENT OF L. C. GRATON, REPRESENTING CERRO DE PASCO COPPER CORPORATION—Resumed

(See p. 210)

3. That all other taxes save foreign income taxes are merely deductible is urged as reason that the foreign income taxes be likewise treated as merely deduction, instead of credit, or at least be treated as half deduction and half credit. The fallacies in this attempted analogy and the vital differences it ignores have been so effectively disposed of by others as to need no further attack.

4. It is intimated that domestic companies which go abroad to do business should be glad to bear the burden of double taxation as the price paid for the physical protection of their interests abroad. Without belittling the value of American citizenship or raising the issue as to how much actual protection the American firm abroad really receives from our Government, it does seem pertinent to inquire whether it is intended that the protection of our Government is to be given to those who are willing to pay an unjustly high tax bill and denied to those who object to tax duplication.

(See p. 211)

6. There is a tendency to belittle and ignore the abstract evils involved in international double taxation, yet no one can maintain that this double taxation is beneficient in principle nor deny that

it is objectionable. We cannot expect this evil to decline if we abandon our own past attempts to reduce it. If we are at present among the minority making such a worthy attempt, we are losing nothing by so doing, but on the other hand are securing resultant benefits of very great magnitude, as will be shown below.

8. It is repeatedly asserted that the granting of foreign tax credit completely wipes out the tax due to this country. In the first place, this cannot be possible unless the taxpayer concerned has absolutely no income ascribable to sources in this country. I doubt if there are more than an insignificant few of whom this is true. Doubtless the Revenue Bureau has or can compile figures showing what proportion of the total tax due this country by those who take the foreign tax credit is actually eliminated by this credit. Until such figures shall be available, it seems idle to talk in sweeping terms of an uncommon, extreme situation as if it were typical.

9. It is repeatedly stated or implied that the effect of the foreign tax credit in reducing or eliminating the tax paid to this country is a direct discrimination against the other taxpayers in this country and a handicap on their ability to compete. By many who hold this view, it seems to be forgotten that at least as much total tax is taken from the taxpayer who receives the credit as from those whose income is earned wholly at home. Therefore, there is no discrimination or unfair competitive advantage. Furthermore, in all those cases where the foreign tax rate is higher than the rate applicable here (which the Chairman of the Ways and Means Committee says is the usual case) the taxpayer operating abroad receives as credit only a fraction of the income tax he has paid to the foreign nation. Therefore, most of the corporations who receive the credit are paying a greater total of income tax than those corporations doing business solely at home. The claim of discrimination on this score is obviously fallacious.

10. Some appear to feel that the credit should be removed in order to equalize the advantage of lower unit cost that accrues to companies who manufacture both at home and abroad, as contrasted with companies of smaller output who manufacture only at home. But it is evident that advantage of lower unit costs arising from larger output does not necessarily accrue to companies doing business abroad, because these are not all large companies. Nor is such advantage exclusive with companies who do business abroad, since there are many large companies who do business only at home and in competition with smaller companies. In short, if what is desired is to reduce the advantage resulting from large-scale operations, the foreign tax credit is not the tool by which to achieve this end. Nor can it possibly be claimed as a general and typical proposition that companies operating abroad have an advantage in the matter of size over companies operating at home.

11. Some seem to intend to eliminate foreign tax credit in order to protect from competition the exports of American companies who do not have branches abroad. There seems to be general agreement that sales abroad are facilitated by foreign branches. To penalize these branches is to reduce their number and importance and, therefore, to reduce our total exports. This is surely a strange means of trying to foster the exports of those who do not have foreign branches.

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