[CONFIDENTIAL]

Liquor Tax Administration Act
Taxes on Wines

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

SECOND SESSION

ON

H. R. 191

RELATING TO TAXES ON WINES

AND

H. R. 9185

AN ACT TO INSURE THE COLLECTION OF THE REVENUE ON INTOXICATING LIQUOR, TO PROVIDE FOR THE MORE EFFICIENT AND ECONOMICAL ADMINISTRATION AND ENFORCEMENT OF THE LAWS RELATING TO THE TAXATION OF INTOXICATING LIQUOR, AND FOR OTHER PURPOSES

PART 1

MARCH 12, 13, and 17, 1936

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

54920

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LIQUOR TAX ADMINISTRATION ACT—TAXES ON WINES

THURSDAY, MARCH 12, 1936

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

The committee met, pursuant to call, at 10:30 o'clock a. m., in room 310 Senate Office Building, Senator Pat Harrison presiding.

Present: Senators Harrison (chairman), King, George, Walsh Barkley, Connally, Bailey, Clark, Byrd, Lonergan, Guffey, Couzens, La Follette, Metcalf, and Capper.

Also present: O. Norman Forrest, C. M. Hester, and Stewart Berkshire, representing the Treasury Department; John E. O'Neill, of the Federal Alcohol Administration.

The CHAIRMAN. The committee will come to order.

Senator KING. The subcommittee is ready to report on the Liquor Tax Administration Act.

The CHAIRMAN. We will be glad to hear what you have to say.

Senator KING. I think I would like to have Mr. Forrest present an analysis of the bill.

The CHAIRMAN. Mr. Forrest, we will hear you.

STATEMENT OF O. NORMAN FORREST, REPRESENTING THE TREASURY DEPARTMENT

Mr. FORREST. In the interest of brevity and being clear about it, if it pleases you, I would like to make my explanation in the language of this draft which we have prepared here, and read from that.

Section 2 of the House bill provided for the seizure and forfeiture of intoxicating liquor and containers thereof when the containers do not bear proper stamps, labels, and other markings required by Federal law or regulation, and for seizure and forfeiture of such containers and contents when the containers are not accompanied by proper bills of lading or other documents required by Federal law or regulation. Your committee was of the opinion that, as written, the section was too general and indefinite in its application and further that existing law relating to forfeitures was sufficient for the protection of the revenues.

The CHAIRMAN. Does the Federal Alcohol Administration agree with you in that conclusion?

Mr. FORREST. We are with the alcohol tax unit, and we have to do with the revenue features, while the F. A. A. has to do with regulatory provisions.

The CHAIRMAN. That suggestion meets the approval of the Treasury Department?

Mr. FORREST. Yes. Section 2 (a) of the bill (section 3 (a) of the House bill) provides that any person convicted of having in his possession, while violating any Federal law or law of any Territory or possession or the District of Columbia relating to intoxicating liquor, any smoke, gas, or fume device or explosive, or firearm as defined in the National Firearms Act, except a machine gun or a shotgun or rifle having a barrel of less than 18 inches in length, shall be subject to a fine of not more than $5,000 or imprisonment for not more than 10 years, or both. Persons engaged in, or aiding in, violating the law relating to liquor may also be held to be in possession of the device, firearm, or explosive.

Senator CONNALLY. What do you mean by persons engaged in such violation?

Mr. FORREST. Where one man is driving the car with the liquor, and the other man is sitting there with a shotgun, machine gun, or smoke screen in his possession.

Senator CONNALLY. Everybody in the car?

Mr. FORREST. Yes, sir.

Senator BAILEY. Why do you except the machine gun in that section?

Senator KING. This follows exactly the Firearms Act in respect to the character of the weapons.

Mr. FORREST. That is right, and we will see that is included in the next section.

The CHAIRMAN. Does the Department of Justice have anything to say on that?

Mr. FORREST. They have not. We followed through the National Firearms bill in designating the kinds of weapons which incur the penalty.

Section 2 (b) (section 3 (b) of the House bill) provides a penalty of imprisonment for not more than 20 years, if the offender is convicted of having in his possession or in his control, while violating the liquor laws, a machine gun as defined in section 5 (b) of the bill, or a sawed-off shotgun or rifle.

Senator CONNALLY. If he has got a rifle you let him off lightly, and if he has got a short rifle you give him the greater penalty?

Senator CLARK. I personally cannot see any distinction, it is just as bad to kill a man with a 36-inch rifle as it is with a 12-inch rifle.

Mr. FORREST. The short gun is very deadly at short ranges at which the revenue officers operate.

Senator KING. That matter was discussed fully, when the Firearms Act was passed, and we have listed out of that act the definitions and provisions.

Mr. FORREST. Section 2 (c) (sec. 3 (c) of the House bill) provides for the seizure and forfeiture of such devices, explosives, and firearms. The provisions of the National Firearms Act under which firearms may be disposed of to law-enforcement agencies and under which such firearms may not be sold are made to apply.

Section 3 (sec. 4 of the House bill) amends the act of May 18, 1934, as amended, which now provides penalties for killing or assaulting certain named officers and employees of the United States while engaged in the performance of their duties. The effect of the amendment is to broaden the statute so as to make punishable, assaults upon or killing of any officer, employee, agent, or other person in the services of the customs or internal revenue. The present law is limited to officers of these services.

Senator KING. This is just excepting those employed in the department.

Mr. FORREST. It is excepting those who are employed in the department, and those who are called upon by our men to aid.

Senator CONNALLY. Suppose a fellow was downtown off duty, would he be covered by that?

Mr. FORREST. No, sir; he has to be engaged in the performance of his official duties.

Senator CONNALLY. It does not say so.

Mr. FORREST. It says so in the act as amended.

Senator CONNALLY. I think when you have an act, it is bad practice to amend them, without reenacting them.

The CHAIRMAN. Do you have the original act before you?

Mr. FORREST. No; we do not have that before us, but that is the way the bill came from the House.

Senator CONNALLY. Of course, it is all right while he is on duty, but if he is downtown, or at a party, or somewhere else, it should not apply to him.

Mr. FORREST. He must be engaged officially, and the persons he calls into service must be acting officially.

Section 4 (sec. 5 of the House bill) gives to courts having jurisdiction of proceedings involving seizure or forfeiture of any vessel or vehicle under any Federal law the power to refuse to order the return of the vessel or vehicle on bond to the claimant thereof, if good cause is shown by the United States why the vessel or vehicle should not be returned on bond. Section 938 of the Revised Statutes provided that any vessel, goods, wares, or merchandise seized and prosecuted under any law respecting the revenue from imports or tonnage should be delivered to any claimant, upon the filing of a bond. Section 1 of the act of June 19, 1934 (48 Stat. 1116), amended section 938, Revised Statutes, by adding thereto a new sentence granting to courts having jurisdiction of cases involving vessels seized for violation of any law of the United States discretion to refuse to order the return of any such vessel to the claimant thereof. Section 204 (d) of the Liquor Law Repeal and Enforcement Act, approved August 27, 1935, provided for the release on bond of vehicles or aircraft seized for a violation of the internal revenue laws relating to liquor but granted to the court discretion, upon good cause shown by the United States, to refuse to order such return on bond. This section will extend the court's discretion to cover every vessel or vehicle, including aircraft, seized for violation of any law of the United States. It has been shown that, in the past, in many cases, during the time the question of whether the vessel or vehicle was subject to forfeiture was being litigated the claimant, upon the filing of a bond, has been allowed to repossess a vessel or vehicle and reuse it in law violation.

Section 5 (sec. 6 of the House bill) contains definitions of the terms "vessel", "vehicle", and "machine gun" as used in title I of the bill.

Senator KING. I suggested it was a little incongruous to say that an animal is a vehicle, but I am told that in many of the statutes an animal is defined as a vehicle. I call the attention of the committee to the fact we may be laughed at by saying that the wise Congress

said a horse is a vehicle. However, they carry the bootleg liquor in little cans, one on each side of the horse which is the vehicle. Proceed, Mr. Forrest.

Mr. FORREST. Section 201 amends section 3287 of the Revised Statutes to authorize the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, (1) to prescribe all necessary regulations relating to the drawing off, gaging and packaging of distilled spirits, and the marking, branding, numbering, stamping, transfer, transportation, and storage of such packages; (2) to prescribe, by regulations, the standards of fill of casks and packages at each distillery, thereby assuring that each cask will have a definite amount run into it from a cistern; relieving the storekeeper-gager of much of the detail work connected with the computation of the proof-gallon contents, now performed by him; and facilitating the entry of spirits into the warehouse; and (3) to require distillers and their employees to do such marking and branding and such mechanical labor pertaining to gaging required under the section, as the Commissioner deems proper and determines may be done by them without danger to the revenue, thereby expediting the entry of the spirits by relieving the storekeeper-gager of the manual work of marking and branding, and affording him much better opportunity to keep close surveillance over the activities of the distillers to see that they comply with the laws and regulations.

Senator KING. This makes for economy.

Mr. FORREST. Economy and speed.

Senator KING. Without injury but with benefit to the Treasury?

Mr. FORREST. Yes; and to the trade as well.

Under the House bill many of the details relating to gaging, marking, and branding were set forth in the bill. Your committee took the position that in the interest of flexibility of administration these matters might properly be the subject of regulations and has amended the bill accordingly.

Section 202 amends section 3295 of the Revised Statutes to authorize the Commissioner, with the approval of the Secretary of the Treasury (a) to prescribe marks, brands, and stamps to be placed upon distilled spirits' original packages upon tax payment and withdrawal from warehouse, and (b) to permit distillers and their employees, upon withdrawal of the spirits, to do such marking and branding and such mechanical labor pertaining to gaging as the Commissioner deems proper and determines may be done by them without danger to the revenue. This will expedite the tax payment and withdrawal of spirits. Following the policy adopted by the committee in section 201, the details of such marking and branding have been omitted from the bill.

Section 203 amends section 3290 of the Revised Statutes by relieving storekeeper-gagers of liability to penalties if distillers are authorized by regulations prescribed under authority of sections 201 and 202, to perform mechanical labor pertaining to gaging.

The law now says if anybody uses the storekeepers' gages, marks, and brands without his approval, he is subject to punishment.

Senator KING. The next is quite a long amendment, and I think you can explain that in a few words.

Mr. FORREST. Under the present law the distiller must own the property or have the consent of those who own it, or have liens or

judgments against it, that if there is any wrongdoing and the United States proceeds against the distiller, the property will be forfeited, and this amendment puts the distiller in the position where if he does not own the property and the landlord will not give the consent and the waivers required, the distiller may in lieu thereof file a bond and go on his way for such a time as the bond is in existence and the business is carried on, with exemption from the lien which now applies under section 351.

Senator KING. There is nothing in this tendered amendment which will jeopardize the interests of the Government?

Mr. FORREST. No, sir; and it will make it easier for the distilleries to continue in business.

Senator COUZENS. Does it handicap the mortgagee?

Mr. FORREST. No, sir; not at all.

Senator KING. Just proceed.

Mr. FORREST. Sections 302, 303, and 304 of the House bill, discussed in the succeeding paragraphs, relating to survey requirements as to the daily spirit-producing capacity of distilleries, have been retained by the committee without change.

Section 302 amends section 3264 of the Revised Statutes to permit the Secretary of the Treasury to waive the survey requirements as to whisky and rum distilleries, as is now done in the cases of industrial-alcohol plants and fruit-brandy distilleries, and, in the event of waiver, to relieve distilleries from such requirements of other sections of law incidental or relating to the survey as the Secretary determines may be waived without danger to the revenue. The survey is a method of determining the daily spirit-producing capacity of distilleries, and in some instances the incidental requirements appear to needlessly limit the output of distilleries. Upon waiver of survey, the output of distilleries will be very greatly increased with the same equipment.

Senator CONNALLY. Why did they have restrictions upon that?

Mr. FORREST. The restriction formerly was because of this survey under which the distiller was required to produce from the grain brought into the distillery a required number of gallons.

Senator CLARK. You only gave him an allowance, and he had to pay taxes on a certain amount of spirits?

Mr. FORREST. Yes; after fixing the allowance, we said to him, "You must pay tax on this amount of spirits."

Senator CLARK. He had to pay the tax whether he made it or not?

Mr. FORREST. Yes; and in order to know that, we had to restrict him to so many tubs per day.

Senator CONNALLY. Why did you change it?

Mr. FORREST. Because the supervision of distilleries now is so much better than when this was put into effect.

Senator CONNALLY. Is the whisky any better?

Senator BAILEY. We do not have so many little local distilleries as we had then. You have how many now?

Mr. FORREST. One hundred and six.

Senator BAILEY. And you used to have a thousand?

Mr. FORREST. Yes.

Senator CONNALLY. Is the effect of the laws we are enacting, putting the whisky business into a monopoly; it seems to me it is making a monopoly of it.

Mr. FORREST. Not these laws.

Senator CLARK. The whole effect of the regulations of the Federal Alcohol Administration since the repeal of prohibition, from the testimony given here, was to put about 90 percent of production of distilleries in the United States in the hands of seven, is that not correct?

Mr. FORREST. I do not know, sir.

Senator CLARK. It was approximately that?

Mr. FORREST. It was just a few.

Since the amount of the distiller's production bond is now predicated upon the distillery's spirit-producing capacity for 15 days under the survey, section 3260 of the Revised Statutes is amended by section 303 to provide that the Secretary of the Treasury shall, in the event that the survey is waived, fix the amount of such bond at a sum not less than $5,000, nor more than $100,000, the latter being the present maximum bond on distilleries operating under the survey.

At the present time, as an incident of carrying out the survey requirements, section 3267 of the Revised Statutes requires the equipment of cistern rooms at distilleries with two or more cisterns, each of which shall be of sufficient capacity to hold a day's run of each kind of spirits distilled. Section 304 amends section 3267 to authorize the Secretary, in the event the survey requirements are waived, and the distiller is relieved from the requirements of section 3267, as to the number and size of cisterns, to require the installation of such cisterns and other equipment in the cistern rooms, by way of tanks, and so forth, as he shall deem necessary to protect the revenue.

If the survey is waived, there is no need to keep the spirits distilled in one day in a separate tank.

Section 305 amends section 67 of the act of August 27, 1894, by providing that no individual, corporation, and so forth, intending to commence or continue the business of a distiller, rectifier, brewer, or winemaker, shall commence or continue such business until all bonds required with relation thereto are approved, and that such bonds may be disapproved if the individual, corporation, and so forth, giving the bond or owning, controlling, or actively participating in the management of the business of the individual, corporation, and so forth, giving the same, shall have been convicted of any fraudulent noncompliance with any law of the United States relating to internal-revenue or customs taxation of intoxicating liquor, or if such an offense shall have been compromised; or if such individual, corporation, and so forth, shall have been convicted of a felony under a law of the United States or of any State prohibiting the manufacture, sale, importation, or transportation of intoxicating liquor. It is obvious that any individual, corporation, or association which has committed any one of these offenses should not be permitted to engage in a business which plays so vital a role in the revenue system of the United States. This provision, it should be noted, is an extension of the old law which applied only to distillers, and is unchanged as it passed the House.

Section 306 (a) which has been added by the committee amends section 1 of the Bottling in Bond Act of March 3, 1897, to permit the bottling of distilled spirits in bond in any internal-revenue bonded warehouse without regard to the survey capacity of the distillery in which made and to permit such bottling to be done before or after tax payment, and in the name of the individual or association in whose name the spirits were produced and warehoused, as well as in the name of the distiller as is now provided by law.

Senator KING. That is in the interest of flexibility?

Mr. FORREST. Flexibility of manufacture, withdrawal, and bottling.

Senator KING. It serves the purposes of the Treasury just as well, and also makes for economy, and aids them.

Mr. FORREST. And aids the trade.

Section 306 (b) amends section 2 of the Bottling in Bond Act of March 3, 1897, to set forth clearly that the bonded period for spirits (except gin for export) shall be at least 4 years from the date of original gage as to fruit brandy, and 4 years from the date of original entry as to all other spirits. This restatement of the law is considered necessary because of certain statutes passed during prohibition which, it has been contended, had the effect of repealing the foregoing requirements. A proviso has been added by the committee, declaring that nothing in the Bottling in Bond Act shall authorize the labeling of whisky contrary to regulations issued under authority of the Federal Alcohol Administration Act. Regulations of the Federal Alcohol Administration now provide that as to whisky produced on and after July 1, 1936, age statements on labels shall be based upon the length of time spirits have been stored in new oak containers.

Senator CONNALLY. Let me ask you a question there. I see advertisements in the paper about blended whisky. Does the Government supervise any of the blending processes?

Mr. FORREST. No. I say no, and I mean to say we do not supervise the exact things they do, but we know the things they do and we see they pay the tax.

Senator CONNALLY. When they put out this whisky, is there any Government authority that knows what is in it or whether it is good whisky?

Mr. FORREST. We know what is in it, because they must give us their formula of each thing they rectify, but we do not go into the merits of whether it is good or bad. That would be under the Food and Drug Administration.

Senator CONNALLY. Does the Food and Drug Administration do that or not?

Mr. FORREST. If liquor should contain deleterious or poisonous matter, it would be under the Food and Drug Administration.

Senator CONNALLY. They do not supervise the manufacture of whisky?

Mr. FORREST. No, sir.

Senator CONNALLY. They have to have some fellow die with it before they do anything.

Mr. FORREST. Or a complaint of misbranding or adulteration, or something of that sort.

Senator CONNALLY. Does the Alcohol Control Unit have anything to do with it?

Mr. FORREST. No, sir.

Senator CONNALLY. What do they do?

Mr. FORREST. Mr. O'Neill can answer that better than I on that, but I can answer a little bit. They have to do with the qualifications of the persons who get the permits, and also the labeling.

Senator CONNALLY. It looks to me like the qualifications of the product would be more important than the fellow. Somebody ought to know whether it is good whisky or not, because they are selling it everywhere over the country.

Mr. FORREST. You ask me as to the deleterious or poisonous qualities of the liquor, and it is not my understanding that is within the province of the F. A. A., Senator.

Senator CONNALLY. I would like to know if the F. A. A. supervised the production of whisky to see that the ingredients are pure.

Mr. O'NEILL. No, the Federal Alcohol Administration established the standards of identities and quality by which a product which contains any deleterious substance cannot be blended.

Senator CONNALLY. If you go down the street you see whisky in the windows marked "blended", and so on; how does the purchaser know whether that is good whisky or not; is there any way he has of knowing?

Mr. O'NEILL. Only by the label itself, and the Federal Alcohol Administration requires a great deal of information to be put on the label. Those regulations have not gone into effect because of the passage of a resolution, but when they become effective the label should show definitely to the purchaser the exact ingredients of the product, whether straight whisky, blended whisky, or whether it contains alcohol, or contains in excess of 2½ percent of blending materials and coloring matter.

Senator KING. I have seen the regulations and read them, and they are very meticulous, and they will make it very clear if there is any violation of the pure food law that punishment will ensue.

They cannot sell anything until they get a label, and they cannot get a label until they furnish your organization with information relative to the product.

Mr. O'NEILL. The act requires that the labels all be submitted for examination and approval, and the storekeeper-gager and revenue officer at the distillery, I understand, will not permit the bottler to put anything in the bottle except what the label says the product is.

Senator KING. So that if there were impurities or deleterious matter put in the bottles in violation of the terms of the label, the man would be subject to prosecution?

Mr. O'NEILL. Yes, sir; that would be a misbranding of the product.

The CHAIRMAN. All right, Mr. Forrest, you may continue.

Mr. FORREST. Section 307, as passed by the House, amended the various provisions of law relating to the bonded period for spirits and the loss allowances thereof by redeclaring those laws as they existed prior to wartime and national prohibition. The purpose of this section was to redeclare the bonded period for spirits to be 8 years and to redeclare the loss allowance to be for a period of 7 years. It further provided that distilled spirits 8 years of age or over which were in bonded warehouses on December 5, 1933, might remain in bond, and, when withdrawn, be given loss allowances up to and including the thirtieth day after the date of the enactment of this act. In view of the piecemeal fashion in which the law granting allowances for losses of spirits by leakage and evaporation has been built up, your committee has deemed it advisable to rewrite the law so as to spell out clearly the intention of section 307 as passed by the House.

Senator KING. The committee had to rely, of course, upon the experiences of the Treasury Department in determining the losses.

Mr. FORREST. This section was rewritten by Mr. Boots, and it appears now in the draft of the amendment. We think he did a very good job.

Section 308, as passed by the House, amends section 602 of the Revenue Act of 1918, which provided for the removal of alcohol and other high-proof spirits from registered distilleries for the purposes stated therein. When section 602 was enacted alcohol and other high-proof spirits of 160 degrees of proof or more were produced at whisky distilleries. At the present time alcohol and other high-proof spirits of 160 degrees or more (except fruit brandy) may be legally produced only in industrial-alcohol plants established under title III of the National Prohibition Act and regulations thereunder. The committee has amended section 308 to specifically require distillers to reduce spirits in the cisterns at distilleries to a proof somewhere between 100 and 159 degrees of proof before removal from the cisterns. The purpose of these amendments are to preserve the distinction between alcohol and other distilled spirits.

As passed by the House section 309 amended section 3293 of the Revised Statutes to prescribe the form of the entry and the entry stamp and to require distillers to furnish monthly or annual warehousing bonds in penal sums of not less than 50 percent of the tax due on distilled spirits on deposit in the distillery warehouse at one time. Your committee has amended the section to require the entries of spirits to be made in accordance with the provisions of regulations prescribed by the Commissioner of Internal Revenue, thus giving desired flexibility to such requirements; and has further amended the section to require distillers and warehousemen to furnish bonds in penal sums not to exceed $200,000 for each warehouse.

Sections 310 and 311 amend sections 3302 and 3303, respectively, of the Revised Statutes, to authorize the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to prescribe, by regulations, the records to be kept by storekeeper-gagers and distillers of the receipt and use of distilling materials, and the production of spirits, at distilleries. In the bill as passed the House the matter to be included in these records was set out in considerable detail. Your committee is of the opinion that these matters should be left to regulations.

Section 312 amends section 3331 of the Revised Statutes to provide for the operation of a distillery or distilling apparatus, under bond, after seizure. The existing statute provides that seized distilleries and apparatus may be operated under bond only when cattle are being fed with the spent grain therefrom, and this section amends the law with a view to permitting the continuance of the employment of the workers in the distillery. No change is made in the section as passed the House.

Section 313 as it passed the House clarifies existing law by amending certain provisions which by implication would permit the use of containers other than hogsheads, barrels, and kegs as original

stamped packages for fermented malt liquors, so as to confine such packaging to hogsheads, barrels, and kegs. The amendment does not prohibit the packing of beer in cans. In this respect canned beer is accorded the same treatment as bottled beer. It also permits the Commissioner of Internal Revenue to authorize the use of such tapping devices or faucets as will permit the fixing and destruction of stamps on hogsheads, barrels, and kegs containing fermented malt liquors in a manner consistent with the protection of the revenue. Your committee has added two new subsections. One authorizes the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury to prescribe by regulations tolerances within the limits of which the amount of fermented malt liquor in a barrel or fractional part of a barrel may exceed the quantity tax-paid as indicated by the stamp affixed to such barrels or fractional parts of barrels, without being accounted and tax-paid at a higher rate. This amendment is in the interest of brewers whose barrels are reduced in capacity by the customary treatment accorded them to keep them in fit condition for the shipment of beer, to wit: (1) Steaming; (2) driving of hoops to tighten the staves; and (3) pitching of interior, and therefore, must be a trifle oversize when new.

The CHAIRMAN. That is on the recommendation of the Treasury?

Mr. FORREST. On the recommendation of the trade, and approved by the Treasury.

The second amendment added by your committee is for the purpose of authorizing the Commissioner of Internal Revenue to permit the shipment of beer in tank cars to breweries and depots, notwithstanding the provisions of law amended by the section as it passed the House, if in his opinion such transfer may be permitted without danger to the revenue.

Section 314 amends sections 3242 and 3281 of the Revised Statutes by making uniform the penalties which may be imposed upon any person who carries on the business of a brewer, rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, and willfully fails to pay the special tax required by law. Under the present law the last sentence of section 3242 of the Revised Statutes imposes a comparatively light penalty upon brewers who operate without paying the special tax, and section 3281 imposes a relatively high penalty upon the other special taxpayers named. In addition, section 314 imposes the penalties only upon those who willfully fail to pay the special taxes. No change is made in this section as it passed the House.

Section 315 amends section 3335 of the Revised Statutes to authorize the requirement of more information to be supplied by brewers in their notices than is now required by law, for the purposes of enforcing tax liability, effecting forfeitures, and approving bonds offered by prospective brewers. The Commissioner of Internal Revenue is authorized to require the notice to set out the names and residences of persons directly or indirectly interested in the business, the precise place and description of the premises, and such additional information as he deems necessary for the protection of the revenue. No change is made in this section as it passed the House.

Section 316 amends section 3336 of the Revised Statutes by permitting the Secretary of the Treasury to prescribe the penal sum of bonds to be furnished by brewers, in proportion to the production capacity of the plant, but in no event to be less than $1,000, and the committee has added a proviso that if under regulations the penal sum of a brewer's bond exceeds $100,000, the brewer shall give bond to cover such excess, which additional bond may be given without surety or collateral security. The present law provides that the bond shall be in a sum equal to three times the amount of tax upon the amount of fermented malt liquor which is estimated the brewer will manufacture in any 1 month. Since the present rate of tax on fermented malt liquor is $5 on each barrel of 31 gallons, the present bond required of brewers is excessive and imposes an unnecessary hardship as to premiums. The requirement that a new bond must be furnished every 4 years has been stricken from the section by the committee.

Senator KING. That is a recommendation by the Treasury Department, and the subcommittee accepted their views as stated.

Mr. FORREST. Section 3340 of the Revised Statutes is amended by section 317 to provide for the forfeiture of brewer's premises for flagrant and willful removal of taxable malt liquors for consumption or sale without payment of the tax thereon. The present law does not provide for such forfeitures and this amendment is considered necessary in aid of the collection of the revenue. Similar provisions of law exist as to distillery premises.

The section, as it passed the House, provided that the brewery premises should consist of the lands and buildings described in the brewer's notice, and that such premises should, as to breweries established after the enactment of this act, be used solely for the manufacture of beer, lager beer, ale, porter, and similar fermented malt liquors, cereal beverages containing less than one-half of 1 percent of alcohol by volume, vitamins, and ice; of drying spent grain from the brewery, and recovering carbon dioxide and yeast.

It further provided that brewery bottling houses established after the date of the enactment of this act should be used solely for the purposes of bottling such fermented malt liquors, and cereal beverages containing less than one-half of 1 percent of alcohol by volume. The section provided that notwithstanding such amendments, where established breweries and brewery bottling houses were on the date of the enactment of this act, being used by the brewer for other purposes, such use might be continued by such brewer.

Senator KING. It was evident to the committee that some of the brewers were manufacturing cereals, and the continuation of that activity would not interfere with the work of the Treasury or the collection of the taxes and would not endanger the revenue.

Mr. FORREST. The section further provided that the bottling house of any brewery should not be used for the bottling of the product of any other brewery. A penalty of $50 was provided with respect to each day upon which any brewery or brewery bottling house was used contrary to the provisions of this section.

The committee has amended the section (1) to provide that the brewery premises shall also be available for the manufacture of malt sirup and the storing of bottles, packages, or supplies necessary or incidental to the manufacture of the articles now proposed to be

manufactured on the brewery premises, and, under regulations, for the manufacture of other commodities or byproducts; (2) to permit the use of the brewery bottling house for the manufacturing, carbonating, and bottling of soft drinks and to prohibit the use of the bottling house for the bottling of the product of any other brewery except under regulations prescribed by the Commissioner of Internal Revenue; and (3) to provide that not only the brewery premises, but the brewery bottling house premises may be forfeited in the event of flagrant and willful removals of taxable malt liquors for consumption or sale without payment of tax thereon. The penalty for use of the brewery or bottling house premises contrary to the section is retained.

Section 318, which has been retained unchanged by your committee, permits the Secretary of the Treasury to authorize the amelioration and fortification of wine without supervision by any officer of the United States, whenever he determines that this may be done without danger to the revenue. The present law requires the amelioration and fortification of wines by the winemaker to be conducted under the supervision of a Government officer. This is deemed unnecessary since wine must be tax-paid upon removal from bonded winery premises.

Section 319 (a) amends section 605 of the Revenue Act of 1918, and relates to the premises to be used for rectification.

Senator KING. You can state that in just a few words.

Mr. FORREST. It means that section 605 of the Revenue Act of 1918 permitted the manufacture of vermouth on the premises, using only sweet wine, without incurring the special tax imposed upon the rectifier, and without payment of the tax of 30 cents a gallon imposed upon the products of rectification.

The CHAIRMAN. Does the Treasury approve that?

Mr. FORREST. Yes, sir; the next section 319 amends the act in the same way with reference to the use of fortified sweet wines in the manufacture of vermouth on the premises of a bonded winery.

Section 319 (c) amends section 611 of the Revenue Act of 1918 to reduce the tax on still wines containing not more than 14 percent of alcohol from 10 cents per wine gallon to 5 cents per wine gallon. Your committee recommends that this provision be enacted in the interest of the use of light wines as food and also to insure a reasonable return to the wine producer on his investment and labor. In the opinion of your committee, however, the proposed reduction in tax (which will result in a revenue loss of not in excess of $833,000) will be considerably offset by increased consumption.

The CHAIRMAN. Does the Treasury approve that?

Mr. FORREST. No; the Treasury does not approve that.

The CHAIRMAN. Because of a loss of revenue?

Senator CONNALLY. They figure it would be offset by the increased consumption.

The CHAIRMAN. What about that?

Mr. HESTER. The increased consumption will be about 20 percent. The Treasury Department has submitted to the committee a brief in prepared form in which the Treasury opposed the reduction of any taxes on wines, and that appears at page 182 of the formal hearings.

We think the increased consumption will not amount to over 20 percent, and that would leave a loss of revenue of over $600,000 on light wines.

Senator CONNALLY. Senator King, you did not recommend any change?

Senator KING. We accepted the view of the House in that matter.

Senator LA FOLLETTE. Does the House bill reduce it?

Senator KING. It reduces it from 10 cents to 5 cents a gallon. If you will read the report which was submitted by Judge DeVreese and Mr. Buck relative to the costs in the production and disposition of wines you will find that there is a very strong argument in favor of the reduction in the taxes.

The CHAIRMAN. The only thing I have in mind at this is that if you start out on a reduction on any taxes it is an invitation to all of the other people to come in and want to reduce some other taxes. It may be a most laudable proposition and may be right, but you are confronted with that proposition.

Senator CONNALLY. I want to ask this gentleman here a question. Do you figure that by this increased consumption of light wines there will be less hard liquor drunk?

Mr. HESTER. Strangely enough, our report beginning on page 182 indicates that last year there was an increase in the consumption of higher-alcoholic-content wines. They wanted fortified wines which have a higher alcoholic content than the light wines.

Senator CONNALLY. Fortified wine is a wine to which has been added spirits.

Mr. HESTER. That is right; it is wine between 14 and 21 percent.

Senator CONNALLY. Was there an increase in the consumption of light wines?

Mr. HESTER. Yes, sir; there was some increase.

Senator BAILEY. Your purpose is to encourage the planting of grapes and the production of more grapes. We have got to make a change in the American agricultural life. We have got to have less wheat and less cotton. You have just as many farmers, and you must have something for them to do.

This is the production of food wine, not distilled spirits. They are planting grapevines all over the South, and in the West. We can grow grapevines, and we can have vineyards as well as France or Italy.

This is to encourage the farmers and is not distilled spirits, but it is food wine of only 14 percent. That is the reason we induced the subcommittee to make a reduction.

I think this is a very fine thing from the prohibition, or moral view, and if we could get the American people to drink light wines instead of hard whiskey, we would accomplish a great deal more than national prohibition ever hoped to accomplish.

We are simulating this to the European experience, making it cheaper, to encourage them to plant vineyards, and they are planting them in the South now. The Government has planted 5,000,000 Scupernong grape vines in the South.

Mr. HESTER. I do not want to be misunderstood as opposing the action of the subcommittee. I just stated briefly that we have this memorandum in here, stating our reasons.

The CHAIRMAN. I have but one thought in mind, and I know what the pressure will be when we reduce any tax, and I know that everybody is going to come in and want a reduction.

I appreciate the force of what you have said, and I know the President has been very insistent to try to get the American people to drink these forms of light wines, but it is going to give the committee trouble about other taxes whenever you do reduce them, no matter how laudible it may be.

Senator KING. Let me make this observation: The House not only reduced the tax on light wines, to which the Senator just referred that are being grown in so many parts of the United States, but it reduced the tax from 20 cents to 10 cents a gallon upon your sweet wines, port, and sherry, and wines in that category.

This committee declined to go along with the House, only to the extent of the reduction on light wines, and we refused the reduction on the sweet wines.

Personally, I think there is a growing interest in the sweet wines, and if we produce more sweet wines, such as port and sherry, there will be less importations. Undoubtedly the House took that view and reduced the tax on sweet wines as well as on light wines, but the Senate subcommittee refused to go along with the House on the sweet wines.

We did feel the light-wines views expressed by Senator Bailey were correct.

Senator BAILEY. I do not think there will be as much loss as has been estimated.

Mr. FORREST. It is claimed there will be an offset by reason of increased consumption to about 25 percent.

The CHAIRMAN. But the total loss would be $600,000.

Mr. HESTER. That is right.

Senator KING. That is a purely arbitrary figure.

Mr. HESTER. It is based on the experience of last year.

Senator KING. The fact is a larger number of people grew grapes last year, that had not grown them for some years, and more will grow next year, so that the production of light wines will increase, and the consumption will increase more than you anticipate based on the consumption of last year and the year before.

The CHAIRMAN. We will return to this proposition later, as we are not passing definitely on these things.

Just go ahead, Mr. Forrest.

Mr. FORREST. Section 319 (d) amends section 613 of the Revenue Act of 1918 to exempt from payment of tax at the distilled spirits rate cordials, liqueurs, and similar compounds made with tax-paid wine fortified with tax-paid brandy, and containing more than 24 percent of alcohol by volume. Under the present law such cordials, and so forth, are subjected to multiple taxation in that the brandy and wine used in their manufacture are taxed, the cordial itself is taxed after manufacture, and there is an additional tax if the alcoholic content which is attained only through the wine and brandy used exceeds 24 percent.

Senator KING. The Treasury recommended that.

Mr. FORREST. Yes; the Treasury recommends that, because under the law as it is now, they are really subjected to two taxes. In the first place they pay the wine tax, then they pay the tax on the brandy used in the fortification. Then they bring it over into the rectifying plant and add their sugar, and if it happens to exceed 24 percent they are immediately again taxed $2, and that is not intended.

However, it is proposed when they make liquor by adding something else that has not paid the tax, that they shall pay the tax.

Section 320 amends section 609 of the Revenue Act of 1918 by striking from that section the words "industrial distillery of either class established under the act entitled 'An act to reduce tariff duties and to provide a revenue for the Government, and for other purposes', approved October 3, 1913", and substituting therefor the words "industrial alcohol plant." Under the act of 1913 the alcohol distillers of both classes were designated as industrial distilleries, whereas under title III of the National Prohibition Act, all alcohol may be produced only at "industrial alcohol plants." The purpose of the amendment is to harmonize section 609 and title III of the National Prohibition Act in this regard. No change is made in this section as it passed the House.

Section 321 requires every retail liquor dealer to keep records, in as simple a form as he desires, of all distilled spirits received by him. Under this section the records must be retained by the retailer for a period of 2 years from the time of the transaction to which they relate, and shall be open to inspection by Government officers. The section provides a fine of $25 for each willful violation. Such records will prove helpful in the enforcement of the revenue laws. No change is made in this section as it passed the House.

Section 322 amends section 3237 of the Revised Statutes by requiring the taxpayer to remit his special taxes with his return within the calendar month in which the special-tax liability commences. Whereas section 3232 of the Revised Statutes provides that no person shall be engaged in or carry on any trade or business in respect of which a special tax is imposed until he has paid the special tax, section 3237 provides only that the return shall be made within the calendar month in which business is commenced. The purpose of this amendment of section 3237 is to harmonize it with the apparent intention of section 3232 that the tax shall be paid within the month in which the business is commenced. The House provision is retained unchanged.

Sections 323 and 324 amend paragraphs "Fourth" and "Fifth" respectively of section 3244 of the Revised Statutes to restate the classifications of retail and wholesale dealers in liquors and malt liquors. The amendments further provide (a) that no retail dealer in liquors or malt liquors shall be held to be a wholesale dealer solely by reason of sales of 5 wine-gallons or more to the same person at the same time when such sales are for immediate consumption on the premises where sold, and (b) that additional special tax as dealer shall not be due on account of sales of malt liquors consummated at other dealers' places of business or, as amended by the committee, at the residences of purchasers who have filed oral or written standing orders with such dealers to call at the residences to ascertain the needs of the residents.

Senator KING. At what place in the bill would it be proper to offer the amendment Senator La Follette offered?

Mr. FORREST. Just at this point.

Senator KING. Senator La Follette, do you desire to offer that amendment now?

Senator LA FOLLETTE. This amendment was brought to my attention by the Wisconsin State Fair Association. They are required now, as I understand it, if they want to take out any license for the sale of malt liquor, they have to take out a license for the whole year, and this amendment would provide that they should pay a license which would be determined upon the percentage of 1 month instead of being required to take out a license for the whole year, where a fair may run for only 3 or 4 or 5 days.

I understand there is no objection on the part of the Department.

Mr. HESTER. That amendment is agreeable.

Senator KING. The matter was submitted to the Treasury officials and they approved it.

The CHAIRMAN. Without objection it will be incorporated.

Senator CONNALLY. I do not see why they should do this myself, since it is competing with the other dealers regularly in the business.

Senator LA FOLLETTE. Here is the situation. For instance, we have a company outside the city limits of Milwaukee, the State owns the property and the fair is held there and it lasts for 3 or 4 days. This does not affect anything but the fermented malt beverages, but if any concessionnaire desires to sell beer with the refreshments that are sold at these stands that are familiar to all Senators, he has got to take out a license for a year, when the fair itself is only going to last a few days.

Senator WALSH. What is the tax?

Mr. FORREST. $25. Let me say further, if he happens to take out this license in June, he would pay one-twelfth of $25 and, on the other hand, if he happens to do it on the 14th of July, he would pay $20.

Senator CLARK. So that if the fair happens to come in one month he pays $2 and in another month he pays the whole sum.

Senator BAILEY. In my State we have plenty of fairs, and it is the same crowd that puts on the show at every fair.

Mr. FORREST. I have not reached that yet, since we have an amendment as to the itenerant in the next paragraph by the issuance of at-large special tax stamps to retail dealers whose business requires them to travel from place to place.

Senator LA FOLLETTE. In this connection, if there is any doubt in the minds of the committee about the amendment, I would like to read this letter from the manager of the Wisconsin State Fair.

The letter is dated at Madison, Wis., January 16, 1936, and addressed to myself, reading as follows:

I am writing you in connection with a situation which exists at the State fair and the 75 other fairs in Wisconsin. Under the law and rulings of the Treasury Department, each concessionaire selling malt beverages at a fair is required to have a Federal malt-beverage license for 1 year. For example, in the case of the State fair held in August, each concessionaire is required to purchase a license for the balance of the fiscal year which during the month of August costs $18.34; such license can be transferred to other places during the year. At Milwaukee there are many local residents who make it a practice of operating a stand during the State fair week only, and therefore have no use for a license the balance of the year. In fact many of these people depend partly on the success of these stands to help make a living for themselves and families, and requiring the taking out of a license for a year creates quite a hardship.

A similar situation formely existed with reference to the local license, but this was corrected in 1935 by the enactment of chapter 238, copy of which is enclosed. Under this law a fair takes out one license for the entire grounds and is permitted to let stands, and the operators of such stands are permitted to conduct their business without additional license.

You will note from a copy of a letter from the Treasury Department to the collector of internal revenue, Milwaukee, that the Department recognizes a fairgrounds as a unit and permits one license to cover a number of concessions, provided one person or firm has the exclusive privilege of selling such liquors. We are unable to take advantage of the one license under this ruling, because we do not care to give some one individual or firm a monopoly on the sale of malt beverages.

I would appreciate any help you can give in getting the Federal law or regulations in line with the present State law. In discussing this with members of the Association of Wisconsin Fairs, composed of officials from the 75 fairs of the State, I find that these fair officials would also appreciate any help you may be able to give.

Yours very truly,

A. W. KALBUS,
Associate Manager, Wisconsin State Fair.

The copy of the letter to the collector of internal revenue referred to in the foregoing letter is as follows:

TREASURY DEPARTMENT,
Washington, D. C., July 3, 1933.

COLLECTOR OF INTERNAL REVENUE,
Milwaukee, Wis.:

Reference is made to your letter of June 12, 1933, regarding the special tax liability incurred through the sale of fermented malt liquor from several stands and an automobile truck at the Wisconsin State Fair.

In reply you are advised that in accordance with the provisions of Treasury Decision 1388, issued July 3, 1908, the park in which the Wisconsin State Fair is held will be considered as one place of business, and sales of malt liquors may be made under the issuance of but one special tax stamp from several concessions located on the grounds, provided one person or firm has the exclusive privilege of selling such liquors. However, if more than one proprietor or concessionaire has the privilege of selling malt liquor on the fairgrounds, each such proprietor or concessionaire will be liable for a special tax as a dealer in fermented malt liquors.

The special tax laws, however, do not provide for the peddling of malt liquors, and persons found selling the same in a manner of a peddler must be regarded as engaged in a business not authorized by the special tax laws and held liable to a special tax at each place where such sales are made. The sale of malt liquor from the automobile truck must therefore be confined to the fairgrounds, and if sales are made outside on the streets adjacent to the park the person making such sales will be penalized to the extent of his failure to qualify as a dealer in malt liquor at each place where such sales are made.

ADELBERT CHRISTY,
Acting Deputy Commissioner.

The CHAIRMAN. I want to ask this question, is there anything in the law now when they take out a license to sell beer they have got to sell it on the premises?

Mr. FORREST. Yes; the special tax covers only the premises mentioned in the application.

The CHAIRMAN. My idea is how we could regulate people who are engaged in the beer business selling at their premises; how would they go down there to sell the beer?

Mr. FORREST. They would not; they would be excluded.

Senator CLARK. Unless they got another license to do it?

Senator LA FOLLETTE. The way it works, someone takes out a concession for a refreshment stand at the fair, and if he wants to sell fermented malt beverages in connection with that, he has got to take out a license and it is a question, as has been pointed out, concerning the discrimination. The fair is only held for a short time, and it is unfair to ask a man to take out a license on the basis that he would operate for a year when he would only operate a few days.

Senator CLARK. The only question involved is the equity of the tax, because there is no competition with the regular beer dealers. Our fair is 4 miles out from the city and nobody wants to eat a hot dog and then go down town to get beer. They will be operating on the fair grounds, and the sole purpose, it seems to me, is whether it is equitable to charge for a year to operate a few days.

The CHAIRMAN. Why would it not be good to put in a proviso that in any case the tax shall be not less than $2?

Senator LA FOLLETTE. There is no objection to that, and it would probably be better from an administrative standpoint.

The CHAIRMAN. It seems to me if a fellow is going to operate he would be willing to pay $2.

Senator LA FOLLETTE. I would have no objection to that, and I suggest you change the amendment so as to make that provision, and then I hope the committee will agree to the amendment.

The CHAIRMAN. Without objection, it will be accepted.

Senator CONNALLY. I want to register an objection.

The CHAIRMAN. Very well; all in favor will please say aye, and those opposed, no.

(Vote was registered.)

The CHAIRMAN. The ayes have it.

Senator LA FOLLETTE. Thank you.

The CHAIRMAN. You may proceed, Mr. Forrest.

Mr. FORREST. Section 323 as modified by your committee also amends paragraphs (a) and (b) of paragraph "Fourth" of section 3244 of the Revised Statutes to authorize the issuance of "wine dealer" or "wine and malt liquor dealer" special tax stamps to wholesale and retail dealers who sell wine only, or wine and malt liquor only, and the issuance of "at large" special tax stamps to retail liquor dealers whose business requires them to travel from place to place.

Section 325 reenacts section 3450 of the Revised Statutes and amends it by increasing the penalty for removal, deposit, or concealment of taxable articles with intent to defraud the Government of the tax thereon, from a fine of not more than $500, to a fine of not more than $5,000 or imprisonment for not more than 3 years, or both. The purpose of reenacting section 3450 is to obviate the possibility of a construction that section 3450 was so amended by section 26 of title II of the National Prohibition Act (relating to the transportation of intoxicating liquor) as to make section 3450 inapplicable to transportation of liquor. Since transportation is the backbone of liquor law violation, it has been considered necessary to increase the penalty in the manner provided in this amendatory section, so as to combat effectively the transportation of illicit liquor. No change is made in the section as it passed the House.

Section 326 as it passed the House amended section 203 of the Liquor Taxing Act of 1934 to authorize the redemption of the strip

stamps issued under the authority of that act. The purpose of this amendment is to remove the incentive to bootleg these stamps, by providing a means for the purchaser to secure reimbursement, for those stamps which he cannot use. Your committee has rewritten the section to specify the condition under which the stamps may be redeemed.

Section 327 (a) provides that the tax paid on fermented malt liquor which was lawfully removed from a brewery to a brewery bottling house between March 22, 1933, and the date of the enactment of this act, and became unsalable during that period without fraud, connivance, or collusion on the part of the brewer and without removal from such bottling house, and was destroyed in the presence of a representative of the Bureau of Internal Revenue or was returned from such bottling house to the brewery in which made for use therein as brewing material, may be refunded to the brewer or credit allowed therefor, provided the brewer files a claim for such refund within 90 days after the date of the enactment of this act.

This subsection in the House bill was applicable to future as well as past losses of beer. To care for such future losses the committee has added section 327 (b) which authorizes the Commissioner of Internal Revenue to make a survey of the losses of tax-paid fermented malt liquor in breweries, brewery bottling houses, and elsewhere for the purpose of ascertaining if refunds may be made of taxes paid on fermented malt liquor so lost, and, if he finds that such refunds may be made consistently with the protection of the revenue, to prescribe regulations under which such refunds may be made.

SENATOR KING. I would like to make one observation here. This does not go as far as many of the requests coming to the committee urged us to go. The contention was made that there was a loss in beer from breakage and many other causes, of from 3 to 5 or 6 percent, and attention was called to the fact that under the act during the Spanish-American War an allowance of 7 percent was given, whether it was too much or too little to cover the loss wasted, and so on. The committee did not accept that view, and this amendment does not go that far. I think this amendment will reach the situation, since it sets up this organization, and the Treasury will make a study and make the regulations that will allow a reasonable amount where the proof is satisfactory of loss from wastage and so on, so I think it covers the situation very well.

Mr. HESTER. As a matter of fact, this is satisfactory to the brewers, as they told you.

The CHAIRMAN. At this time the committee will recess until 2:30 o'clock this afternoon, to meet in the office of the Senate District Committee.

(Whereupon, at 12:10 p. m., the committee took a recess until 2:30 p. m., this day.)

AFTER RECESS

The committee met at 2:30 p. m., after the taking of the recess.

The CHAIRMAN. The committee will come to order. Mr. Forrest, you may continue, if you will.

Mr. FORREST. Section 328 amends section 3246 of the Revised Statutes by providing that a wine maker who has qualified under the internal-revenue laws, may be exempt from occupational tax

for the sale of wine of his own production at the place of manufacture or at his principal office or place of business, but can have only one such exemption. Under the House bill, it was not required that the wine makers be qualified as such under the internal-revenue laws. Under existing law such exemption is granted only to vintners who make wine of grapes grown by them or purchased from others, which obviously affords no exemption to wine makers who produce wine from fruits other than grapes. By reason of the fact that wines are produced from other materials, it is deemed advisable to rewrite the section to cover the subject. The provision that apothecaries and manufacturing chemists or flavoring-extract manufacturers shall use recovered tax-paid alcohol only in the manufacture of medicines or flavoring extracts of the kind in the production of which originally used, is in harmony with the long-established ruling of the Department that tax-paid alcohol recovered after use in the manufacture of dangerous drugs shall not again be used in the production of medicines or flavoring extracts for internal use to the possible injury of the users.

Senator CONNALLY. Let me ask you about this wine. If this bill passes, can anybody make wine that wants to?

Mr. FORREST. Yes; anybody that wants.

Senator CONNALLY. What does he have to pay? What I am talking about, there is no use in a little fellow having a little vineyard if he has got to ship his grapes to some wine factory.

Senator GUFFEY. He can make the wine and sell it on his place.

Senator CONNALLY. What does he have to do?

Mr. FORREST. All he has to do is notify the Internal Revenue Department he is going into the wine business, and submit his bond and submit his plan and have that approved.

Senator CONNALLY. How much wine can he make on home manufacture without the payment of a tax?

Mr. FORREST. That is a different question.

Senator CONNALLY. I know it is a different question, but I want to know what it is.

Mr. FORREST. I mean in my mind it raises a two-point question. I thought you were asking about the head of a family.

Senator CONNALLY. Yes; anybody that has a vineyard and wants to make wine.

Mr. FORREST. The head of the family, whether he owns the vineyard or buys the grapes, can now make 200 gallons for his own family.

Senator CONNALLY. Without a tax being had.

Mr. FORREST. Yes; without a tax.

The CHAIRMAN. And without making application to anybody.

Mr. FORREST. Yes; he must do that, so that we can know where he is working.

Senator KING. You can state that next one in a word.

Mr. FORREST. The law is amended so as to permit charitable clinics to withdraw alcohol free of tax.

Section 330 in the House bill has, in substance, been enacted into law in the Federal Alcohol Administration Act since this bill passed the House. The committee has inserted a new section 330 which amends sections 610 and 613 of the Revenue Act of 1918 to authorize (1) the manufacture of peach wine and (2) to make subject to tax the cordials, liqueurs, or similar compounds containing peach wine fortified with peach brandy.

Section 331 amends section 612 of the Revenue Act of 1918 to authorize withdrawal of peach brandy from the new type of internal revenue bonded warehouse for use in the fortification of peach wines; extends the time within which the tax on brandy and wine spirits of any kind used in the fortification of wines must be paid from 10 to 18 months; and requires every producer of wine who withdraws brandy or wine spirits to give bond, in the form prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to fully cover at all times the amount of tax due on the brandy and wine spirits so withdrawn by him. As passed by the House, this section reduced the tax on brandy and wine spirits used in the fortification of wine from 20 cents to 10 cents per gallon (this rate has been restored by the committee); extended the time for payment of the tax to 12 rather than 18 months; did not require full bond coverage; and made no reference to peach brandy or fortified peach wine.

Sections 332 and 333 of the House bill, like section 331, were in substance enacted into law in the Federal Alcohol Administration Act. Your committee has substituted two new sections dealing with peach wines and peach brandy. Section 332 amends the last paragraph of section 42 of the act approved October 1, 1890, to extend the provisions of that section and of section 43 of the same act to cover the use of peach brandy in the preparation of fortified peach wine, and to provide that no brandy other than peach brandy may be used in the fortification of peach wine, and that peach brandy may not be used for the fortification of wine prepared from any fruit other than peaches. Section 330 amends the first proviso of section 3255 of the Revised Statutes to provide that where in the manufacture of peach wine, artificial sweetening has been used, the peach wine or the fruit pomace residuum thereof may be used in the distillation of brandy and that such distiller may be granted exemption from the administrative provision of the internal-revenue laws under section 3255. This amendment has the effect of extending to distillers of peach brandy the privileges already enjoyed by distillers of brandy and citrus-fruit brandy.

Section 618 of the Revenue Act of 1918 is amended by section 334 for this purpose. For instance, under that law wine might be kept at distilleries and used for distilling material provided if alcoholic spirits are saved they would have to be denatured or used in the manufacture of nonalcoholic beverages. That is no longer necessary because prohibition is repealed.

The provision came from the House that on any alcoholic spirits saved there should be an allowance for such tax as was paid on the wine or the brandy, but in view of the administrative difficulties involved, the committee has stricken from that tax provision, so that in the bill as presented that provision is stricken out, leaving them free to use the spirits.

Section 335 amends section 620 of the Revenue Act of 1918 by removing the prohibition against mixing domestic wines with distilled spirits for the purpose of increasing the market for domestic

wines by permitting their use in rectification. Under the present law only foreign wines may be so used. No change has been made by the committee.

Section 337. This section limits the amount of intoxicating liquor which may be imported free of customs duty by travelers returning from abroad to 1 wine gallon. It has been brought to the attention of the committee that returning travelers have been able, by the liberal exemption of $100 contained in paragraph 1798 of the present tariff law, to import liquors from nearby and other foreign countries without payment of duty and that the practice of bringing in such liquors is becoming so general that considerable loss of revenue is sustained and bona-fide taxpaying sellers in the United States are losing a substantial amount of business. The effect of the provision proposed by the bill is to impose duty on any amount of such liquor imported if in excess of 1 wine gallon in the aggregate (all kinds imported at a time being included); and to include the value of the free amount of liquor in the ascertainment of the total $100 exemption. No change has been made by the committee.

Senator CONNALLY. In the tariff act there is a provision, a limitation that they cannot go across except once a month or two months, does that apply here?

Mr. FORREST. Yes, sir; we did not change the tariff-act requirement as to merchandise generally, but simply say as to liquor there shall be only 1 gallon.

The CHAIRMAN. They could bring in a hundred dollars' worth?

Mr. FORREST. Yes.

The CHAIRMAN. And in this you have limited it to a gallon at a time?

Mr. FORREST. Yes.

Senator CONNALLY. Suppose he went over twice a day?

Mr. FORREST. That would be a violation of the tariff act.

Senator GEORGE. The tariff act provides that they cannot go once a day, and puts a limit on the time within which they can go.

Mr. FORREST. Section 338, which has been added by the committee, amends section 616 of the Revenue Act of 1918 to provide that the Commissioner may prescribe labels or other marks for the case or shipping container of wines as well as for the immediate container of such wines, as is now provided by such section 616.

The CHAIRMAN. Let me ask you about that. Senator McAdoo spoke to me about that provision and, while I do not know what his position is, I would like to ask you about that.

Senator KING. He has never spoken to me about that, but, so far as I know, he has no objection to that at all.

Mr. FORREST. I do not know of any.

Senator KING. Would this provision affect the manufacture or sale of wines in California?

Mr. FORREST. No; it has only to do with those brands and stamps which are important to us from a revenue standpoint.

This is not the same labeling proposition you were talking about this morning.

Section 401 (a) amends section 3354 of the Revised Statutes to eliminate the words "other vessel", so that the withdrawal of fermented malt liquors will be permitted only in hogsheads, barrels, or kegs, except where withdrawals in other containers is permitted by the Commissioner under section 313 (f). No change has been made in this subsection by the committee.

Section 401 (b) amends section 3354 of the Revised Statutes by permitting the Commissioner of Internal Revenue to prescribe the manner of paying the tax on fermented malt liquor removed from a brewery to a brewery bottling house by means of a pipe or conduit other than by the cancelation and defacement of stamps covering the amount of the tax. Under the present law, the brewer turns over to the Government officer for defacement, stamps covering the amount of tax due on the fermented liquor removed from the brewery by pipe line or conduit. The purpose of this amendment is to permit the Commissioner of Internal Revenue to prescribe some other method of payment of the tax which will involve less expense to the Government. The committee has amended this subsection to insure that the method prescribed will not entail additional expense to the taxpayer.

At the present time we have to go through the cumbersome procedure of giving the storekeeper or inspector of the Internal Revenue Department a sheaf of stamps and he has to punch them, perforate them, at great inconvenience.

The CHAIRMAN. We have let them use a tank car for the shipment of beer, and are you now going to let them use a pipe line, too?

Mr. FORREST. Pipe lines have been permitted for the removal of beer from the brewery to the bottling house since, I think, 1918.

The CHAIRMAN. We will now pass section 402 as to the embargo, and will pass to the next section, which is 403.

Mr. FORREST. Section 403 and all the rest of the sections following that, have been added by this subcommittee.

Section 239 of the Criminal Code was adopted in 1909 to afford relief to "dry" States against c. o. d. shipments of "intoxicating liquors" whether collection was effected by carriers or by banks. Banks now refuse to accept drafts attached to bills of lading for liquors shipped in interstate commerce. This situation makes it difficult for importers, distillers, rectifiers, brewers, and others to do an interstate business. Section 403 amends section 239 by eliminating the designation of "intoxicating liquor" and adding to spirituous, vinous, and malted liquor the designation "or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor, fit for use for beverage purposes." Section 239 is further amended to limit the scope of its prohibition to shipments of liquors into States which prohibit the delivery or sale therein of such liquor as is designated. The section is also amended by providing a further penalty of imprisonment for not more than 1 year in addition to, or in lieu of, the present penalty of a fine of not more than $5,000.

Senator CONNALLY. This is designed to protect the dry State.

Mr. FORREST. It is designed to protect the dry State, and give freedom of commercial intercourse to the bank and the rectifier.

Senator CONNALLY. Why should you make it easier to send an interstate bill of lading to a wet State?

Senator GEORGE. It does not interfere with anything in the dry State.

Mr. FORREST. The original law was intended to apply to the dry States, but it was so phrased that it applied to any State, and now we are correcting that situation.

Senator CONNALLY. We have a wet State, and I think we should protect the dry State. Suppose it is only a precinct or a county that is dry in the State, will this catch that?

Senator GEORGE. This leaves the old laws as to the dry State just as they were.

Senator CONNALLY. This might be held to say that the whole State had to be dry for the purpose of shipment.

Senator KING. You want to isolate a county if it happens to be dry.

Senator CONNALLY. They can ship interstate liquor through them.

Senator KING. How about the rest of the State?

Senator CONNALLY. That is all right, where it is wet.

Mr. FORREST. This section is not designed to protect the dry State, but to protect the dry State from this kind of shipment where the bank or carrier accepts the bill of lading.

Senator CONNALLY. While we are at it, we ought to adopt something to protect the dry States and dry subdivisions, and, if necessary, I will offer an amendment to that effect.

Senator KING. I think the existing law takes care of that.

Senator BAILEY. Why not add a proviso to say nothing herein provided shall prevent the shipment of liquor into a county or other local subdivision, where the prohibition law has been repealed?

Senator KING. Senator Connally, there is a bill pending before the Judiciary Committee to enforce the twenty-fourth amendment, and that will take up this matter.

I am just told that this matter you are suggesting will have to be taken up in connection with that bill, so that we will pass this for the present, and recur to it whenever you desire, Senator.

Senator CONNALLY. All right, that is satisfactory.

The CHAIRMAN. You may proceed, Mr. Forrest.

Mr. FORREST. Sections 404 and 405 amend the provisions of the tariff act to allow draw-back of internal-revenue tax on distilled spirits bottled especially for export and actually exported. The idea of this section is to permit them to withdraw from a warehouse to bottle for export, and if it goes into foreign commerce, then allow the rebate of the taxes.

Senator CONNALLY. Why should we give up that revenue?

Senator GEORGE. We would not be able to export, if you did not.

Senator KING. It is to encourage exportation. If Senator George is exporting liquor that is bottled, and I am exporting it direct from the distillery, I see no reason why he should not get a draw-back as well as myself.

Senator BAILEY. Is that not conforming to the Constitution?

Senator GEORGE. No; it is a draw-back in the tariff.

The CHAIRMAN. This is on the same theory of draw-back on flour and other things?

Senator GEORGE. It is just to permit the draw-back for bottled goods whereas now you get the draw-back only when it goes out in the cask. It is like the processing tax on cotton.

Senator CONNALLY. The theory was that we encourage the milling of raw material here in the United States, and give the draw-back so that they could reexport it and compete with foreigners.

Mr. FORREST. That is the purpose here.

Senator CONNALLY. You have all of the articles and everything right here, and you make the whisky here and people pay the tax here, then you give a draw-back on that which is shipped out and lose all of that revenue.

Senator GEORGE. You lose it anyhow, if you export it in the cask.

Mr. FORREST. At the present time whiskys and wines rectified in the customs bonded warehouse is exported free of tax to foreign countries, but they may not be rectified here and shipped free of taxes to Puerto Rico, and section 406 is to amend the law so as to permit the manufacture in customs bonded warehouses and shipment to the island of Puerto Rico without the internal revenue tax here.

It is already providd by law that articles going into Puerto Rico from the United States shall be exempt from taxes imported by the internal revenue laws of the United States, and this is an extension of the law to permit them to go into the custom bonded warehouses to make liquors by rectification and not distillation and ship them to Puerto Rico free of tax here.

Senator CONNALLY. Why should you take the tax off of them to Puerto Rico and make them pay it here at home?

Mr. FORREST. The purpose and object of the law heretofore has been just the opposite, to collect the internal revenue tax in Puerto Rico for the benefit of the Puerto Rican Government, and in the case of bringing in liquors to the United States, to collect them here and return them back to Puerto Rico for the benefit of the Island.

The CHAIRMAN. I notice we have two distinguished visitors here from the State of California.

Senator JOHNSON. You may be certain we want something, and that both of us want something for California. We came in at the instance of the Senator here, because he said you were dealing with the question of champagne and some prohibitory regulation.

The CHAIRMAN. Senator McAdoo spoke to me about a labeling proposition; what is it you gentlemen have in mind?

Senator MCADOO. Both Senator Johnson and I are not familiar with the legislation you have before you, but a short time ago complaint was made to us by California producers of champagne "Chateau Yquem", that after the 1st of March 1935 they were prohibited by regulation issued by the Treasury Department from continuing to use the term champagne by the use of these words on their labels, even though they were plainly marked "California champagne", "California sherry", and so forth.

We see no reason why that should be done, as long as we show that it is California champagne.

Senator LA FOLLETTE. I thought we had this up in the Federal Alcohol Act, and took care of it.

The CHAIRMAN. Yes; we had this up the last time.

Senator LA FOLLETTE. We had a long controversy about it in conference, as I remember.

Senator KING. I thought we did take care of it, but Mr. O'Neil's statement to me indicates we have not taken care of it.

He took the position that champagne like cognac was a geographical thing and was entitled to protection against any manufacturer in the United States, even though we call it United States champagne.

Senator GEORGE. We provided in the act that where the name had been used 5 years they could continue to use it by simply designating the place of manufacture.

Senator LA FOLLETTE. I was on the conference committee, and I remember we had a long argument about it and put in this proviso:

> *Provided further*, That nothing herein or by any decision, ruling, or regulation of any department of the Government shall deny the right to any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office, which has been used by such person or predecessors in the United States for a period of at least 5 years past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

Senator KING. There should be a modification of that, because a number of plants that were engaged in the manufacture of wine before prohibition have ceased for a while, and the resumption has not been for 5 years.

Senator GEORGE. Let them attack the use of it, and if they used it at any time prior to the repeal of the act, that would be effective.

The CHAIRMAN. I have a long letter here from the Federal Alcohol Administration, and the closing paragraph says:

> Approaching the matter from another angle, it is suggested that the adoption of this amendment may cause retaliation in foreign countries, thus jeopardizing the trademarks and copyrights now employed on many articles exported to foreign markets. Such distinctive American products as "Sun Maid Raisins", "Sun-Kist Oranges", and "Remington Typewriters", for which I understand there is an extensive foreign market, would, of course, be adversely affected by any policy of a foreign country which would permit, for example, shipment from France to Great Britain of French-made typewriters under the brand name "Remington." Other examples of distinctive American products also come to mind in this connection, such as "Kentucky Bourbon", "Old Grandad", "Virginia Dare Wine", "Idaho Potatoes", "Ivory Soap", "Uneeda Biscuits", "Chesterfield Cigarettes", and "Ford Automobiles." It is suggested in this connection that information might be obtained from the State Department and the Department of Commerce with respect to the difficulties which will be faced by many of our exporters in trying to protect their trade marks in foreign countries if the United States Government adopts a law which would legalize the indiscriminate use of foreign trade marks, brands, and names upon domestically produced alcoholic beverages.

I assume that is where the proposition arises.

Senator JOHNSON. I submit with all due deference to the writer of that letter that the comparison he quotes is ridiculous and not applicable to the situation we present.

My colleague told me there was a design or the thought of somebody somewhere, I do not know where, in not permitting the sale of champagne manufactured in California, and marked, mind you, deliberately and completely as California champagne.

The CHAIRMAN. There is not anything like that in this bill, is there?

Mr. O'NEILL. I am sorry the Senator did not hear my exposition of the subject before the subcommittee last Saturday, where I explained that the regulations issued by the Alcohol Administration permitted the use of the words "sherry", "port", and "champagne" on products which conformed to those distinctive products, if they are preceded by the word "American" or the word "California", to distinguish them from the foreign product, but under this proposed amendment it just throws the door wide open for the indiscriminate piracy of foreign names or brands, whether geographic or proprietary.

Senator JOHNSON. Do you call champagne geographic or proprietary?

Mr. O'NEILL. That is a geographic name for a particular type of wine that has become generative for champagne the world over, if it conforms to that type, and the same is true as to sherry and port.

Senator JOHNSON. Is there any disposition on the part of the authorities to prohibit or prevent the sale of champagne manufactured in California, that is in so many words stated to be California champagne?

Mr. O'NEILL. No, Senator; there is only one question that arises on that.

Senator MCADOO. You say no; but as a matter of fact there is, as I understand it. I am sorry we did not know this hearing was to come up, because we might have asked some of the representatives of the wine industry out there to come here and explain the situation.

As I understand it, you say they can label it California champagne if the process by which they make the champagne conforms to the present idea of making champagne.

Mr. N'NEILL. That is what I say.

Senator MCADOO. What difference does it make whether we use the same precise process to make it, if we call it California champagne? The French have their method of doing these things, but why should we have to conform to that, to say we make California champagne?

Mr. O'NEILL. As I have said to Senator King before on that question, the wine interests of the country are divided as to whether the product produced by bulk fermentation as against the historical method of bottle fermentation is identical with the bottle product.

Senator MCADOO. We do not claim that; we claim this is California champagne as produced by the California method, and everybody knows it is very decent wine made according to our ideas.

The CHAIRMAN. Mr. O'Neill, is there anything in the present law that changes this matter?

Senator KING. We are tendering an amendment, and it will be offered at a later time.

The CHAIRMAN. I mean in the bill which we are considering now?

Mr. O'NEILL. I do not know what the subcommittee reported.

Senator KING. There was nothing reported on that by the subcommittee, but we have a proposed amendment which was offered by Mr. Buck and Judge DeVries, representing the wishes of the wine industry, and they contend that all of the regulations which you have promulgated or about to promulgate will not protect the wine growers of the United States in the sale of their product, so this amendment was tendered to the committee, and because we had not had opportunity to study it sufficiently, we said we would refer it to the full committee.

Now, let me read the amendment so that we will have it before us, and then if you want to explain this, I am sure the committee will hear you. The amendment offered reads as follows:

Provided further, That nothing herein nor any decision, ruling, or regulation of any department of the Government shall deny the right of any person to use any name or brand of foreign origin not presently effectively registered in the United States Patent Office, whether or not susceptible of such registration——

This is different from the present law——

whether or not susceptible of such registration, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It is proposed in this amendment, to eliminate the provision, "which has been used by such person or predecessors in the United States for a period of at least 5 years past", because many of those who have made wine have not been engaged in it for a period of 5 years, for the reason that many of them stopped and did not continue until 3 or 4 years ago.

It will, therefore, be seen that the proposed amendment changes the law by adding the words "whether or not susceptible of such registration", and strike out the provision that "which has been used by such persons or predecessors in the United States for a period of at least 5 years past."

Now, what objection have you to this amendment which, as I stated, has been presented for the consideration of the full committee?

Mr. O'NEILL. As I understand the amendment, it would permit the appropriation by domestic manufacturers of any foreign name or brand.

Senator KING. Just a moment, there is a memorandum here that has just been handed to me this morning, and I forgot, and on which you may desire to comment, and in which there is the following statement.

The ruling of the Federal Trade Commission mentioned related to wine known and branded as "Chateau Yquem." Notwithstanding said enactment of Congress and its evident intent, two proceedings before the Federal Trade Commission have been inaugurated by importing interests and are now pending against the domestic users of that term, although they have uniformly prefixed thereto the name of origin, such as "California Chateau Yquem", "American Chateau Yquem", and so forth.

So, these suits are pending before the Federal Trade Commission to interdict the use of these terms by the California wine growers.

Senator GEORGE. There was a ruling by the Federal Trade Commission prior to the time we considered the Federal Alcohol Act of last year, and we undertook to permit in that act the use of that name by the American manufacturers where it had been used for 5 years previously.

Senator KING. As Senator George said, when this matter was considered previously, as I understand it, this amendment was inserted by reason of the Federal Trade Commission ruling.

Senator JOHNSON. With the committee's permission, I want to call to their attention, as I understand Mr. O'Neil, they are seeking to prevent such a thing as a champagne manufacturer in a particular locality in this country, although designated as manufactured in that particular locality, and to prohibit it from being sold if its process is not exactly as the process of the manufacturer of champagne across the water. Is that right?

Mr. O'NEILL. That is substantially correct, but the question is not closed.

As I started to say on this champagne question, historically champagne has been manufactured from white wines in the champagne districts of France, in the beginning about 2 years old, and the carbonation is derived from the fermentation of the wine within the bottle. Of course, sediment is formed in the process. The bottles are continually turned in the cellars, involving a lot of labor.

At the time the wine is completely aged and the gases are naturally formed within the bottle, the bottles are continually turned up, so that the sediment forms in the neck of the bottle, and the neck of the bottle is then subjected to a freezing process for the purpose of freezing the sediment, and it is disgorged from the bottle and something else is added.

As I understand it, these various champagnes only differ in the extent of the brandy or flavoring added after the disgorging of the sediment.

That is not exclusively a French process, because some of the biggest producers in this country use the bottle fermentation method, among them including the Great Western, which I understand is the leading champagne company in this country, known even before prohibition as such.

Senator MCADOO. Where is that? Is that in New York?

Mr. O'NEILL. I do not know where it is. In recent years the so-called Charmont process was developed in France.

Senator JOHNSON. And sold in France now as champagne.

Mr. O'NEILL. I understand that a product manufactured in that process is not permitted to be sold as champagne, but it is sold under a name which is the derivative in French of champagne method.

If the bulk process is to be used in this country, the tanks have to be imported from France, because of the metal in the tanks, which can expand and contract with heat and cold, while our American tanks have not gotten the secret of that yet, so the machinery has to be imported from France.

Not alone in California, but throughout the East and Middle West as well this Charmont process of bulk fermentation is in use.

Here is the only way that differs from the other process, that instead of putting this 2-year-old, possibly, sauterne type of wine in a bottle and letting the secondary fermentation generate the carbonic gas, it is put into a large closed tank kept at a controlled temperature, and it is a sort of quick-aging process. You can subject it to heat and cold and the sediment comes down and the fermentation effervescence of the product is quickened.

It is then thrown off into another tank and the sediment taken off in that way. It is perhaps aged in some other tank, then bottled, and is completed in that way.

Our American producers of the bottled fermentation product contend that there is a great deal of labor involved in the turning of the bottles in the wineries, and it takes a great deal more time and is a very expensive manufacture but produces a much better product, a really fine champagne; whereas they contend that the bulk process is a quick, easy process and that the product which is produced is not the same, and, although chemically by analysis you might find it to be the same, that in taste and aroma and all of that it would not be an identical product.

So that in our hearings on this subject pursuant to the act which required the issuance of regulations, we were confronted with two lines of thought among our own domestic producers. One, like the Great Western people, would apply the bottle fermentation process as resorted to in California, and other members in other parts of the country will use the Charmont process, and the users of the bottle fermentation process would claim that it is superior to others and object to permitting them to call their product champagne, the same as they call theirs champagne.

Of course the evidence on the subject seemed to indicate, at the time of the last hearing, which also covered, by the way, every other subject in the question of labeling, but the testimony seemed to indicate that there was a distinction between the two processes, and one should not be placed on the same basis as the other, so that the regulation which is to take effect next September that the bulk product shall be called sparkling wine, champagne type, American process, or sparkling wine, is the one required.

All of the bulk-champagne makers of the country have recently gotten together since the regulation was proposed and asked for a rehearing. They have filed a brief asking to reopen the question and permit them to submit evidence that the bulk product is identical to and perhaps superior to the bottled fermentation product, and they both should be called champagne.

It is contemplated that a hearing of that character will be held in the near future, devoted solely to that one question, wherein the bulk-process and the bottle-process people will come in and submit their respective viewpoints.

Senator JOHNSON. Do you have the viewpoint that champagne is a specific name, is a geographic name, or what?

Mr. O'NEILL. No; it is generic.

Senator JOHNSON. If it is a generic term, and you label the bottle with the particular geographical territory from which it comes, why have you not done all that could reasonably be asked?

Mr. O'NEILL. Also, for the protection of the American consumer it should conform to the type of the product.

Senator JOHNSON. Should conform to the type of the product; what type?

Mr. O'NEILL. The general type.

Senator BAILEY. The difference is between the bulk process and the bottled process.

Senator KING. As I understood Mr. O'Neil, there was no uniformity among the wine people in the United States in the difference between the bottled and the bulk processes.

Senator JOHNSON. I am unable to speak to you on that score.

Mr. O'NEILL. I am sure the Senators would not wish to have the type of differentiation knocked out, because that is the only way you can adequately inform the American consumer what he is getting.

As I read this amendment which permits the appropriation of all brands of foreign origin, there is no distinction between geographic names and proprietary names.

Senator JOHNSON. This is not a geographical name, it is a generic thing. It is a different thing from saying some particular brand manufactured by a particular manufacturer, and you might as well say I cannot sell water and say it is water. It is different from some other water that is sold.

Mr. O'NEILL. I am talking now generally on the subject of the amendment and, of course, I think this champagne matter is one that can be handled at the hearings, satisfactorily to all concerned.

Senator JOHNSON. If you will pardon me, I will not take much more time, but I would like to say I happen to be more or less familiar with this term "Chateau Yquem", and I was very fond of that brand which came from a particular locality of France at one time, but there happens to be a district in California that for some time past has manufactured California Chateau Yquem, and it is a question whether one is better than the other.

The Federal Trade Commission, in my opinion, in violation of law, took and old gentleman out there who had been manufacturing for 20 years the California Chateau Yquem, and charged him with misbehavior and illegal acts, and he being over 80 years old and having engaged in the manufacture of wine all of his life, and this particular wine for over 20 years, he yielded, although he was very strongly advised he should not yield. He yielded to their demands in relation to the manufacture of what he had manufactured, designating it plainly in all of the years gone by, and that led to the presentation of the amendment that has been read here, that was put in the last act.

Now, you are seeking to take a generic term, champagne, and you are seeking then, as to that generic term, to prescribe the particular mode in which it shall be manufactured, and although the locality where that champagne comes from be designated in large letters so that no one can mistake it, you want to make it conform to a French process in order that it may be salable in an American market.

I submit that should not be done.

Senator LA FOLLETTE. As I understand it, there are interests in this country just as much interested in the bottled fermentation method as there are those who are interested in the bulk fermentation.

Senator JOHNSON. If that be so, one should not be preferred to the other.

Senator LA FOLLETTE. There is a conflict of interests here between domestic producers of champagne. It is not just between the producers in France and here.

Senator JOHNSON. If you will read the Treasury letter which the chairman has read a part of, you will find that is not the difference. The difference is in having a champagne that is not manufactured as the French champagne is manufactured.

Senator COUZENS. Is not champagne a geographical name, however?

Mr. O'NEILL. Yes; but it has, however, become generic.

Senator JOHNSON. It is not one of the peculiar ingredients of a particular kind that there is a champagne in France.

Senator CONNALLY. Just because they made it there first is no reason they cannot make it at some other place.

Senator MCADOO. Let me say just a word, because I have to go very quickly. I am not familiar with the various processes of champagne manufacture, except in a very general way, and I think the method by which champagne is produced is wholly unimportant. Some of our people make it according to the French method, and people in other parts of the country make it according to another method. It is a question then of the popular taste.

If the French method employed, we will say, by the Great Western produces a superior champagne to the California champagne produced by another method the popular taste will determine that it will be what they want.

They know the California champagne means one kind, and the Great Western champagne means other thing, and French champagne another.

What is said about champagne? I have been in Germany, and I have drank German champagne and it is excellent. Are you going to say the German cannot make champagne?

You take the same thing with respect to whiskies in this country. Do you think every manufacturer of it produces whisky in identically the same method, and by the same process? They all make straight bourbon and blended whisky. They all use their own particular mark or brand, and show that it is Old Taylor, or whatever it is, and the public learns to discriminate between the different brands and what they want, but it is all rye, bourdon, or blended whisky.

What you are trying to do here, is to impose on the American producers the process used by the French in order for it to be champagne, and I think that is preposterous to attempt to place any such restriction on our industry.

I think anybody that buys a bottle of California champagne buys it because they like it, or because it is cheaper.

Senator KING. Senator, supposing you and I manufactured Ivory Soap, which has a reputation here as well as abroad, as I am told, would you and I not object if some Frenchman made Ivory Soap and used our label and did not describe it?

Senator MCADOO. You are getting down to trade marks and so on, but champagne is not a trade mark, it indicates it is made in this district in France, but it is made all over the world, and no one manufacturer has got the exclusive use of that name, and as long as we label it New York champagne, California champagne, or American champagne, that distinguishes it.

Senator CLARK. Anyone that saw French wine being made would prefer the American champagne.

Senator MCADOO. Yes; I would say they would.

Senator BAILEY. If you provide otherwise we would not be able to manufacture champagne or port or other wines.

Senator MCADOO. Yes; that is correct, and we make all of these wines in California and many other States.

Senator BAILEY. We would have to get up some names of our own then.

Senator MCADOO. Yes; we would have to get up our own names.

The CHAIRMAN. The subcommittee has recommended nothing to us on this, so that this matter is not before us except that the Department has submitted a letter to the full committee regarding the matter. But we are glad to hear the discussion.

Senator CLARK. I am willing to offer that amendment on this subject which Senator Johnson and Senator McAdoo have been discussing.

Senator CONNALLY. Mr. Chairman, I am with Senators Johnson and McAdoo on this amendment.

The CHAIRMAN. Without objection, then, this amendment will be approved.

Senator LA FOLLETTE. Just a moment; this amendment was suggested by the representatives of the wine industry to the subcommittee, and there is nothing in the present bill that changes the existing law.

Senator CLARK. The existing law, as I understand, authorizes the Federal Alcohol Control Commission to say we cannot sell California champagne, North Carolina champagne, or any other champagne as champagne.

Senator LA FOLLETTE. No; that is not what they have said.

Senator CLARK. What have they said?

Senator LA FOLLETTE. As I understand these regulations as drawn now provide that you can sell champagne labeled Missouri champagne, unless it is made by the bulk fermentation process and not the bottled process.

Senator CLARK. You cannot sell it unless it is made in conformance to a particular French process.

Senator LA FOLLETTE. No; it is not a particular French practice, it is also a practice that goes on in this country, and there is no use trying to get ourselves excited over nationalism here. As I understand it, the issue is a conflict of economic interests between two different types of manufacturers of champagne in the United States. There is no question but they have the right to call it champagne, but the people who make it by this slower, and what they call the more expensive process, have been before the alcohol board and have said their product produced by these more expensive methods was the real champagne, and that this stuff that is fermented in the big tanks by the bulk process is not the same thing as champagne; and the people who produce it by the bulk process say that this too is champagne, and it is as good or better than the bottled fermentation process, but let us not get exercised over whether this issue is between the American and the French producers.

Senator CONNALLY. As I understand, the Treasury has held they will call one champagne and the other sparkling wine champagne type.

The CHAIRMAN. Is there an amendment offered now?

Senator BAILEY. That nationalistic question is raised by the letter from the State Department.

Senator KING. Let us read this amendment which Senator Johnson and Senator McAdoo and the wine interests desire.

Senator COUZENS. When you say wine interests, you mean only a part of it.

Senator KING. Yes; the California wine industry; I beg your pardon. This amendment they desire reads as follows:

Provided further, That nothing herein nor any decision, ruling, or regulation of any department of the Government shall deny the right of any person to use any name or brand of foreign origin not presently effectively registered in the United States Patent Office, whether or not susceptible of such registration, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand or any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

That presents the issue stated so clearly by Senator La Follette.

Senator CLARK. I think the amendment is too broad. I do not think it would be fair to permit a manufacturer in California, North Carolina, Missouri, or anywhere else to put out a brand such as Cliquot champagne, or such brands as are well recognized simply by putting that brand on it. However, where it is a generic term, in general, describing wine, such as champagne, which, of course, originally took its name from a particular district in France, I think that is quite a different question.

Senator BAILEY. Under that amendment could not I go down to North Carolina and manufacture some corn liquor and dilute it to 24 percent and label it North Carolina champagne and sell it?

Senator CLARK. Yes.

Senator LA FOLLETTE. The only thing I know I would like to pass on is whether or not this new synthetic or speeded-up process, actually produces something which falls under the generic term "champagne." That is the issue here, but whether it does or not, I do not know.

The CHAIRMAN. Does the committee want to take action on this at this time, or wait until in the morning?

Senator COUZENS. I suggest that we finish the bill first.

The CHAIRMAN. Then this will pass until tomorrow morning. Mr. Forrest, you may proceed.

Mr. FORREST. Section 406 amends section 311 of the Tariff Act of 1930, (a) to permit the rectification of distilled spirits and wines in customs bonded warehouses, class 6, for shipment to Puerto Rico (as well as for export) exempt from all internal-revenue taxes; (b) to exempt the person so rectifying in the customs bonded warehouses from the payment of special tax as a rectifier; and (c) to provide that, for the purposes of the section, distilled spirits reduced in proof and bottled in such manufacturing warehouses shall be deemed to have been there manufactured.

Section 407 amends section 51 of the act of August 27, 1894 (which now authorizes the establishment of general bonded warehouses), to authorize the Commissioner of Internal Revenue to establish a single type of warehouse to be known as internal-revenue bonded warehouse for the storage of distilled spirits (other than alcohol) until payment of tax thereon.

At the present time there are three types of warehouses for storing alcohol, the distillery warehouse, the general warehouse, and the special bonded warehouse.

Sections 407 to 411, inclusive, are to strike down those distinctions which have heretofore been made between those various types of warehouses, and to establish one type of warehouse called the internal revenue bonded warehouse, for the storage of all kinds of distilled spirits, except alcohol.

Last year there were offered and passed amendments to section 51 of the General Bonded Warehouse Act and the Special Warehouse Act, which permits the establishment of warehouses adjacent to the distilleries and the removal of spirits directly from the distillery to this warehouse of this new type, without passing through the distillery warehouse, and this is an enlargement of that idea.

We will abolish the distillery storage warehouse, and we will also abolish the distinction between the various types of warehouses, and permit them to be established where they will perform their functions more properly, and cover the storage of spirits in them by regulation, and cover the taxes while in storage by bond.

Senator GUFFEY. Will this permit the storage of alcohol of any kind in a tank in an open building?

Mr. FORREST. No, sir; the warehouse legislation under the industrial alcohol system is covered by another section.

Senator GUFFEY. Will you permit alcohol manufacturers to store in tanks?

Mr. FORREST. We are permitting that.

Senator GUFFEY. Where are you permitting that?

Mr. FORREST. There is an amendment offered for that purpose.

Senator CLARK. You are cutting out that provision in the regulations whereby if four or five different people are using a warehouse they have to build partitions.

Mr. FORREST. That is right.

Senator KING. This amendment which has been suggested to the subcommittee by the Treasury officials has been suggested after full investigations, and the officials informed the subcommittee they think it will be more advantageous and more easily regulated than the present law.

Mr. FORREST. Section 412 is a new section which authorizes the destruction or denaturation, exempt from tax, of distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil (commonly referred to as heads and tails, respectively) removed in the course of distillation. The presence of the minimum quantities of aldehydes and fusel oil prescribed in this section make the distillate unfit for use for beverage purposes, and the effect of the section will be to relieve distillers of the tax on such distillates and authorize the destruction or denaturation thereof, whichever is more economical to the distiller.

Senator KING. That was recommended by the Treasury Department after full investigation.

Mr. FORREST. Yes; that is correct. It was recommended after full investigation.

Section 413 amends section 3318 of the Revised Statutes to require rectifiers and wholesale liquor dealers to keep daily at their places of business covered by special tax stamps records of distilled spirits received and disposed of by them and to render under oath correct transcripts and summaries of such records, and to authorize the Commissioner in his discretion to require such records to be

kept at the place where such spirits are actually received and sent out. The present statute requires the record to be kept, and the details thereof, and provides for the summary and transcript. Many rectifiers and wholesale liquor dealers maintain their business offices in one place and their warehouses in another. Under this section the Commissioner is authorized to require the keeping of such records as he prescribes, in the place which he deems most advantageous to the Government in checking on the receipt and disposition of distilled spirits. Under the present statute the details of the report and the record are fixed. Under this section the Commissioner is authorized to require the records to be kept in such form as he deems desirable.

Section 414 amends section 62 of the act of August 27, 1894, insofar as that section relates to the keeping of records by distillers who well only distilled spirits of their own production at the place of manufacture or at the place of storage in bond in the original packages to which the tax-paid stamps are affixed. As to the keeping of the records and the form of the records and transcripts, this section is identical with section 413.

Section 415 declares that all laws of the United States in regard to the manufacture and taxation of, and traffic in, intoxicating liquors, and all penalties for violations of such laws, that were in force at the time the National Prohibition Act took effect, and has not been deliberately and specifically altered, amended, modified or repealed by Congress, shall be declared to be in full force and effect from this time forth.

Senator KING. Let me say to the committee, I look with considerable doubt on the wisdom of a blanket provision such as this is, but the explanation made to me seemed to warrant it.

However, I stated to the Treasury officials I would feel like bringing this matter to the attention of the committee, so that they would know the comprehensiveness of it and its implications, and I should be very glad, Mr. Forrest, if you will point out just what measures will be covered by this, and what difficulties will be encountered in such a measure as this.

Senator BAILEY. In this section, you except those that have been reenacted, isn't that a mistake, and should it not be as modified? Why do you except the reenacted laws?

Mr. FORREST. Ever since before national prohibition they have been reenacted to cover specific objections, and we do not want to disturb it; in other words, we do not want to disturb anything Congress actually did.

Senator KING. Did you hear the suggestion of Senator Bailey?

Mr. FORREST. Yes.

Senator KING. Why is that?

Mr. FORREST. I say that is in case a statute is reenacted to offset some impairment by some section.

Senator BAILEY. You say here that the laws should be in effect and continue in force except such as reenacted, and do you not wish those to continue in force?

Senator COUZENS. Is it not the intent that if since the National Prohibition Act a law has been reenacted, you want it to continue?

Mr. FORREST. I yield on that, I think the Senator is entirely correct on that.

Senator KING. Aside from that, what do you intend to cover by that?

Mr. FORREST. I can outline this situation. Before the Prohibition Act was enacted there was in existence a bill in the internal-revenue laws having to do with taxation, and section 35 of the act provided that all provisions of law inconsistent with the act are hereby repealed only to the extent of such inconsistency.

Thereafter a man by the name of Yuginovich was indicted for violation of four sections of the law. The case went to the Supreme Court of the United States, and that Court said that being inconsistent, the internal-revenue laws deal with a matter permitted to be done in a certain way, and the National Prohibition Act being a set of laws which absolutely prevented the doing of a certain thing there was inconsistency, therefore those sections were repealed to that extent.

Thereafter Congress, by section 5 of the Willis-Campbell Act provided that all internal-revenue laws in effect when the National Prohibition Act was enacted and not in direct conflict with the National Prohibition Act or the Willis-Campbell Act should be continued in force.

Thereafter another man by the name of Statoff was indicted and his case went to the Supreme Court, which held that the effect of section 5 was to restore fully, as if they had been reenacted in terms, those sections of the internal revenue laws which were in effect when the National Prohibition Act was enacted, and were not in direct conflict with the act, or section 5.

The question is, Do we find ourselves today with section 5 repealed, in the position we were after the Supreme Court made its decision in the *Yuginovich case*? There is a great danger that the answer must be yes, so we are trying here, in as specific language as we can, to go back to that date in 1919, back to these internal-revenue laws, and bring them up to this date.

Senator CONNALLY. Why don't we reenact them?

Mr. FORREST. There is a book of them like this [indicating size] and we do not know how we could pick them out.

Senator CONNALLY. Will you know after you get through with this bill?

Mr. FORREST. As each matter of taxation, production, and distribution comes before us, we will know, but until they are called to our specific attention with specific acts, we cannot tell.

Senator CONNALLY. It looks like to me you are going back and reenacting the whole thing.

The CHAIRMAN. Is there any objection now to adopting this?

Senator KING. I think we should adopt it, but I wanted to bring this to the attention of the full committee.

Senator CONNALLY. I think we should clear out all of the brush of the past and start all over again.

The CHAIRMAN. Without objection that amendment will be adopted.

Mr. FORREST. I want to add one more fact. Since the section was printed in this book, Mr. Boots has given us invaluable assistance, and we have rewritten this section in lieu of what is in section 415 now.

The CHAIRMAN. Will you read that?

Mr. FORREST. It reads as follows:

> SEC. 415. All internal-revenue laws of the United States in regard to the manufacture and taxation of, and traffic in, distilled spirits, wines, and malt liquors, and all penalties for violations of such laws, that were in force at the time the National Prohibition Act was enacted, shall be and continue in force, except as they have been repealed or amended, by acts other than (1) title II of the National Prohibition Act as amended and supplemented, and (2) section 1 of the Liquor Law Repeal and Enforcement Act, and except as they may be modified by, or may be inconsistent with, this act.

Senator BAILEY. If that is a criminal action or a tax question in a court, in order that a man might find where his client was standing, he would have to read all of those laws, then see to what extent they are repealed or amended, and that is a pretty good job for a fellow, and we have just reprinted our code up to January 3, 1935, and I think the code would be of little value under those circumstances.

Senator CONNALLY. You want to revive all of these laws?

Mr. FORREST. Yes, sir. We want it to be revived, and we do not want the National Prohibition Act to change any effect of these laws.

The CHAIRMAN. All right, we will get to section 416 now.

Mr. FORREST. Section 416 provides that, except as provided in section 329 of this act, which section extends to charitable clinics the right to withdraw alcohol tax-free for charitable use, nothing contained in the act shall be construed as restricting or limiting the provisions of title III of the National Prohibition Act, as amended. This section preserves the distinction between alcohol and other distilled spirits.

Senator KING. Where is Senator Guffey's amendment; will you read that?

Mr. FORREST. The amendment offered by Mr. Guffey reads as follows:

> Section 3 of title III of the National prohibition Act, as amended (U. S. C., 1934 ed., title 27, sec. 73; and supp. I, title 27, sec. 73), is amended by adding at the end thereof the following new sentence: "Permanent tanks and other structures located on the industrial-alcohol plant premises and approved by the commissioner, shall be deemed to be warehouses within the meaning of this section."

Senator KING. Does the Treasury approve that?

Mr. FORREST. Yes, sir.

The CHAIRMAN. All right; without objection, that will be agreed to.

As to title V, suppose we take that up tomorrow morning, and at this time the committee will adjourn until 10:30 o'clock tomorrow.

(Thereupon the committee adjourned until 10:30 o'clock Friday, Mar. 13, 1936.)

LIQUOR TAX ADMINISTRATION ACT—TAXES ON WINES

FRIDAY, MARCH 13, 1936

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

The committee met, pursuant to adjournment, at 10:30 a. m. in room 310, Senate Office Building, Senator Pat Harrison presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Barkley, Connally, Bailey, Clark, Byrd, Lonergan, Gerry, Guffey, Couzens, and Capper.

Also present: O. Norman Forrest, C. M. Hester, and Stewart Berkshire, representing the Treasury Department; John E. O'Neill, of the Federal Alcohol Administration.

The CHAIRMAN. The committee will be in order. Mr. Forrest, you may proceed.

STATEMENT OF O. NORMAN FORREST, TREASURY DEPARTMENT—Resumed

Mr. FORREST. On page 27, lines 3 to 22, appears a redraft of section 308, which is proposed to amend section 602 of the Revenue Act of 1918.

Prior to the enactment of the act of 1918 they were producing whisky and alcohol at the same distilleries, with authority to remove by pipe line or tank cars. Then along came title III of the National Prohibition Act and set up a new system of production of alcohol.

Last year it was determined to propose an amendment to this old section 602, and the matter was referred to Captain McGovern, and the subcommittee had many conferences with Dr. Doran, of the whisky people, and this was not settled until last night with Captain McGovern.

It seems section 602 was superseded by the National Prohibition Act, and we would like to see a section written out to express the wishes of Congress to grant these privileges, without reference to section 602, and to that end we propose this morning that section 308 be changed so as to write a new section without reference to the old section, and that lines 16 to 22, that full sentence there, be deleted, and that the language which I will read to you now be substituted, as follows:

> Under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, such spirits may be transported, tax-paid, from the distillery where produced, in bulk containers or by pipe line, to a rectifying plant adjacent or contiguous to the bonded premises of such distillery.

That will make it so that you can take the spirits over where the distillery is adjacent or contiguous to the rectifying premises, and where it is some distance away you can package the spirits at the distillery and roll it out onto trucks.

The CHAIRMAN. That does not change what we did yesterday?

Mr. FORREST. No, sir.

The CHAIRMAN. Without objection, that amendment will be agreed to. Is that in lieu of section 602?

Mr. FORREST. Three hundred and eight; yes.

The CHAIRMAN. It is not called 308 now, is it?

Mr. FORREST. Lines 16 to 22 and all reference to section 602 will be omitted.

The CHAIRMAN. Without objection, the amendment will be accepted.

Senator Murphy, it was brought to the attention of the committee you desired 5 minutes to state a proposition here, and Senator Overton also requested time.

Senator KING. Might I say to you, Senator Murphy, your testimony was transcribed and printed, as well as that of Senator Overton, and appears in the print of the hearings before the committee?

The CHAIRMAN. Senator Murphy, we will be glad to hear you now.

STATEMENT OF HON. LOUIS MURPHY, UNITED STATES SENATOR FROM THE STATE OF IOWA

Senator MURPHY. Mr. Chairman, for the benefit of the members of the committee who were not present at the hearing before the subcommittee, I will refer you to that testimony given in those hearings. When I appeared before the subcommittee the other day I did not have the figures on grain production that went into whisky and gin in the last few years and now, to illustrate what the repeal of prohibition has given to the grain interests, I will give you the following figures.

In the year 1933, at the end of prohibition, the consumption of grain in that year was 380,000 bushels, approximately, of corn, and the consumption of corn the last fiscal year ending 1935 was 18,222,000 bushels, approximately.

The consumption of rye in 1933 at the end of prohibition was 562,000 bushels, and in 1935 it was 10,170,000 bushels.

The consumption of malt at the end of prohibition in 1933 was 176,000 bushels, and in 1935 it was 4,557,000 bushels.

The consumption of other grain was 6,480 bushels in 1933, and in the year 1935 it was 353,000 bushels.

Taking the total grain used in distilled spirits, in whisky and gin, in 1933 it was 1,126,245 bushels, and in 1935 it was 33,000,000 bushels.

That market is about to be taken away from the grain interests.

Senator KING. Might I ask a question?

Senator MURPHY. Yes; certainly.

Senator KING. Have you the figures before you for the production of corn in the same years in bushels, or of wheat or rye?

Senator MURPHY. No; but the corn crop could be approximated as a general proposition at 2½ million bushels.

Senator KING. And wheat or rye?

Senator MURPHY. I do not have those figures. The comparison of the amount that goes into alcohol to the amount of total production is this, that of the corn crop, for instance, 78 percent goes to the terminal markets to be sold, and the price that grain brings in the terminal market fixes the price of that left at home and fed to stock, so that throwing 33,000,000 bushels of corn into the terminal markets necessarily will have a depressing price effect.

In advocating the repeal of prohibition the Democratic Party did it on the theory it would restore the grain market to the farmer for the grain used in the manufacture of distilled spirits. I made my campaign against prohibition using that as the basis of my argument. I think it was an argument made on repeal which in good faith should be adhered to.

Dr. Doran was a witness before your committee the other day, and he made the statement that he had never known a single gallon of Louisiana molasses being distilled for beverage purposes, and in the last few years not for industrial purposes, because of the local feed value, as Congressman Dirksen pointed out, makes it more valuable for feed purposes than for distilling.

Senator CLARK. Your amendment would not affect the use of it for industrial purposes in any event?

Senator MURPHY. Not the slightest. The point is, it has not affected and will not disturb the status quo with respect to distilled spirits from Louisiana molasses.

The market for this grain will be given over to distilled spirits made from blackstrap molasses, and in the course of time it is possible, as Dr. Doran pointed out in his testimony, that this market will go to the petroleum interests, that they can make distilled spirits much more cheaply from petroleum than from blackstrap molasses, and certainly cheaper than from corn, and such distilled spirits may now be purchased at one-half of the cost of producing grain spirits.

We are therefore confronted with this question in considering the amendment, as to whether or not we should take away a market from grain and give it to a product that never has had the market, but will under this amendment get it.

There does not seem to me to be any difference in fairness for that, and there is not any economic wisdom in it, particularly at a time when we have an agricultural program relating to the production of grain.

Senator CONNALLY. When you said this amendment, what amendment do you refer to?

Senator MURPHY. My amendment.

Senator CONNALLY. I understood you to say that would give it to the petroleum industry.

Senator MURPHY. I say if we do not prevent the distillation of spirits from other than grain eventually it will go to distillation from petroleum.

Senator CONNALLY. Do you mean industrial alcohol or potable alcohol?

Senator MURPHY. I mean potable alcohol.

Senator BAILEY. He not only said they could make it, but he said it would be just as good.

The CHAIRMAN. Have they ever made any from petroleum products?

Senator GUFFEY. In the laboratories they have.

Senator MURPHY. Dr. Doran said this:

I believe you can make blended whisky out of a distillate from any source, and I want to say right now it will not be blackstrap. It, in all probability, will be petroleum, and in my humble judgment, that is probably the cheapest raw material for the manufacture of neutral spirits, and I do not look on that with any degree of satisfaction from the standpoint of the user or the distiller, particularly the small distiller, and from the standpoint of the man in the street.

Aside from the economic aspects of this, there is the historical fact that whisky has always been considered a product of grain distillation. Some years ago there was a controversy between the interests engaged in the production of whisky, and that finally was settled by President Taft who declared whisky to be a product of grain distillation.

The Food and Drugs Act applies to those drugs, medicines, and liquors, and section 6 of that act defines the term food as including all articles used for food, drink, and confectionery by man or other animals, whether simple, mixed or combined. The historical aspect of that I will not go into, because it is covered in this testimony.

Senator KING. May I ask one question, if it will not interrupt you?

Senator MURPHY. Yes.

Senator KING. Your amendment, as I understand it, would forbid the use of molasses or cornstarch, or artichokes or sugar for the manufacture of ethyl alcohol, and would compel the use of grain exclusively for the manufacture of alcohol for potable purposes?

Senator MURPHY. Yes; my amendment would prevent the use of anything except alcohol distilled from grain, in liquors.

Senator CONNALLY. What about fruit?

Senator MURPHY. If you permit the alcohol from other grain, you are going to break down the alcohol into brandy, and you will have substitutes for brandy and you will have substitutes all along the line of other than grain or fruit products; and this is protecting the integrity of the Food and Drugs Act, and is in line with the historical understanding of what whisky is.

Senator COUZENS. May I ask the Senator who was chairman of the subcommittee, whether the pharmaceutical people were represented at this hearing?

Senator KING. No; I received some letters from them, and I expected them to appear.

Senator OVERTON. I filed with the committee a number of letters in protest against the Murphy amendment, from the pharmaceutical people.

Senator MURPHY. The objection that would arise from the pharmaceutical interests was one which occurred to me, and one which Dr. Doran pointed out. Dr. Doran was asked specifically whether or not the amendment in the form in which it now appears is a satisfactory form. Senator Capper asked the question as follows:

May I ask you, is the Murphy amendment in the present form all right, or have you any suggestion as to it?

would. They have no disposition in any way to interfere with the

To that Dr. Doran replied:

It says for nonindustrial use, and I think it would be pleasing to the druggists if it said nonbeverage use, or for other than beverage use, or something of that sort, because the phrase "nonindustrial use" relates to the bottle regulations of the Treasury, but it would place all minor lots of prescription alcohol in this beverage class, and I think it should be amended as to that phrase, "beverage purposes", to completely clear the pharmaceutical manufacturers of any fear of being imposed upon by higher-priced material, and not being given a completely clear market.

Senator CLARK. Do you have any objection to that?

Senator MURPHY. Not the slightest.

Senator BAILEY. Do you insist on keeping neutral spirits in line 5? Is it not your object to prevent selling as whisky and gin something that is made out of some other product? You can make neutral spirits out of almost anything, and is it not your intent to confine this to whisky and gin?

Senator MURPHY. That confines it to alcohol, neutral spirits.

Senator BAILEY. Nobody drinks neutral spirits, and would you not accomplish your purpose by preventing the advertisement and sale as whisky of any beverage made from other than grain?

Senator MURPHY. That would be satisfactory to me, Senator.

Senator BAILEY. Let us see if it is injurious to the cause you are interested in. Nobody is going to buy neutral spirits and you do not see them advertised in the package store. Neutral spirits is just a means of making liquor and nobody drinks it.

Senator MURPHY. Blended whisky is used, Senator Bailey.

Senator CLARK. I understand in these blended whiskies that are put out, there is a great deal of neutral spirits in that, some of them as much as 35 or 40 percent and in some cases 50 percent.

Senator BAILEY. Here is what I have in mind: Assuming that is so, he must not advertise or sell it as whisky or gin when the neutral spirits were derived from other than grain. Is that not the object of this legislation?

Senator CLARK. Yes.

Senator BAILEY. You want whisky to be whisky, according to the historical definition?

Senator MURPHY. Yes.

Senator COUZENS. May I ask Senator Murphy if this amendment which was submitted to me by the pharmaceutical interests of Detroit, would be satisfactory as a substitute amendment. It reads this way:

SEC. —. (a) For the purposes of the Federal Alcohol Administration Act, and of any act of Congress amendatory or any substitution for said act, no product shall be labeled or advertised or designated as whisky or gin, or any type thereof, for nonindustrial use, if distilled from materials other than grain, or if the neutral spirits used in the manufacture thereof or contained therein are produced from materials other than grain. The term "neutral spirits" shall not include or be construed to include ethyl alcohol for any use other than in the manufacture of whisky or gin for nonindustrial use. The term "nonindustrial use" shall mean beverage use.

Senator BAILEY. If you used beverage all of the way through and leave out nonindustrial use, would that not cover the same purpose?

Senator COUZENS. I discussed it with them and they thought it

farmer's selling his grain, but they do contend for medicine and other purposes they do find advantage from other materials than grain.

Senator CONNALLY. Of course, your amendment provides that it does not include industrial alcohol, but it uses the term "neutral spirits", which includes ethyl alcohol.

Senator CLARK. Senator Couzen's amendment, as I understood it, includes alcohol for beverage purposes.

Senator COUZENS. Neutral spirits do not include alcohol.

Senator CLARK. Does it not include ethyl alcohol for other than beverage purposes?

Senator COUZENS. Yes.

Senator CLARK. That is the same as Senator Murphy's amendment as amended, and I do not see any difference, except Senator Murphy's is a little simpler.

Senator GEORGE. Senator Murphy's amendment includes ethyl alcohol for all purposes.

Senator MURPHY. Ethyl alcohol and neutral spirits are synonymous; they mean the same thing.

Senator CLARK. I understood Senator Murphy to propose that the word "nonindustrial" be changed to "beverage" then, with the change, it seems to me that means exactly what Senator Couzens proposed. In other words, he says that no product shall be labeled gin or whisky or any type thereof for beverages purposes if distilled from other than grain. That is exactly the same proposition that your draft is, Senator Murphy, except you stated the converse of it.

Senator GERRY. I would like to ask the Department what their definition is of ethyl alcohol.

Mr. BERKSHIRE. Ethyl alcohol is distilled spirits of a proof higher than 190.

Senator GERRY. Distilled from what?

Mr. BERKSHIRE. From anything.

Senator GERRY. Wood alcohol or any thing else?

Mr. BERKSHIRE. Ethyl alcohol is not wood alcohol.

Senator GERRY. Then you have not given me a definition. What is the definition? The one you have given me is no good.

Mr. BERKSHIRE. Ethyl alcohol is alcohol which is potable and wood alcohol is made by another distillate, and is poisonous. The chemical make-up I cannot tell you.

Senator GERRY. You said ethyl alcohol is anything that is over 190 proof.

Mr. BERKSHIRE. Ethyl alcohol is a distillate of grain, sugar, or molasses, and it may be from petroleum products, brought over at a degree of proof higher than 190.

I am not able to tell you the processes in the making of wood alcohol.

Senator GERRY. What product did you say?

Mr. BERKSHIRE. Grain, molasses, or sugar.

Senator GERRY. Or any vegetable?

Senator BARKLEY. You can make it from potatoes.

Senator GERRY. In prohibition days, they used wood alcohol and had a way of rectifying it, did they not?

Mr. BERKSHIRE. They had a way of denaturing it.

Senator GUFFEY. Was it not ethyl alcohol denatured?

Mr. BERKSHIRE. We do not authorize denaturing of wood alcohol, according to law.

Senator GERRY. They used to do it in prohobition days.

Mr. BERKSHIRE. They did, but that was the bootlegger, and it is what has killed folks.

The CHAIRMAN. Senator Overton, do you want to say something about this?

Senator KING. Before that, Senator Overton asked me about the American Pharmaceutical Association. That was to be brought to the attention of the full committee because our subcommittee was not agreed on this matter.

Senator CONNALLY. As I understand, there is really no conflict here, because all Senator Couzens wants is to exempt it for nonbeverage purposes, and that is what Senator Murphy says he wants to do; it is just a question of wording it to accomplish that purpose, and there is no friction between views.

Senator KING. I want to put this in the record. The secretary of the American Pharmaceutical Association wrote on February 11 as follows:

> I desire to record the emphatic objection of this association to the proposal that neutral spirits, including ethyl alcohol, for medicinal purposes shall be distilled only from grain.
>
> The United States Pharmacopoeia defines alcohol synonyms ethanol, ethyl alcohol, spirits vini rectificatus, for medicinal purposes, as "a liquid containing not less than 92.3 percent by weight, corresponding to 94.9 percent by volume, at 15.56° C., of C_2H_5OH", and gives appropriate descriptions and tests for its identity, purity, and strength. It does not, however, restrict the source of alcohol and it is our conviction that any attempt to restrict the source of such a necessary basic chemical material is highly undesirable.

Another letter from the American Chemical Society, dated February 11, is as follows:

> This amendment undertakes to define a perfectly definite chemical compound, i. e., ethyl alcohol, as a material obtained from a specific source. Nothing, in my opinion, could be more detrimental to the proper administration of our laws or the interests of both the farming community and the chemical industry. The adoption of this amendment would carry with it almost insurmountable difficulties of administration and enforcement since the ethyl alcohol obtained from corn is chemically indistinguishable from the chemically identical ethyl alcohol obtained from sugars (beet, cane, or corn); from molasses, also an agricultural product; from corn starch, sweetpotato starch, or Irish potato starch; from artichokes; and from other farm crops and agricultural wastes. The amendment is apparently intended definitely to discriminate in favor of corn raisers at the expense of other agriculturists. It very definitely brings into the Food and Drug Law another difficulty of administration, which, since there is no chemical test capable of determining the source from which pure ethyl alcohol comes, would appear to be almost insurmountable.

This letter is from the Industrial American Chemical Society:

> I understand that you are chairman of the committee which is considering H. R. 9185 and particularly the amendment thereto which defines ethyl alcohol, neutral spirits, etc., for nonindustrial use, to be only that distilled from grain.
>
> This would have the effect of defining a well-known chemical body, which may be and has been produced in a number of different ways, from a number of different raw materials, as necessarily derived from a single raw material. To do this would be to establish to some degree a precedent very inimical to our American chemical industry and might therefore at some time later prove to be very harmful to the chemical industry and to the public. One of the things that has been most helpful to progress in the chemical industry is the fact that many different chemical bodies, such as ethyl alcohol, can be

produced in a number of entirely different ways from totally different raw materials, thus furnishing opportunity and encouragement to American chemists to undertake research work leading to the development of new methods of manufacture, opportunities to American manufacturers to find new ways to compete with old methods of manufacture, and benefit to the American public from the results of such new methods of manufacture.

I might appropriately add that to my certain knowledge, very large quantities of the purest grade of ethyl alcohol have been made in this country from sawdust. Understand, I am not referring to wood alcohol but to the highest grade ethyl alcohol, quite equal to any that has ever been made from grain. Ethyl alcohol is also being made in this country from natural gases and petroleum compounds. Whether or not alcohol so made is the highest grade ethyl alcohol is immaterial to the present question, as the manufacturers of it can purify it to any degree desirable so that alcohol so made may if desired be as pure as any that has ever been made from grain.

To define ethyl alcohol as alcohol obtained from a particular source is almost equivalent to defining a true American as only one who comes from a single State. Of course, you understand that I am not raising my voice against defining "grain alcohol" as only ethyl alcohol which is derived from grain, but I do claim that it is a serious mistake to define ethyl alcohol as one which is derived from any single source. I therefore urge you and your committee to oppose any nomenclature for any chemical body that would limit the raw material from which it is made or the chemical means for making it.

Senator KING. I also have this letter from the Industrial and Engineering Chemistry, editorial office, which says:

As chairman of the industrial alcohol committee of the American Institute of Chemical Engineers, an organization of approximately 1,400 technical men. I wish to have placed in the record the opposition of that body to the amendment proposed by Senator Murphy of Iowa to H. R. 9185.

The proposed amendment is to a bill drawn to insure the collection of revenue on intoxicating liquor, to provide for the more efficient and economical administration and enforcement of the laws relating to the taxation of intoxicating liquor, and for other purposes. The amendment undertakes to define according to its source a perfectly definite identifiable chemical compound, namely, ethyl alcohol. The American Institute of Chemical Engineers as such is not directly concerned with the nonindustrial use of ethyl alcohol, where it is affected by the Federal Alcohol Administration act, but it is convinced that it is both unsound and unwise to set up for this or any other purpose a definition of a chemical compound as something derived from a particular source, in contradistinction to the established properties of the product regardless of how it is made.

The basic purposes of the Food and Drug Act are to prevent the manufacture, sale, or transportation of adulterated or misbranded food and drugs, but there is no reference in the Food and Drug Act nor in the bill S. 5, now pending, to the industrial or nonindustrial use of distilled spirits or the beverage or nonbeverage use of alcohol. The Food and Drug Act has to do with the purity and quality of the articles which it covers and not their use, and in the pending legislation the term "drugs" refers to preparations recognized in the United States Pharmacopoeia, in which ethyl alcohol as such has been long recognized, quite irrespective of the source of its manufacture, being concerned only with its quality and purity.

Under the wording of the proposed amendment, all other sources than grains themselves would be barred as a source of ethyl alcohol. This would include sugars, whether derived from the cane, the beet, or corn, starches that might be converted into fermentable carbohydrates, various farm crops such as the Irish and the sweetpotato, artichokes which are being widely discussed as a source of alcohol to give variety to farm crops, and many agricultural wastes. Ethylene as a source would be likewise barred. Since alcohol is alcohol regardless of the raw material from which it is made, it is not difficult to foresee numerous difficulties and unjustifiable expense in the enforcement of such a plan of manufacture, and the amendment can scarcely be viewed as anything else than an effort to discriminate in favor of one small group at the expense of the others.

We urge that action on the amendment be unfavorable.

Senator BAILEY. The man who wrote that letter has confused alcohol with whisky. This amendment says you cannot advertise whisky or gin for beverage purposes if the neutral spirits therein were made from other than grain.

Senator BARKLEY. Notwithstanding the fact that originally they did not know how to make alcohol out of anything else—corn, or grain—it does not seem to me that the United States Government would declare itself against scientific development which would produce alcohol undistinguishable and identical to that made from corn or grain and say that no beverage can be called whisky, although it is whisky, and that no beverage can be called gin, although it is gin—no matter from what source it is derived, you cannot call it whisky or call it gin.

I come from a State which grows a great deal of corn, and makes whisky from the corn, but it seems to me we are legislating a fiction, that although the product is identical, and is not harmful in any respect, except in the same respect it would be harmful no matter what it came from, yet we cannot call it what it is, because it happens to be made from a kind of alcohol that they made originally from grain because they did not know how to make it from anything else.

It puts a ban on scientific development in the matter of making alcohol and of making beverages.

I just cannot see it.

Senator GERRY. Senator, is there any more fusel oil in this kind of alcohol than the grain alcohol?

Senator BARKLEY. I do not think so.

The CHAIRMAN. Let us hear from Senator Overton; he is interested in this matter.

STATEMENT OF HON. JOHN H. OVERTON, UNITED STATES SENATOR FROM THE STATE OF LOUISIANA

Senator OVERTON. Mr. Chairman and gentlemen of the committee, I think Senator Barkley has presented my argument in a few short words.

As I understand the amendment of Senator Murphy, he is willing now to restrict his proposed amendment to any labeling or sale of whisky or gin as such that is produced from alcohol made from other sources than grain.

I think the provision as suggested by him is monopolistic, it is undertaking to create a monopoly in favor of grain as against all other products, agricultural or otherwise, that can enter into the manufacture of whisky or gin, as a factor.

I think that is totally unjustified, because I have shown from the statements given to me by chemists connected with the different departments of our Government, as set forth in the hearings, that alcohol made from molasses, for instance, is just as pure, just as good, and just as wholesome, if it can be called wholesome, as alcohol that is manufactured from grain.

Then, why this discrimination? Why say to the cane producers in Louisiana and Florida, and to the beet producers out West, that

we are going to legislate against whisky and gin that is made from alcohol that is produced from beets and from sugar? I think it is totally unjustifiable.

It is my impression that the purpose of this amendment is to create a monopoly, and as the result of the creation of that monopoly we will have much higher whisky and much higher priced gin.

Gentlemen, I am in receipt of this kind of a letter from Mr. Hilton, president of the United States Pharmaceutical Union, in which he makes this statement:

> If alcohol can only be produced from grains, a condition will be imposed upon the sick and suffering in obtaining their necessary medicine, and prices will be exhorbitant.

If it will be exhorbitant for medicinal purposes, it will also be exhorbitant for beverage purposes.

Senator CLARK. His statement is practically at variance with that of Dr. Doran who says as far as he knows, and he has had as great opportunity of observation as anybody in the United States, that there is no blackstrap molasses going into whisky.

Senator GUFFEY. If you go to Philadelphia and see the Continental Distillery, you will see it does go into the manufacture of whisky.

Senator OVERTON. That statement made by Dr. Doran I am not in position to refute, except I understand from the representatives of the American Sugarcane League that molasses does enter into the manufacture of alcohol, which in turn is used in making whisky and making gin.

This whole matter has been thoroughly gone into by the Treasury Department and the Federal Alcohol Administration, and they proposed these regulations, and these regulations, it seems to me, would be satisfactory, and if you wish to incorporate them into legislation, the Murphy amendment may be amended so as to incorporate the recommendations of the Federal Alcohol Administration as shown by the regulations.

Their regulations provide that in the case of distilled spirits other than cordials, liquors, and specialties produced by blending or rectification, if neutral spirits had been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirit has been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form:

> (Blank) percent neutral spirits distilled from grain; or (blank) percent neutral spirits distilled from cane products; or (blank) percent neutral spirits distilled from fruit; or (blank) percent grain (cane products) fruit neutral spirits.
>
> (*b*) In the case of neutral spirits or of gin produced by a process of continuous distillation there shall be stated the name of the commodity from which such neutral spirits or of gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form:
>
> Distilled from grain or distilled from cane products or distilled from fruit.

I have no objection to incorporating the regulations into the law if the committee desire me to do so. In that event, the Murphy amendment would be amended so as to read as follows:

Strike out in line 4, after the word "Acts", all of the remainder of the provision, and in lieu thereof insert the regulations I have just read, so that it will read:

> For the purposes of the Federal Alcohol Administration Act, the Food and Drugs Act, as amended, and of any act of Congress amendatory of or in subordination for either of said acts—

and follow that with the regulations of the Federal Alcohol Administration, to which I have previously referred.

There would then be set forth on the label the product from which the whisky or gin has been manufactured, and that would put the public on notice, and if people did not wish to drink blended whisky made from molasses or other products, and wished to drink whisky only that has been made from cereal or grains, then they will look at the label upon the bottle and they can make their selection.

However, in my opinion there is no justification to legislate against whisky or gin made from products that are just as healthy and just as wholesome as those made from grain, and if the public wants to be advised in order that they may determine according to their own preference what they are about to drink or are drinking, then the label on the bottle can give them the information.

Senator KING. Thank you very much, Senator; the committee will take the matter under advisement, pursuant to the suggestion of the chairman, who has been called away to another meeting.

Senator GUFFEY. Can I ask what position Dr. Doran now occupies; he is no longer with the Government?

Senator MURPHY. I do not know.

Senator CLARK. He is head of the Distilled Spirits Institute.

Senator GERRY. I would like to ask the administration members here does blended whisky have to be so labeled?

Mr. BERKSHIRE. It does.

Senator CLARK. You can label it straight whisky.

Mr. BERKSHIRE. No; you have to say it is either straight whisky or blended whisky.

Senator CLARK. I notice in the advertisements the statement frequently saying it is straight whisky, and if you look at the labels you will find it is a blended whisky.

Mr. BERKSHIRE. There would not be any neutral spirits in that, but sometimes they blend straight whiskies.

Senator GERRY. If it is blended, is it shown on the label?

Mr. BERKSHIRE. I suggest that Mr. O'Neill can answer that better than I.

Mr. O'NEILL. The regulations which define straight whisky and then blended whisky have not yet gone into effect, so that they would not show what you would find on the market today.

Senator CLARK. As a matter of fact, unless you buy bottled-in-bond whisky, you are not certain you are getting whisky.

Mr. O'NEILL. That is true, and the regulations to which I referred go into effect on the 15th, and they will provide that blended whisky must contain 20 percent bottled-in-bond whisky.

Senator CLARK. As a matter of fact at the present time they use 10 percent of whisky 8 years old, mixed in with 60 percent whisky 1 year old, and add in the rest with neutral spirits, and advertise it as 8-year-old straight whisky, do they not?

Mr. O'NEILL. I have not seen any of that kind of advertising, but there is nothing in the law to prevent it.

Senator CLARK. They do not set out what the ingredients are, but as a matter of fact that is what they can do at the present time.

Mr. O'NEILL. Yes; as far as the Federal law is concerned.

Senator GERRY. Is that going to be prevented by the future regulations; the old regulation was 4 years?

Mr. O'NEILL. That is bottled in bond. Under the new regulations, they will require informative labeling.

Senator CLARK. Do these new regulations require them to show on the label how old it is, or simply refrain from putting on any claim unless it is true?

Mr. O'NEILL. No; they must put on its age.

Senator CLARK. At the present time they do not have to put on the age if they do not want to.

Mr. O'NEILL. No.

Senator CLARK. In other words, if they do not want to make any claim they do not say anything about it under the present conditions?

Mr. O'NEILL. That is right.

Senator CLARK. If they make any claim it has to be true to the extent I have just stated, that some of the whisky has to be the age they claim, and unless they do make a claim they can sell the whisky without putting anything on the label about it.

Mr. O'NEILL. Yes.

Senator GERRY. That means when whisky is sold over a bar, the natural result of that would be that the young whisky would be sold, and you would never have whisky sold on a bar that was over a year old.

Mr. O'NEILL. That is probably true, because the younger whisky is the cheapest.

Senator KING. It depends on the bar and the reputation of the house.

Senator GERRY. Before prohibition was it not required that whisky remain in bond 4 years?

Mr. O'NEILL. No, sir; there was a requirement, which is still in existence today, the Bottling-in-Bond Act, which permits bottling in bond under the blue-strip stamp after 4 years' aging, but there is nothing to prohibit bottling without the bonded stamp, regardless of the age of the whisky.

Senator GERRY. But it could not be called bottled-in-bond whisky?

Mr. O'NEILL. No, sir.

Senator BARKLEY. During the period of 4 years when the whisky is supposed to be in the barrel, which is charred on the inside, and which gives it the color, during that 4 years a barrel of 45 gallons would evaporate considerably, and a large part of the evaporation has been fusel oil.

Senator GERRY. That is one of the purposes of keeping it in the barrel for 4 years, so that the higher alcohols are evaporated.

Senator BARKLEY. Yes; that operates as a sort of purifying process. You can bottle it the next day after you make it, but it cannot be bottled in bond.

The CHAIRMAN. The Committee will take this under advisement.

Senator OVERTON. May I ask a question? When these regulations adopted in January by the administration go into effect, whisky and gin will have to be labelled indicating the products from which they are manufactured?

Mr. O'NEILL. Yes; the Federal Alcoholic Administration Act definitely requires now the statement you have read from the regulations. If alcohol is added to the product, if it is gin or blended whisky containing neutral spirits, it must state upon the label the source of the commodity and the percentage of the spirits contained.

Senator KING. Whether from grain, molasses, or potatoes?

Mr. O'NEILL. That is right.

Senator OVERTON. I was going to make this statement, that instead of amending the Murphy amendment by incorporating into the amendment the present regulations, I understand that is now the law.

Senator GEORGE. Yes; that was passed just before we adjourned last year.

Senator OVERTON. Therefore I submit that the amendment offered by Senator Murphy be not agreed to.

Senator KING. The amendment offered by Senator Murphy will be taken under advisement.

Senator CONNALLY. I suggest we vote on it.

Senator KING. We are ready to vote on the Murphy amendment. Is it agreeable?

Senator BAILEY. The Murphy amendment is not in shape to be voted on.

Senator BARKLEY. We can vote on the principle, and then if it is approved, shape it up.

Senator BAILEY. Before you vote on it, I wish to make a remark. There was a statement made by a witness at the hearings before the subcommittee that the molasses from which distilled spirits are made does not come from this country but is imported from the islands, and I am going to vote for this in the interest of our farmers.

Senator BARKLEY. I think that is not a fact. You get a lot of your base form of your alcohol out of your own refineries. I know we do not make all of our sugar in this country and we have to import a lot of it, but it looks to me like this is the grossest kind of discrimination and I am not in favor of any part of it, because it is just an attempt to discriminate in favor of one or two sections.

Senator BAILEY. I will give you my authority for that statement. Dr. Doran testified that none of the molasses used to make spirits came from this country.

Senator BARKLEY. At the present time the blackstrap molasses produced in Louisiana and other southern States is more valuable as food than it is as distilled liquor. It may be true this comes from the islands, from Puerto Rico, which is a part of the United States, and from Cuba, toward which we owe some obligation.

It may come in sugar or in molasses, but it is all a product of cane. I am not concerned about that, but it seems to me that here is a thing that is manufactured, and just as long as it is harmless, if any of it is harmless and it is undistinguishable from, and is identical in all respects to the grain alcohol, and it should not be discriminated against.

In ancient times they did not know how to distill alcohol out of anything but grain, and are we going to say we have got to stick to that old formula and not permit anybody through scientific de-

velopment to make whisky, gin, or ethyl alcohol out of anything except grain?

As I said awhile ago I am prejudiced here for the grain people because we not only produce it in my State, but we produce whisky from it in my State, but it seems to me we are taking on a big job when we say you cannot make whisky out of anything but grain.

Senator KING. We will now vote on the Murphy amendment.

(Thereupon a poll vote was taken and the amendment was rejected 8 to 5.)

Senator CLARK. I reserve the right to support the amendment on the floor.

Senator KING. Senator Copeland has offered an amendment, and considerable testimony was taken on it. The amendment provided that the tax upon these alcoholic liquors should be collected from the retailer, and that the strip stamp should be put over the bottle when sold by the retailer and the tax collected at the retail place rather than at the wholesale place.

Senator WALSH. Which is the method now exercised in the District of Columbia on which statistics show there will be produced much more revenue than the present method?

Senator BARKLEY. That is not the testimony from the subcommittee, and it will take $50,000,000 to enforce, with an army of people to stand around every retail place, and will legitimatize the bootlegger, because all a man has got to do is to put a stamp on the bottle to show he has paid it, no matter where he bought it.

Senator CLARK. As I understand it, the only possible benefit would be to the indemnity insurance companies who would have more bonds to issue.

Senator WALSH. What was the organization that submitted that amendment?

Senator KING. There was only one witness, and that witness was from the National Civic Federation.

Senator GEORGE. I am not on the subcommittee, but Senator Copeland presented this amendment last year, and it went to the conference committee on the Alcohol Control Act, and this one organization referred to presented the amendment.

Senator KING. The Treasury is opposed to it. Are you ready to vote on the Copeland amendment? All in favor say aye. All in favor say no.

(Vote taken.)

Senator KING. The ayes have it and the amendment is rejected.

Senator CONNALLY. There is one matter I desire to bring up before the committee at this time. The committee referred to a subcommittee, of which I am chairman, the matter of the war-revenue bill or war-profits bill, and we have had some hearings and have come to learn that it is a very intricate matter.

It has been studied very carefully by the Treasury Department, and by the staff of the Joint Committee on Internal Revenue Taxation, and they know it from one end to the other. They have submitted to the subcommittee the following statement, which I will read:

Principal issues in re war revenue and industrial management bill; submitted for the consideration of the members of the subcommittee.

TITLE I. INCOME TAXES

1. Should the bill be designed so as to take the profit motive away from both corporation and indivdual?
2. If the answer to issue 1 is in the negative, what maximum rates can be used without destroying the profit motive?
3. Should the bill be designed to produce the maximum revenue possible, or should the social and economic effects of the bill be deemed more important?
4. Is it sound to adopt the general principle that the most important thing in connection with war legislation is "to win the war"?
5. Should the bill be designed to tax net income only, or should limitations be imposed on the deduction of necessary business expenses with the result that the tax rates may apply to a figure greater than true net income?
6. Should the bill attempt to correct possible defects and to close possible loopholes in existing law when such defects or loopholes are a present problem not directly connected with war-revenue legislation?
7. Should the rather low taxes proposed in the bill on the indivdual with a moderate net income be increased so as to secure more revenue?
8. Is it constitutional to tax gifts as income, as indicated by the bill?
9. Is it constitutional to require the filing of joint returns by the husband and wife as proposed in the bill, such a provision affecting the present community property system?
10. The bill taxes all gains from the sale of capital assets, but disallowed all losses from such sales, except to the extent of $2,000; that is, if a man has $50,000 of gain from the sale of capital assets and in the same year has $80,000 of losses from such sales, the bill proposes to tax the man on $48,000 regardless of the fact that he had a net loss of $30,000. Is this a sound policy?

TITLES II TO VI. INDUSTRIAL MANAGEMENT

11. Should the bill be kept in its present form or should it be divided into two separate bills—one dealing with revenue and the other with industrial management and control?
12. Title III of the bill gives the President power to fix prices, close exchanges, requisition plant, etc., not only after war has been declared but whenever Congress declares a grave national emergency exists, or whether there exists a war between two foreign powers. Is it constitutional to grant this power to the President at a time we are not actually at war?
13. As a practical matter, will the War Department be able to organize quickly enough to handle the exceptional duties placed on it in titles II and III?
14. Is the revolving fund of $500,000,000 provided for in section 506 sufficient?
15. Is there any danger, under the terms of this bill, that some future President, personally ambitious of extreme power, would get us into war for the purpose of wielding such power?

Those are the tentative questions and issues prepared by the experts, and they have carefully studied the measure and know all about it. We feel like we should report this bill back to the committee with the report of the Department and experts, and then this committee could determine some of the major policies.

The CHAIRMAN. Without objection that course will be followed.

(Whereupon the committee proceeded to the consideration of other business.)

Senator KING. There is one further amendment offered by Mr. Alvord and I suggest we take that up now, and Mr. Alvord, as we know, was connected with the Treasury many years. Will the Treasury representatives please explain this amendment?

Mr. BERKSHIRE. Mr. Alvord has proposed an amendment to Section 605 of the Revenue Act of 1918, which authorizes the redistillation of distilled spirits over aromatics in the production of gin, and when they use the redistillation process they are relieved of the thirty-cent rectification tax.

The history of the thing is this, briefly stated, the laws have heretofore endeavored to distinguish sharply between a distiller on the one hand and a rectifier on the other, so we have drawn this distinction: A distiller is the person who manufactures distilled spirits, and a rectifier is the one who rectifies or purifies or refines the distilled spirits, and if he does either of those things by statute he becomes a rectifier, and the product of rectification is assessed an additional 30-cent tax per proof-gallon.

A distiller might heretofore, in the continuous process of distillation and before the spirits reached the cistern room, might take it from the tank and run it over juniper berries in the continuous process of manufacturing gin and escape the 30-cent tax.

The rectifier then came in and asked for the same privilege, that if he used without a redistillation process a continuous process over the aromatics or the juniper berries he might produce a gin which would not be subject to the 30-cent tax, placing them on a parity.

That was the Revenue Act of 1918, section 605.

Now, Mr. Alvord's Distillers Co., Ltd., a British concern, came over here about a year ago and wanted to manufacture gin by their process, which was such that for some reason they desired to take the spirit and redistill it first and make the material from which they would manufacture gin by the redistillation process, and then after the redistillation of that spirit they then charged their gin still and redistilled again over the juniper berries. Under the statute the first distillation would be a refining process which would be subject to the 30-cent tax, which they have paid, and which they thoroughly do.

Now they come in and ask that they be relieved of the rectification tax by reason of this redistillation of the spirits first before they charge their gin still, which means just this: That it would be an unjust discrimination against those manufacturers of gin by other processes.

There are those who combine gin and do not distill at all, and they pay the 30-cent tax, and if that fellow wanted to do this under the amendment he would be paying a 60-cent tax, where the distiller would not pay anything, and it amounts to this, that they would be relieved of some hundreds of thousands of dollars tax which they are now paying, and it would be discriminating against others.

The Treasury Department objects to the loss of the tax, and they believe there should be no discrimination against the other rectifier who makes the spirits in a different manner.

The CHAIRMAN. I understood from Mr. Alvord yesterday when he talked to me about this that his concern is, I believe, the Gordon people, and they are the only ones using this process, and that they were paying 30 cents more than the others.

Mr. BERKSHIRE. No; I do not think that is exactly correct, because all of them would like to do a certain amount of redistillation, and if this were done, many of them would redistill their paint, called the "heads and tails", and that would reach out and every rectifier in the country would be affected, and they would resort to this sort of thing if the law is passed, so that we would lose a great deal more than the hundred thousand dollars which we would lose from this company alone.

Senator CONNALLY. You think the rejection of the Alvord amendment would leave all of them on a parity and would still preserve the revenue to the Treasury?

Mr. BERKSHIRE. Yes, sir; we would retain the revenue we are now collecting and they would be left exactly on a parity.

Senator CONNALLY. If we adopt the Alvord amendment, however, we would be giving special privilege to this particular concern that has this process.

Mr. BERKSHIRE. We would be waiving the 30-cent tax, as far as this Distillers, Ltd., are concerned.

The CHAIRMAN. Did the subcommittee consider this proposition?

Senator KING. It was presented to us, but we did not take any affirmative action.

The CHAIRMAN. Does the committee want to give Mr. Alvord 5 minutes on this proposition?

Mr. BERKSHIRE. I have a letter addressed to the chairman, prepared by the Acting Secretary, and I would like to file it and make it a part of the record.

The CHAIRMAN. That will be included as a part of the record. We will also include a statement submitted by Mr. Alvord, and they will be printed.

(The matter referred to is as follows:)

THE SECRETARY OF THE TREASURY,
Washington, March 12, 1936.

Hon. PAT HARRISON,
Chairman, Finance Committee.

MY DEAR MR. CHAIRMAN: The representatives of the Distillers Co., Ltd., a wholly owned British corporation, whose plant is located at Linden, N. J., have proposed amending the first proviso of section 605 of the Revenue Act of 1918, to read as follows:

"*Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries or other aromatics, or to any distilled spirits rectified, purified, or refined in the process of, and used solely in, the production of such gin."

The pupose of the proposed amendment is to exempt from the payment of the tax imposed on products of rectification, distilled spirits which are rectified, purified, or refined solely for the purpose of being used in the manufacture of gin by the distillation of spirits so purified, rectified, or refined over juniper berries or other aromatics. The purifying, rectifying, and refining processes incurring liability for payment of special or occupational tax as a rectifier were declared to be acts of rectification in the following language in the act of April 10, 1869:

"* * * every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is complete * * * shall be regarded as a rectifier, and as being engaged in the business of rectifying; * * *."

In order that you may have before you the statutory definitions of both a distiller and a rectifier, and may, by comparison thereof, ascertain the distinction made by statue between rectifier and distiller, there are quoted immediately hereafter all of the provisions of section 3247 of the Revised Statutes, which defines a distiller:

"Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller."

A tax at the rate of 15 cents per proof gallon was first imposed upon rectified spirits and wines by Section 304 of the Revenue Act of 1917, and was increased to 30 cents per proof gallon by section 605 of the Revenue Act of 1918. The tax was imposed by the Revenue Act of 1917 in the following language:

"That in addition to the tax now imposed or imposed by this act on distilled spirits there shall be levied, assessed, collected and paid a tax of 15 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wine hereafter rectified, purified, or refined in such manner, and on all mixtures hereafter produced in such manner, that the persons so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3244 of the Revised Statutes, as amended, and on all such articles in the possession of the rectifier on the day this act is passed: *Provided*, That this tax shall not apply to gin produced by redistillation of a pure spirit over juniper berries and other aromatics."

It is the above proviso that is now sought to be amended. Except as to the rate of tax, the same language as that quoted was repeated in section 605 of the Revenue Act of 1918.

The fact that Congress by way of a proviso to the section first imposing a tax on the products of rectification granted the exemption to gin produced by the redistillation of pure spirits over aromatics indicates that it was the legislative intent to tax the rectification of spirits intended for such use, but to exempt from tax the gin resulting from subsequent distillation of such spirits over aromatics.

The exemption of such gin from the 30-cent tax has the effect of placing on a parity rectifiers who manufacture gin by the distillation of pure spirits over aromatics and distillers who produce spirits and before removal of such spirits to cistern rooms use them in the distillation of gin. Under the present law, the basic $2 tax on distilled spirits is payable on all distilled spirits in the condition in which they are transferred to the receiving cistern at distilleries, and, except for gaging, no further acts in respect of changing the character of such spirits are permitted at the distillery or warehouse. If the spirits produced by the distiller are not satisfactory or suitable to the distiller, or his customers, they may be reconditioned or made suitable or satisfactory only in a rectifying plant, and the rectifying, purifying, or refining of such spirits is a taxable act of rectification. If gin makers who rectify gin by distillation are to be permitted to first rectify their spirits without payment of the tax, then it would seem to follow that the same exemption should be extended to those gin makers who produce their product by compounding, that is, by mere mixing of ingredients with distilled spirits, and to distillers whose finished product is unsuitable or unsatisfactory, and likewise to every other preparatory act performed by rectifiers generally. Unless extended to gin compounders, distillers, and rectifiers generally, a grant of the exemption to the rectifiers who produce gin by distilling pure spirits over aromatics will amount to an inequitable and unjust discrimination, and a tax adjustment for the benefit of one group in the liquor industry, with the result that that group will enjoy a distinct advantage in the competitive market in which they must all do business.

Your attention is invited specifically to the tax differential which will be enjoyed by rectifiers who distill gin if the proposed amendment is adopted. A compounder (mixer) of gin must pay a tax of 30 cents per proof gallon on such gin. If the compounder rectifies spirits to be used in the making of such gin, he must pay a tax of 30 cents per proof gallon on such rectified spirits. The compounder's gin will bear a rectification tax of 60 cents per proof gallon. If the proposed amendment should be enacted into law, the gin manufactured by distillation in a rectifying plant will bear no tax. Therefore, the tax differential will be 60 cents per proof gallon.

If the proposed amendment is enacted into law, it will result in exempting from tax, at the instance of a single rectifier, one more act of rectification. If the proposed amendment is extended to all preparatory acts performed by rectifiers, it will tend to break down the distinction between distillers who have always been regarded as producers of distilled spirits, and rectifier who have been regarded only as possessors or manipulators of tax-paid spirits and wines, and will, of course, result in substantial losses of revenue.

When the Distillers Co., Ltd., was preparing to commence business in the United States, its representatives conferred with representatives of the Bureau of Internal Revenue and at that time stated that under the plan of opera-

tions proposed to be pursued the Government would receive the 40-cent rec fication tax on all spirits produced. This statement is repeated here to sh that before commencing operations the company had full knowledge of tl liability to the rectification tax under the process which they proposed to u

There are attached photostat copies of (1) letter dated October 18, 19 addressed to Mr. Grigsby of the Bureau of Internal Revenue by Mr. Spoffo of the law firm of Davis, Polk, Wardwell, Gardiner & Reed; (2) letter dat October 23, 1934, addressed to Mr. Reed, of the Alcohol Tax Unit, Bureau Internal Revenue, at Newark, N. J., by J. Nicholson of the Distillers Co., Lt Linden, N. J.; and (3) a letter dated November 15, 1934, addressed to t Acting District Supervisor of the Alcohol Tax Unit, Newark, N. J., by Arth J. Mellott, Deputy Commissioner of Internal Revenue.

The file of the Bureau of Internal Revenue covering the Distillers Co., Lt indicates clearly that the company proposed to distill the spirits procured it for use in manufacturing gin and that the first and last runs of such distil tion, commonly referred to as heads and tails, would be diverted and furth purified, and only the middle run used in the distillation of the gin. Su treatment of the spirits must be held to be rectification of spirits for use the manufacture of gin, and not to be a part of the manufacturing process.

The enclosures further indicate the company's knowledge that the tax no sought to be eliminated would be due on its gin products produced in tl manner outlined by its representatives.

For the reasons set forth herein, it is recommended that the proposed amen ment to section 605 of the Revenue Act of 1918 be not enacted into law.

Very truly yours,

WAYNE C. GAYLOR,
Acting Secretary of the Treasury.

DAVIS, POLK, WARDWELL, GARDINER & REED,
New York, October 18, 1934.

The Distillers Co., Ltd.

E. G. GRIGSBY, Esq.,
Alcohol Tax Unit, Bureau of Internal Revenue, Washington D. C.

DEAR MR. GRIGSBY: I want to thank you for the courtesy you extended t Mr. Nicholson, Mr. Mair, and myself yesterday in giving us a full morning t discuss the various problems arising in connection with the prospective operatio of the plant of the Distillers Co., Ltd., at Linden, N. J. I believe we have clear understanding of the general attitude of your department will take towar the imposition of the 30-cent rectifying tax. Mr. Nicholson is placing befo his principals the question of paying the 30-cent tax upon the entire productio of gin which would leave him free to take the various steps in the manufactu which he believes necessary to produce a high-grade gin of uniform quality.

Mr. Nicholson is preparing a letter briefly describing his proposed process i the manner he described it to you yesterday which will be sent to Mr. Read an which will presumably be passed on to you so that Mr. Nicholson may hav general confirmation of the results of yesterday's conference. As we agree yesterday, this renders academic the questions which were recently place before you through Mr. Read, at least for the time being, and it is my unde standing that you will so advise Mr. Read.

Yours very truly,

CHARLES W. SPOFFORD.

THE DISTILLERS CO., LTD.,
Linden, N. J., October 23, 1934.

EDGAR READ, Esq.,
Alcohol Tax Unit, Newark, N. J.

DEAR MR. READ: With reference to interview which I, Mr. H. Mair of ou company, and Mr. Spofford, of Davis, Polk, Wardwell, Gardiner & Reed, ha with you at your office on October 9, the three of us journeyed to Washingto and had an interview with Mr. Grigsby, of the Alcohol Tax Unit, Bureau o Internal Revenue, on Wednesday, October 17.

As a result of our discussions, Mr. Grigsby asked that we write out a state ment, describe briefly, as the writer did to him, the use of the equipment i

the rectifying houses, and the different processes by which it is our intention to operate at the new plant on Edgar Road, Linden, N. J.

This statement is embodied in the accompanying letter.

It is our understanding that from our conference with Mr. Grigsby that if we are prepared to pay the 30-cent rectifying tax upon our entire production of gins and other liquors, we will be free to use our usual processes and equipment in the manner described in this statement. We wish, however, to have this confirmed by ruling, a procedure in which Mr. Grigsby concurs.

Yours very truly,

THE DISTILLERS CO. LTD.
J. NICHOLSON.

ACTING DISTRICT SUPERVISOR, NOVEMBER 15, 1934.
Newark, N. J.:

Reference is made to your letter dated October 24, 1934, BA: ET1R, transmitting copies of two letters dated October 23, 1934, from the Distillers Co., Ltd., Linden, N. J., relative to the tax on products which they desire to manufacture on their rectifying premises.

The company may be informed that operations may be commenced under the various processes described and that the rectifying tax will be incurred only on the finished product under each formula, provided there is a continuity of process. However, it must be understood that in order to avoid a second rectification tax the rectifier must proceed promptly in the manufacture of gins of the Old Tom and Burnett White Satin type, cocktails, and sloe gin, implying the use of straight gins, sugars, and certain other ingredients. Straight gin may not be manufactured and retained indefinitely in the rectifying room pending receipt of orders for the different types of gins, cocktails, and also gins. The processing of such products must be started promptly upon the manufacture of the straight gin, and the finished products in each case must be promptly transferred to bottling tanks for tax payment.

It would not appear that 6 months would be required for the manufacture of sloe gins and cocktails of orange bitters, but if such length of time is required, it will be allowed, but the process must be continuous in each case. Straight gins for sale as such must be promptly tax-paid and bottled. The processing of straight gins in the manufacture of other products must be continuous.

ARTHUR J. MELLOTT,
Deputy Commissioner.

PROPOSED AMENDMENT TO H. R. 9185

I. THE AMENDMENT

At an appropriate place in the bill insert the following:

"SEC. —. The first proviso of section 605 of the Revenue Act of 1918, as amended, is amended to read as follows: '*Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries or other aromatics, or to any distilled spirits rectified, purified, or refined in the process of, and used solely in, the production of such gin.'"

II. EXISTING LAW

The first paragraph of section 605 of the Revenue Act of 1918 reads as follows:

"SEC. 605. That in addition to the tax imposed by this act on distilled spirits and wines, there shall be levied, assessed, collected, and paid, in lieu of the tax imposed by section 304 of the Revenue Act of 1917, a tax of 30 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines hereafter rectified, purified, or refined in such manner, and on all mixtures hereafter produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3244 of the Revised Statutes, as amended: *Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics."

III. LAW AS AMENDED

It is thus proposed to amend the proviso quoted above to read as follows, th[illegible] new matter being in italics:

"*Provided*, That this tax shall not apply to gin produced by the redistillatio[illegible] of a pure spirit over juniper berries or other aromatics, *or to any distilled spirit[illegible] rectified, purified, or refined in the process of, and use solely in, the productio[illegible] of such gin.*"

IV. PURPOSE OF AMENDMENT

The amendment is intended to clarify existing law.

It is apparent on the face of section 605 as a whole that the tax impose[illegible] thereby, insofar as it is applicable to gin producers, applies and is intende[illegible] to apply only to those who produce gin by mixing alcohol with flavoring mat[illegible] rials. The proviso specifically exempts gin produced by redistillation ove[illegible] aromatics. Undoubtedly, the distinction between the two types of producer[illegible] was drawn in order to equalize competition. A redistillation process is mor[illegible] elaborate and expensive than a mixing or blending.

There are three classes of gin producers who produce gin by a process [illegible] redistillation over aromatics. All pay the $2 tax upon distilled spirits generall[illegible] and there is no problem here as to that tax. These classes, and the applicatio[illegible] of the 30-cent rectifying tax to them, are as follows:

Class 1.—This group distills alcohol from grain or molasses, and then redi[illegible] tills the alcohol over aromatics. The 30-cent rectifying tax does not appl[illegible] since these producers are technically "distillers."

Class 2.—This group purchases alcohol and redistills the alcohol over ar[illegible] matics. The 30-cent rectifying tax does not apply to these producers by virt[illegible] of the proviso of section 605.

Class 3.—This group also purchases alcohol (the same alcohol as is purchase[illegible] by class 2), purifies it by redistillation, and then redistills it again, this tin[illegible] over aromatics. Certainly the proviso of section 605 was intended to exem[illegible] these producers from the 30-cent rectifying tax, just as it exempts those wh[illegible] redistill only once. The Treasury, however, imposes the 30-cent tax upon t[illegible] first redistillation, on the theory that that redistillation is not technically t[illegible] "production of gin", although it is obviously a step or process in such produ[illegible] tion. The proposed amendment will correct this interpretation and place [illegible] those who produce gin by redistillation on an equal footing.

V. TREASURY POSITION

The Treasury has two objections to the amendment. These objections, a[illegible] the answers thereto, are as follows:

(1) *Loss of revenue.*—This has no real force, for enactment of the amen[illegible] ment would not result in actual loss of revenue. Only one major gin produc[illegible] redistills its alcohol twice. If the amendment is not adopted, that produc[illegible] will be forced to transfer its first redistillation process to the plant of [illegible] alcohol supplier. The 30-cent rectifying tax will then not be payable. Althou[illegible] the process is a valuable trade secret, the transfer will be an economic nec[illegible] sity, if the amendment fails.

(2) *Antipathy toward rectifiers.*—One of the major problems of Treasu[illegible] supervision over the alcohol industry is presented by "rectifiers" as a cla[illegible] Because of the large number of rectifiers, and the unreliability of many of the[illegible] the good and the bad have been lumped together as "undesirables." All gin p[illegible] ducers except those who distill from the original grain or molasses are tec[illegible] nically rectifiers, and could not, if they would, avoid the stigma of that tec[illegible] nical designation. Incidentally, the Treasury freely admits the absolute tru[illegible] worthiness of the producer to whom the proposed amendment is intended [illegible] apply.

Because of its antipathy toward rectifiers, the Treasury opposed the gra[illegible] ing of privileges or exemptions—no matter how equitable—to any one or mo[illegible] of them, for fear that one request will lead to others. The answer to t[illegible] objection is relatively simple. Congress has already granted an exempti[illegible] to those rectifiers who produce gin by redistillation. That exemption shou[illegible] be applied to all who produce gin by that process. Other petitions can a[illegible] should be examined on their merits if and when they arise.

The CHAIRMAN. Has there been any action taken on the feature of the bill in which the State Department is interested?

Senator BARKLEY. The subcommittee went into that and rewrote the section.

The CHAIRMAN. The State Department is interested in it and the Treasury is interested in it, and why cannot the subcommittee work with the State Department and the Treasury Department officials and see if they cannot get something reported back here?

Senator BARKLEY. As I say, we went into that.

The CHAIRMAN. Did you have the State Department's attitude?

Senator BARKLEY. Yes; we had their attitude, and while I cannot say we worked it out perfectly, but if the Treasury is going to have any protection in the collection of the amount of revenue due, they have got to assert the claim. The only thing this does is to give the Secretary of the Treasury the right to require the continuance of a lien on the property within the United States to guarantee him, otherwise he might get a judgment, but there would be nothing upon which to collect it.

The CHAIRMAN. Yesterday I saw representatives of the State Department, the Under Secretary, the Assistant Secretary, and one other gentleman who came here to present this situation, and I thought it might help this committee if the subcommittee might see if they could get together with Treasury officials and the State Department officials and work at it from that angle.

Senator BARKLEY. The two Departments should not be playing hide and seek with each other.

Mr. HESTER. This was not brought to your attention yesterday, but the State Department officials had said they would not object to legislation on this policy.

Senator HARRISON. They asked to be seen yesterday, and I did not know anything about it, and the chairman of the subcommittee and myself said we wanted to have the Treasury officials there, and you heard what they said, and they presented us a very serious situation and one which this committee is bound to take great consideration of.

Senator KING. I think, Mr. Hester, your statement was a little too broad. Judge Moore said a different situation had arisen, and his letter was not to be construed as approval of this proposition.

Mr. HESTER. I would like to take that up in detail with Judge Moore present here.

Senator KING. If there is a controversy of veracity between you and Judge Moore, I do not want that raised.

Senator BARKLEY. It is true since this matter first arose the Canadian Government has made protests. We left certain things to the discretion of the Secretary of the Treasury, and at that time Senator King and myself questioned whether or not we can do anything at all that will satisfy the State Department or the Canadian people.

Senator CLARK. It appears to me if the State Department has any objection or any observations to submit, on any sort of pending legislation, they ought to come to the committee and submit it. The Treasury Department has been here at length and gone into the matter in great detail on anything connected with the Treasury Department, but the State Department has not seen fit to do that. The State Department, I confess, through certain of its representatives, has called on several members of the committee personally, but if they have anything to submit contrary to another department, they ought to come up to the committee and state their views and submit themselves to cross examination like the Treasury Department has done.

The CHAIRMAN. I will say that is the very suggestion I made when the Under Secretary called me yesterday morning, but he said the matter was such that he would like to talk to me first.

Senator CLARK. The point I make is, when the Treasury first presented this proposition I was extremely adverse to it, and I think other members of the subcommittee were adverse to it, but after hearing the argument on behalf of the Treasury Department and analyzing it, I completely changed my mind, and now, if the State Department has any contrary views, it is possible some of us might change our minds again; but I certainly think they should come up to the committee, as the Treasury Department did, and submit themselves to cross-examination.

The CHAIRMAN. We will adjourn until Monday morning, and let me suggest to your representatives of the Treasury Department, that you talk to your chief, Mr. Morgenthau, and let some conference be arranged between Secretary Phillips and others of the State Department, because Monday morning we are going into this matter, and it is much better for this committee if you will reconcile your views and get together on something. We do not want to be put in a hole where the State Department has protested vigorously on a proposition and state that it violates the present agreement we have and will cause retaliation and all of that, so that you had better discuss this matter out with the State Department, and see if you cannot come to some reconciliation of your views.

Senator BAILEY. Would you suggest inviting the State Department and the Treasury Department to come down here next Monday, or next Tuesday at 10 o'clock?

The CHAIRMAN. Next Monday. I think we will ask them to come Monday morning, from the State Department. It will be in executive session.

The committee will now adjourn until 10:30 o'clock Monday.

(Thereupon, at 12:30 p. m., the committee adjourned until 10:30 a. m., Monday Mar. 16, 1936.)

(Subsequently the meeting scheduled for Monday, Mar. 16, 1936, was postponed until Tuesday, Mar. 17, 1936, at 10:30 p. m.)

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LIQUOR TAX ADMINISTRATION ACT—TAXES ON WINES

TUESDAY, MARCH 17, 1936

United States Senate,
Committee on Finance,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:30 a. m., in room 310, Senate Office Building, Senator Pat Harrison presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Barkley, Connally, Costigan, Bailey, Clark, Byrd, Lonergan, Gerry, Guffey, Couzens, LaFollette, Metcalf, and Capper.

Also present: John E. O'Neill, of the Federal Alcohol Administration; C. M. Hester, O. Norman Forrest, and Stewart Berkshire, of the Treasury Department.

The Chairman. The committee will come to order.

Senator King. The Federal Alcohol Administration has submitted a memorandum to me, which I would like to read. It is as follows [reading]:

MEMORANDUM TO SENATOR KING

The attached memorandum apparently seeks to justify the recommendation of the Wine Institute that Congress amend the Federal Alcohol Administration Act by permitting the use upon domestic distilled spirits, wines, and malt beverages of any name or brand of foreign origin.

The Federal Alcohol Administration is in complete accord with the statement contained in this memorandum that the Congress of the United States should not deny to the domestic wine industry the right to use the names port, sherry, muscatel, and so forth, and that it would mean annihilation of the industry if such names were permitted to be placed only on imported wine. It is pointed out, however, that the American wine industry is not prohibited by existing law from using these names, and that no amendment to existing law is necessary in order to authorize such use.

So far as the administration is aware, there are only 14 distinct types of wine known to the world. These are: Burgundy, Sauterne, Rhine, Moselle, Chianti, Chablis, Champagne, Tokay, Malaga, Madeira, Port, Sherry, Marsala, Claret, Vermouth. All of these names were originally of foreign origin. They have, however, come to be known as names for distinctive types of wine. Their use is therefore permitted upon American wines which correspond to the distinctive types named. The regulations issued pursuant to the Federal Alcohol Administration Act do not in any manner restrict the right of the American producer of these distinctive types of wine to designate his product by the use of such type names.

The memorandum of the Wine Institute, however, while referring to such type names as Port, Sherry, and Muscatel, seems to concern itself principally with the fact that American producers of wine are not presently authorized to use the designation "Chateau Yquem."

In this connection Chateau Yquem is not a type of wine but is rather a proprietary brand name for a sauterne wine produced in France. There are hundreds of such proprietary brand names, including Chateau Margaux,

Chateau Latour, Chateau Hauté-Brien, Chateau Lafite, and Chateau Malescot.

These Chateau names are the names of individual estates in France in which grapes are grown and wine produced. The Chateau Yquem formerly belonged to the family de Sauvage d'Yquem who transmitted it in 1875 by marriage, to the family of the Marquis de Lur-Saluces. This estate, which produces the best white wines in the world comprises 148 rectares, 90 of which are planted with white vines. Its reputation is old and universal.

It is therefore apparent that to authorize the use upon American wines of French chateau names would not only lead to deception of the American consumer but would legalize the appropriation by American producers of the proprietary rights of citizens of foreign countries.

The CHAIRMAN. I have here an amendment, which I think is the amendment that was suggested by the Treasury Department.

Mr. O'NEILL. The Treasury Department did not suggest any amendment.

The CHAIRMAN. This is Judge DeVries' amendment:

: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any department of the Government shall deny the right of any person to use any name or brand of foreign origin not presently effectively registered in the United States Patent Office, whether or not susceptible of such registration, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

What is your objection to this? Will you analyze it for us?

Mr. O'NEILL. The objection to it is that it would throw open American wines and spirits and beer of any name or brand of foreign origin, whether it was proprietary or geographical. For instance, you might have a kind of sherry that is identified by a foreign geographical name and therefore the name cannot be registered in the Patent Office. Anybody could come along and take that name.

Senator CLARK. Under that almost anyone could take almost any trade name or commodity name?

Mr. O'NEILL. That is right. There is nothing here to deny any person from using this name. A man could take apple cider and charge it with carbon dioxide and call it champagne. That is what this amendment would permit.

The CHAIRMAN. Let us have your proposition, Senator La Follette, so that we can get to a vote.

Senator LA FOLLETTE. The other proposition is to leave the law as it stands. We fought this whole thing out in the conference committee, and we came to a very distinct adjudication of the whole controversy by letting them take these names that have come to be established as defining a type of wine or a particular kind of wine, and call it that, call it American; and when it comes to the proposition of letting them have somebody else's trade name that it has taken them a hundred years to develop, you are just going to invite the pirating of every trade name on every kind of product that this country produces.

The CHAIRMAN. Mr. O'Neill, I understand that your position is that you want the law left exactly as it is?

Mr. O'NEILL. Yes, sir.

The CHAIRMAN. And they are suggesting this amendment?

Mr. O'NEILL. Yes.

The CHAIRMAN. We have the issue. Let us vote.

Senator KING. Under the present law, you think that all of these wines that you have indicated here could be produced without any objection whatever?

Mr. O'NEILL. That is true, sir.

On the same question, bulk and bottle fermentation, they will be treated as Senator La Follette said, in a hearing to be held in the near future.

Senator CONNALLY. In other words, under the present law, you can sustain these regulations that were passed, under which they can say "champagne" or "California champagne, bulk method" or "California champagne, bottle method."

Mr. O'NEILL. The present requirement is that the bottle-method product only is champagne; that the bulk-method product is the sparkling wine, champagne type. That is what the bulk process people object to, and that is to be the subject matter of the hearing.

Senator CONNALLY. That is what the California Senators are anxious about. They want us to let them call their bulk-method product champagne.

Senator GEORGE. You say that you are going to have another hearing?

Mr. O'NEILL. Of course, these regulations, Senator, do not go into effect until December 15 next. In that time we hope to have a complete study of this question.

Senator GERRY. Your present law gives you the power to decide whether it is champagne or not, so that if you come to the conclusion that the bulk method produces champagne, you can include that?

Mr. O'NEILL. Yes, indeed.

The CHAIRMAN. All of those in favor of this amendment that was suggested by Judge DeVries, and which was advocated by Senators Johnson and McAdoo, will say "aye." Those opposed to it will say "no."

(After the vote.)

The noes have it, so the amendment is not agreed to.

There was some suggestion made about some reduction in taxes on wines or something of that kind. Let us get at that.

Senator KING. The bill that came from the House reduced the tax on sweet wines from 20 to 10 cents a gallon, and the tax on light wines, such as claret and wines of that kind, from 10 cents to 5 cents.

The subcommittee adopted the House provision on light wines, but rejected the House amendment to the present law on sweet wines.

Congressman Buck came to see me yesterday, and he said that under the parliamentary situation on this question of sweet wines, when I moved to reduce the tax from 20 to 15 cents, he said we would be in a better parliamentary situation if we kept it at 20 cents than if we reduced it to 15.

The CHAIRMAN. I have a letter here from Senator Schwellenbach, of Washington, with respect to this matter, that I think I ought to read to the committee. It reads as follows:

It is my understanding that under section 8 of the Liquor Tax Act of 1934 the tax on brandy used to fortify grape wine is 20 cents per gallon, while under section 2 of the Liquor Act of 1934 the tax on brandy used to fortify natural-fruit wine is $2 per gallon. I understand that 1 gallon of brandy is added to 4 gallons of wine to make 5 gallons of fortified wine. This means that it costs

the fruit-wine makers in Yakima Valley in the State of Washington 36 cents more per gallon in the tax than upon the grape wine made in California.

It appears to me that the tax for brandy used in fortified wine should be all the same on all classifications of wine. I, therefore, urge upon you that in the consideration of H. R. 9185, which you have before you, such amendment as may be necessary be adopted in order that this inequality shall be corrected.

Give us your explanation of that proposition.

Mr. BERKSHIRE. I don't know that any such inequality exists. To put it the other way, I think that brandy withdrawn for the purposes of fortification under the present law bears a 20-cent tax.

Senator KING. Mr. Forrest, what do you say?

Mr. FORREST. As I get the point, there seems to be the contention that there is discrimination in some sections of the country.

I don't understand the law that way. Brandy as such bears a $2 tax at the distilled-spirit rate. But if brandy or wine spirits are withdrawn from a bonded warehouse for the purpose of fortification, they only pay a 20-cent tax, which is paid 10 months after the date of assessment.

Senator KING. I wish you would take this amendment and by looking at the law give us an explanation of it.

Senator GERRY. What is the distinction between sweet and dry wine? Is it the percentage of alcohol in the wine?

Mr. BERKSHIRE. Yes; we have wine as it is being produced now with from 14 to 20 percent.

Senator GERRY. Fourteen percent sugar or alcohol?

Mr. BERKSHIRE. Alcohol.

Senator CLARK. That is the percentage of alcohol?

Mr. BERKSHIRE. That is the percent of alcohol; not just fortified wine, although some sugar content exists in order to bring it within the class of sweet wine. I think in most instances they do have some sugar.

Senator GERRY. The sugar content of the wine does not go into the classification of it?

Mr. BERKSHIRE. It is the alcoholic content. If it has more than 14 percent, it is classed as sweet wine. It has usually been fortified.

In the case of the dry wines, it has not been fortified as to its alcoholic content, and its alcoholic content is not such as to bring it up higher than 14 percent.

Senator GERRY. Then the determination of whether it is a sweet wine or dry wine would depend upon the alcoholic content of it?

Mr. FORREST. Yes.

Senator GERRY. If it is above a certain alcoholic content, it is sweet wine; and if it is below that content, it is dry wine? Is that right?

Mr. BERKSHIRE. A dry wine is one of those wines in which the fermentable sugar has fermented out. A sweet wine is the same kind of wine to which alcohol has been added and some percent of sugar is still in the unfermented state.

The alcohol being added to make up the lack of alcoholic content caused by the sugar not fermenting. In other words, in a dry wine the sugar is out of it but in a sweet wine the sugar is in it in addition to its being an alcoholic beverage.

Senator GERRY. That is a departmental ruling to simplify the classification of wine?

Mr. FORREST. It is a process.

Mr. BERKSHIRE. The 1918 Revenue Act referred to sweet wines and defined them.

(Discussion off the record.)

The CHAIRMAN. One of the questions that I understand is involved in this section 403 is this: It is claimed that the Treasury Department would set up a very large bond. It is claimed that it would amount in some cases to 10 or 20 millions of dollars. I don't know which. I think that that is a pretty large bond for anyone to have to give. I think that would be an exorbitant bond.

Senator WALSH. The original section provided that the bond should be double the amount of the claim. I think it should be so as to require an amount in the same amount as the claim.

(Discussion off the record.)

The CHAIRMAN. Gentlemen, let us take up the question of whether this agency should be placed in the Treasury Department or made an independent department. It is now in the Treasury Department. The question is whether we should leave it there or make it a separate agency.

I may say that the Treasury Department is in favor of it being made an independent department. The agency itself is very anxious to be made an independent department. I don't want to go any further than that, but I think I could go further and say that there are others who would like to have it an independent department

We had this matter up the last time. It was one of the real controversial questions in the conference. We finally agreed on putting it into the Treasury Department.

What is the viewpoint of the committee on it now?

Senator KING. I would like to hear some arguments on the subject first.

The CHAIRMAN. I might say that the subcommittee that worked on this matter recommended that it be an independent department.

Senator BYRD. I understand that the subcommittee did recommend it.

Senator LA FOLLETTE. They referred it to the full committee.

Senator BYRD. Senator King said that he could not recommend it. He was chairman of the subcommittee.

Senator KING. This amendment was brought to the committee and we were asked to consider it. I said that it was very important, that it was not in the House bill, and that, speaking for myself, I would prefer to refer it to the full committee.

Senator CLARK. I didn't understand that the matter was ever voted on.

Senator KING. No; it was not voted on. I thought it should come to the full committee. That was my view.

The CHAIRMAN. Senator Byrd has asked for some reasons for this. I have a letter here from Mr. Choate, who was the head of this Alcohol Administration, written to Senator Byrd. He showed me a copy of the letter. In this letter he gives you his reasons why he thinks that the agency should be a separate agency. If the committee wants to hear it, I will be glad to read it.

Senator COUZENS. Let it be put into the record.

Senator KING. This is one of the main controversial matters. Read the letter.

The CHAIRMAN. In the letter Mr. Choate says:

I have written a letter, of which I enclose a copy, to Senator Byrd advocating the amendment of the Alcohol Administration Act to make it an independent organization. Would you be good enough to see that the letter is brought to the attention of the Finance Committee and if that is proper read into the record.

I have no personal interest in the controversy whatever, but feel that the proposed amendment is vital to the usefulness of the Alcohol Administration.

Very truly yours,

J. H. CHOATE, Jr.

(The copy of letter to Senator Byrd, above referred to, is as follows:)

MARCH 14, 1936.

The Honorable HARRY F. BYRD,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: As one who necessarily has some knowledge of the Federal Alcohol Administration situation and no possible personal interest involved, may I urge you to support, or at least not oppose, the present proposition to make the organization independent of the Treasury. I regard its independence as absolutely necessary to its usefulness. The substitution of a board of three for a single Administrator seems to me extremely desirable but less vital.

The Alcohol Administration ought to be independent for these reasons, none of which has ever been satisfactorily answered.

1. Its main job is quasi-judicial, passing on the rights of thousands to receive or retain permits. It has always been recognized in our Government that the judge in such cases must be independent with no conflicting duties and not a subordinate of another officer whose desires and interests may bear on decisions.

2. The Treasury has never done the jobs which the new organization has to do, knows nothing about them and doesn't want to control them.

3. To make the Administrator responsible, and still fetter him by subordination, and by the requirement of approvals by the Treasury, is a typical divorce of responsibility from power, and as such as against every canon of good government. The present law puts a good deal of final responsibility on the Secretary of the Treasury but gives him no power to initiate anything or to shape policies.

4. All questions of how liquor should be controlled ought to be studied and decided in the first instance, from the standpoint of public welfare, and not alone from that of revenue. Any degree of Treasury control tends to produce decisions favoring large consumption of the more highly taxed drinks without reference to temperance. We need a totally independent Government body to advise Congress and the President on liquor facts, unbiased by possible effects of such advice on revenue.

I think there should be a board of three rather than a single administrator, because of the need of continuity. In that job a new head of the office is necessarily helpless for months till he learns the ropes, and during that time is a mere echo of his subordinates. By making the second in command and the general counsel members of the board you put a share of the legal responsibility where it really rests in fact, insure the public against violent reversals of policy, and make those whose business is affected by decisions feel that they have been judged by a tribunal rather than by a single "czar." You would not increase the cost, since men fit for the jobs of second in command and general counsel cannot be had on a permanent basis at salaries less than you would give board members.

Very truly yours.

The CHAIRMAN. I have received a memorandum from Mr. Harris E. Willingham, vice chairman of the Federal Alcohol Control Administration, which is along the same line. It reads as follows:

There are several definite reasons which may be offered in support of the proposed amendment designed to change the Federal Alcohol Administration, a division of the Treasury, to the Federal Alcohol Commission, an independent agency. I shall be glad to present and briefly analyze a few of the more important among these reasons.

In the first place the functions of the administration and of the proposed commission are largely foreign to the general functions of the Treasury Department. The Treasury collects the revenue taxes imposed on alcoholic beverages, while the proposed commission undertakes to govern the conduct of the members of the alcoholic beverage industries. The problems connected with these two activities are for the most part not even remotely related, and it appears that no advantage can result from an attempt to solve them through a common agency, or through closely related units of the same agency. It can hardly be argued that the Treasury, through the collection of the alcoholic beverage taxes, becomes adapted to meeting the important social problems incidental to the production and sale of liquor, or to the supervision of a division organized for that purpose. It might almost as well be said that the units of the Treasury which collect the tax on radio messages, the tax on radio receiving sets, or the income tax of broadcasting companies thus become qualified to combine with those functions the highly specialized regulatory work performed by the Federal Communications Commission.

In the second place, the union of the administration with the Treasury, while contributing no advantages to control of industry conduct for the reason that the regular Treasury activities in no way adapt it to the making of such contributions, requires the expenditure of much needless effort on the part of the Secretary of the Treasury and his assistants. He is required to approve salaries of administration employees and regulations promulgated by the Administrator, and the conscientious performance of the latter function requires that he or his assistants make a careful study of the various subjects covered by the regulations. This necessarily involves the surveying, by Treasury representatives, of ground already gone over exhaustively by the Administration, and consequently represents unproductive duplication, resulting in extra trouble and expense to the Treasury as well as needless period of delay in the adoption of regulations. While the two powers mentioned are the only ones expressly given to the Secretary, the fact that the Administration is set up as a division of the Treasury makes it expedient to correlate and harmonize many details of administration and policy in a manner which would be unnecessary and in some instances undesirable if the two agencies were entirely separate. This requires a certain amount of time and effort, which would be saved under the terms of the proposed amendment.

In the third place, the present organization of the Administration presents the possible danger that in the future it may become largely subservient to revenue considerations and that the functions for which it was created may be greatly submerged. The present Treasury staff has been most cooperative, and most friendly toward the Administration's purposes. It is possible, however, that a later regime, with a staff inclined to less sympathy with the purposes of social control, might use its general supervisory power over its divisions in such a manner as in effect to merge the Administration with the tax agency, to use its permit system as a tax collection weapon, and in substance to return to the situation prevailing prior to prohibition by failing to exercise in any effective manner the regulatory powers provided in the act.

In the fourth place, as has previously been pointed out to this committee, organization of the Administration as a unit of the Treasury makes it vastly more difficult to attract to its head the type of leadership necessary for the wise and effective regulation of an industry characterized by the peculiar properties and preplexing problems of the liquor traffic. The type of man who could give best service in this exacting post would be reluctant to accept an appointment as the head of a minor departmental unit in which his authority

would in no sense be commensurate with his responsibility and in which his own regulatory program might be materially affected by the changing policies of different Treasury regimes. Two examples of the soundness of this statement have already been afforded. The views of Joseph H. Choate, Jr., a man of outstanding ability and prominence, who headed the former Federal Alcohol Control Administration, have previously been recorded with this committee; while the letter of resignation of Judge Franklin C. Hoyt, the first Administrator appointed under the act and a man of capacity and prominence, indicates that this weakness in the Administration's set-up was an important reason for his retirement. In view of the expressed opinions of these two gentlemen, and of their more convincing actions, it appears that it may be difficult under present circumstances to attract to the head of the Administration the caliber of leadership its proper direction requires.

In the fifth place, a group of three men, such as the proposed commission, would be in a much stronger position to deal with the difficult problems of administration and enforcement than a single administrator. Members of the industry who may desire permit concessions or who may wish to escape liability for violations of the act are capable in many cases of bringing such pressure and influence to bear as would be difficult for a single individual to withstand. Such situations can be met in the proper manner with much greater ease when subject to the decisions of a board or commission.

In the sixth place it may be appointed out that the advantages claimed for the organization of the Administration in the Treasury are more theoretical than practical. It is understood that a compelling consideration in the decision to place this agency within the Treasury was the expectation that the extensive field organization of the Alcohol Tax Unit could be adapted to the service of the Administration. An examination of this theory is in order as a part of this discussion.

The Tax Unit's field men are carefully trained in the technique of tax collection and their whole time is devoted to this work. It is understood that leading officials of that agency consider the field force which can be employed under their present appropriation to be appreciably smaller than is needed to perform their functions in a properly effective manner; and it will be obvious under such circumstances that it would not be reasonable to expect these field agents to devote a portion of their time to investigations required by the Administration. Even if time permitted, this combination would not be desirable. The two lines of activity are entirely different in nature, requiring specialized training in each case, and to require one man to perform both functions would result in a loss of efficiency in both capacities. For the Alcohol Tax Unit to perform investigative work for the Administration would require an increase in its field force in proportion to the amount of such extra work to be done; and it must be agreed that it would involve no more expense, but that it would result in much greater efficiency, if these additional men were employed and directed by the Administration in the first place, and carefully trained for their specialized work. It will thus be evident that the Administration cannot secure any important service through the present Treasury field organization, and that the existence of this organization furnishes no proper reason for constituting the Administration as a part of the Treasury.

It is believed that this committee, in sponsoring legislation providing for the Federal regulation of the liquor traffic, was fully aware of the serious social problems connected with this traffic and the importance of creating a strong agency to cope with them and to attempt a vigorous and prudent regulation in the public interest. If these were worth-while purposes—which surely no one will deny—it seems essential, in order to effectuate them, that the agency should be changed to an independent commission, capable of undertaking and maintaining an administrative program such as the importance of the problem demands.

The CHAIRMAN. Suppose we vote on this proposition of whether this agency shall be an independent one or not. We will have a roll call on it.

(Whereupon a roll call was taken.)

The CHAIRMAN. The vote is, ayes 10 and noes 6. So it will be an independent organization.

Mr. GEORGE. Mr. Chairman, with reference to the amendment, I have no objection to the board naming the three members to preside; but I do believe that the President ought to designate the chairman annually.

The CHAIRMAN. Three members, of which the general counsel shall be a member?

Senator GEORGE. That is all right.

The CHAIRMAN. And the assistant shall be a member.

Senator GEORGE. I think it should be written that way. They are going to have those officers. They are not going to have any additional officers.

The CHAIRMAN. You think that the President should designate the chairman?

Senator GEORGE. I think the President should designate him annually. I think one should hold office for 2 years, one for 4, and one for 6, or make it at least, 3, 4, and 5.

The CHAIRMAN. All in favor say "aye." All opposed say "no." The "ayes" have it and the amendment will be agreed to.

There is a provision in there, gentlemen, that all of these people who are in here shall be under civil service. It seems to me that that is going a little too far. I think that the lawyers and the other experts should be excluded from the civil service.

Senator GEORGE. I move that that be done.

The CHAIRMAN. Without objection, the amendment will be agreed to that all of the Board shall be under civil service except the lawyers and the experts, the same as was provided under the Social Securities Act.

Senator CONNALLY. I move that we reduce the salaries of the Board members from $10,000 to $8,000.

The CHAIRMAN. All of those in favor of the motion to make the salaries $8,000 will raise their hands; 10. Those opposed to making it $8,000 will raise their hands; 4. The motion is carried.

Does that carry with it that the chairman shall have $8,000, too?

Senator GEORGE. Yes.

Senator CONNALLY. What is his present salary?

Senator BYRD. Ten thousand.

Senator GUFFEY. I suggest that the Chairman of the Board be given $10,000. I make that motion.

The CHAIRMAN. All those in favor of the Chairman of the Board getting $10,000 raise their hands. Those opposed will raise their hands. The amendment is rejected.

I have an amendment here which was introduced by Senator Tydings. It reads as follows:

Amendment intended to be proposed by Mr. Tydings to the bill (H. R. 9185) to insure the collection of the revenue on intoxicating liquor, to provide for the more efficient and economic administration and enforcement of the laws relating to the taxation of intoxicating liquor, and for other purposes, viz, at the proper place insert the following:

SEC. —, subsection (3) of paragraph (f) of section 5 of the Federal Alcohol Administration Act, approved August 29, 1935, Public, No. 401, Seventy-fourth Congress, is amended to read as follows:

"(3) As will require an accurate statement, if a representation of age is made in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, where neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in the case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled.

The CHAIRMAN. That is inclusive of the Alvord amendment, is it?

Mr. O'NEILL. No, sir; the act at present requires that all labeling regulations shall adequately inform the consumer of the identity of the product. So, in the case of neutral spirits to be used, the percentage of neutral spirits contained in the product, and the source from which the spirits are derived, whether molasses or fruit or grain, is required in the advertising as well as in the labeling.

Whisky itself does not contain any neutral spirits as such, but a blended whisky contains whisky and alcohol mixed with it. The act requires now that that particular product have on the label the percentage of alcohol in it, and whether that alcohol came from grain or molasses or fruit.

The CHAIRMAN. So you don't think that the amendment is necessary, do you?

Mr. O'NEILL. No, sir; the purpose of the amendment, as I understand it, is to relieve the distillers from the necessity of stating the fact that their product contains alcohol in the advertising if it does not claim age.

Of course, there are several nationally advertised brands of liquor today, especially blended products, that are widely known and widely advertised; and all of them have trade names. The age is claimed for the percentage of whisky that is in it.

For example, say that there is a product that contains 5-year-old whisky or 7-year-old whisky. The advertising makes no reference to the fact that it also contains alcohol.

The CHAIRMAN. The subcommittee turned this down. All those in favor of the amendment say "Aye." Those opposed say "No." The "noes" have it. The amendment is rejected.

Senator CONNALLY. I desire to bring up at this time the matter of the war profits bill, H. R. 5529.

Senator CLARK. I would like to have a chance to wait on this proposition until Senator Nye gets back. If it is possible for him to return in the next few days, I would like to have him present at the consideration of this bill.

Senator COUZENS. We could take that up later.

Senator CLARK. I think it would be very unfair to take this up without him being present. He was chairman of the Munitions Committee, which reported this bill. I don't think we should take it up in his absence if he expects to return within the next few days.

Senator LA FOLLETTE. I understand that the members of the subcommittee would like to have an opportunity to make what might be termed a "progress report", indicating to this committee just what the subcommittee is up against.

Senator CLARK. I understand that we are to be asked to determine certain policies, which I am very anxious to do. Senator Connally has had some experts, exactly who I don't know, working on the question of the policy to be determined by the whole committee, which I think is entirely proper. But I think that when the policy is determined, Senator Nye should be present, if he is to return within a few days.

I also think that Mr. Flynn, the economist employed by the Munitions Committee, who actually drafted the bill, should also be present.

Senator LA FOLLETTE. I am very much in sympathy with what the Senator from Missouri has said about the last meeting that we had of the subcommittee, as I understood it, that we agreed that we ought to report to the full committee just what kind of a situation the subcommitte was in. This is not for any purpose of action, as I understand it, by anybody.

Senator CLARK. I would be very glad to have the subcommittee report today; but when the matter is taken up, which I am very anxious to have done at the very first possible date, if possible, I would like to have Senator Nye present and also Mr. Flynn.

Senator LA FOLLETTE. I would simply say, as I understand it, that the subcommittee was not desirous of making a final report at this hearing nor taking any action; but that we thought that the full committee should be acquainted with the problem that was confronting the subcommittee, and thereby to indicate to the full committee just what it was that the subcommittee was confronted with.

Senator KING. I suggest that the committee be called together by the chairman after he consults with Senator Connally and Senator Clark and Senator La Follette; and let them agree on a time, and the committee be called together at any time that they may wish to determine.

The CHAIRMAN. Let me ask Senator Clark: Do you want, before the committee takes any final action with reference to the policy, as I understand it, Senator Nye to be given an opportunity to express his view? You don't mean that you want him to sit on the committee while we are taking this action?

Senator CLARK. Not at all. But this is a matter which, to my mind, is a most important matter. It is now before this committee of the Senate, and I would like Senator Nye and Mr. Flynn to be heard.

Senator CONNALLY. Mr. Chairman, just let me say something. I am not trying to take advantage of Senator Nye's absence, and Senator La Follette will bear me out in that.

The reason for this is we have been trying to make some speed on it, because we thought Senator Clark and Senator Nye were anxious for that, and criticized us because we had not acted.

But what is the history of this? I do not know how long it has been here, but a year ago it was referred to the Finance Committee; we had a meeting some time last summer, then it was referred to the Treasury Department and the tax experts who had to deal with the tax measure, and they are the important part of the bill. They told the committee they had not finished their studies, had not been able to make the studies.

It was then agreed by all concerned that the subcommittee would delay until this session of Congress the taking up of the tax question and that the subcommittee, and the gentlemen who are the experts on taxation, under Mr. Parker would make a study in the interim.

The subcommittee has met quite a number of times, as Senator Guffey knows, and Senator La Follette knows, but we have had difficulty in getting a full committee meeting, because of the stress of other matters in the Senate.

We have had these meetings and gone into the matter in a general way, but not in any careful meticulous manner.

Because of the great complexity of the bill and its great importance, what we have been faced with right at the threshold is, there are a lot of matters of policy that ought to be decided before we take up the details of considering the schedules in the tax bills, and we thought it was unwise for the subcommittee, with only three or four of us present, to undertake to determine for the full committee these questions of major policy.

Senator COUZENS. Why can you not recommend them?

Senator CONNALLY. That is what we want a meeting for, we are coming before the Finance Committee and laying these matters before it, and trying to get instructions or expressions of view, or we will report the matter back to the full Finance Committee for its deliberation.

I do not want to question the fact that Senator Nye or Senator Clark desire to have this speeded up, but we were doing all we could to speed the matter, and I am willing to wait until Senator Nye comes back.

Senator CLARK. I am anxious to speed the matter and I have been trying to speed it with all available efforts I could for over a year. The history of this measure is that it was originally reported by the Munitions Committee, then was referred to the Committee on Military Affairs and considered by the committee, and they had hearings, and the bill was reported favorably from the Committee on Military Affairs.

Then, because this does involve very important tax matters, the bill was re-referred to the Committee on Finance, which was entirely proper.

The chairman appointed a subcommittee headed by Senator Barkley, and for some 3 months it was in that subcommittee headed by Senator Barkley. After repeated efforts on the part of the members of the Munitions Committee and other interested Senators to get the bill up before that committee for the purpose of considering it, Senator Barkley explained by saying he was very deeply engrossed on certain other matters in the Committee on Interstate and Foreign Commerce, and the Committee on Banking and Currency, he resigned as chairman of the subcommittee after 3 or 4 months in the chairmanship.

The Senator from Texas, Mr. Connally, was then appointed as chairman of the subcommittee and he called a meeting of the subcommittee, in which what he has just related took place, Senator Nye and myself being present.

There is no criticism of the subcommittee or the chairman of it, or of any member of it, that they have not been able to pass on the bill and make a report. I think it is entirely proper for them to come back to the full committee for determination of the questions of policy which are involved. We understand the importance of the questions of policy which are involved in the bill, and the proponents of the bill will desire to make an explanation and presentation of their case when it is heard.

Senator COUZENS. Are you not going to recommend the policies?

Senator CLARK. I am very much in favor of recommending policies, and also, Senator Nye will come back in a few days, and he should have an opportunity to present his case.

The CHAIRMAN. Senator Connally, when do you want the committee called to take up this matter?

Senator CONNALLY. I want it called at the earliest day possible that may be satisfactory to Senator Clark.

The CHAIRMAN. All right. If you will let us know, we will call it at whatever date you want.

The committee will adjourn until Friday morning at 10:30 o'clock.

(Thereupon, at 12:20 p. m., the committee adjourned until 10:30 a. m., Friday, Mar. 20, 1936.)

(Subsequently the meeting scheduled for Friday, Mar. 20, 1936, was postponed until Tuesday, Mar. 24, 1936, at 10:30 a. m.)

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