Liquor Tax Administration Act
Taxes on Wines

HEARINGS

BEFORE A

SUBCOMMITTEE OF 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

JANUARY 13, 15, AND 16, 1936

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CONTENTS

LIQUOR TAX ADMINISTRATION ACT

TAXES ON WINES

MONDAY, JANUARY 13, 1936

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

The subcommittee met, pursuant to call, at 10 a. m., in room 310, Senate Office Building, Senator William H. King presiding.

Present: Senators King (chairman), Barkley, Bailey, Clark, and Capper.

Also present: C. M. Hester, Stewart Berkshire, O. Norman Forrest, and Dr. O. V. Emery, of the Treasury Department, and L. H. Parker, chief of staff, and C. F. Stam, counsel, Joint Committee on Internal Revenue Taxation.

Senator KING. The committee will be in order. There have been referred to the subcommittee of the Committee on Finance of the Senate, H. R. 9185, H. R. 191, the proposed amendment to H. R. 9185 submitted by Senator Johnson, and the amendment to the Liquor Taxing Act of 1934, relating to the taxation of distilled spirits, offered by Senator Copeland.

It seems to me that the proper course to pursue this morning is to have the representatives of the Government explain the various measures which are before us and the necessity of the legislation therein provided for, and then those who desire to be heard will have a full opportunity to submit their views.

Mr. Hester, I think, is here representing the Treasury Department.

Mr. HESTER. I would like to bring up with me, Mr. Chairman, three of my associates from the Treasury Department, Mr. Stewart Berkshire, Mr. O. Norman Forrest, and Dr. O. V. Emery.

Senator KING. Mr. Hester, explain the necessity for legislation which seems so ponderous as H. R. 9185 and the purposes of it, the defects, if any, in existing law, and whether this bill to which I have just referred goes further than curing defects in existing law and deals with other matters. You may proceed.

STATEMENT OF C. M. HESTER, TREASURY DEPARTMENT

Mr. HESTER. H. R. 9185 deals with many phases of internal-revenue taxation of distilled spirits, wine, and malt beverages. For the most part, the bill proposes technical amendments to the existing law on that subject. Many of these amendments have as their object the more economical administration of these laws and the simplification of enforcement and avoidance of duplication in the work of tax collection. Other provisions of the bill propose the elimination of obsolete requirements of the statutes (most of them running

back as far as 1875) which can now be repealed without danger to the revenue. Other statutes, old and new, are proposed to be modified to remove burdens on the intoxicating liquor producing and distributing industries when this can be done without sacrificing efficiency of execution of the law and certainty of collection of the tax. Some of the restrictions which have been removed or modified were imposed during national prohibition as an adjunct to that policy, and their necessity no longer exists. Other provisions of the bill are designed to close doors which are now open to the tax evader and to assure tax collection by providing for closer supervision of those liable for the various taxes under these laws and by providing for other administrative machinery under which tax collection will be speedy and sure.

TITLE I

Section 1 contains the short title of the act.

Section 2 provides 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.

Senator KING. Does section 2 amplify the existing law?

Mr. HESTER. Yes; it does.

Senator KING. What changes does it make?

Mr. HESTER. Well, we think that there are defects in the present law. Where we would use, for instance, strips tamps or other stamps or labels that might be put on distilled spirits, that would not be covered. In other words, the distilled spirits themselves could not be forfeited, and the containers could not be forfeited.

Senator KING. Proceed.

Senator BAILEY. What is the purpose of inserting the clause "which is not accompanied by manifests, bills of lading, certificates, permits, or other documents required by such law or regulation"?

Mr. HESTER. For instance, we had one section in the antismuggling bill of last year which introduced a new feature into the law. Permits now have to be obtained from foreign consuls for shipment of distilled spirits into the United States, and that permit is connected up with the manifest.

Senator BAILEY. Is it understood that the holder of the article would have always to be ready to show his bill of lading?

Mr. HESTER. Only if the law required that it be accompanied by the bill of lading.

Senator BAILEY. Well, it is in the law. It says, "or other mark made in similitude of that required by such law or regulation, or which is not accompanied by manifests, bills of lading, certificates, permits, or other documents required by such law or regulation." I suppose this "law or regulation" relates to regulations that may be made in pursuance of this?

Mr. HESTER. That is right.

Senator BAILEY. What is the purpose of this? Wherein does it protect the Government? We have the stamp, there is a provision about that. I understand in commerce when anything is shipped there is a bill of lading goes with it, but I never heard that a man was re-

quired to keep it and be ready to show it at anytime. What is the purpose of that?

Mr. HESTER. I thought I had explained that.

Senator BAILEY. You said you thought you had explained it?

Mr. HESTER. Yes. This simply provides if the law requires a bill of lading to accompany it.

Senator BAILEY. I assume the law does. Why should they give permission if the law requires it? It is the presumption that the law is going to require it. What is the purpose of it?

Mr. HESTER. Mr. Berkshire will answer that.

Mr. BERKSHIRE. That is for protection of the revenue.

Senator BAILEY. Well, you collect the revenue by way of stamps. There is a full provision about the stamps. I do not get the relation between the stamps and the bill of lading.

Now, no purpose being stated, Mr. Chairman, I am going to suggest that it be stricken out. I am going to suggest to strike out "or which is not accompanied by manifests, bills of lading, certificates, permits, or other documents required by such law or regulation." Of course, if it can be shown that there is a good purpose for it I will not insist upon my amendment, but I would like to know about this. Somebody wrote this bill. Whoever put this in ought to know why it was put in.

Mr. HESTER. Senator, may I say this: We will be very glad to consider that suggestion and if we feel we are wrong about it we will be very glad to suggest to the committee to take it out of the bill.

Senator KING. The committee will consider the suggestion of the Senator.

Senator BAILEY. We will mark that.

Senator KING. It seems to me that the provision of the law here will be an interference with legitimate right of purchasers.

Senator BAILEY. And it would not aid the Government, as far as I can see.

Senator KING. And it would not be any aid to the Government.

Mr. HESTER. Under section 3 (a) of the bill, any person convicted of having in his possession any smoke, gas, or fume device, or explosive, or firearm as defined in the National Firearms Act, while violating any Federal law, or law of any Territory or possession or the District of Columbia, relating to intoxicating liquor, is 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 are also to be held to be in possession of the device, firearm, or explosive. No penalty is provided in this subsection for possession of a machine gun or sawed-off shotgun or rifle, but under subsection (b) a penalty of imprisonment for not more than 20 years is provided if the offender is convicted of possession, while violating the liquor law, a machine gun as defined in the National Firearms Act or sawed-off shotgun or rifle.

I might say this, that today there is no law that specifically deals with smoke, gas, or fume devices or explosives, and the only way that the Federal Government can prosecute a bootlegger who uses any of these devices is on the ground that he is obstructing the Federal officer in the performance of his duties.

Senator BAILEY. All right. Now have you sufficiently defined the expression, "smoke, gas or fumes?" I understand an automobile makes smoke, gas, and fumes. Do you mean to say it would include

the use of an ordinary automobile or do you mean one equipped for the purpose of emitting fumes or a smoke screen?

Mr. HESTER. An automobile equipped for the purpose of emitting smoke, gas, or fumes.

Senator BAILEY. Why not write it that way?

Mr. HESTER. Well, we will be very glad to take that under consideration, if it does not accomplish that.

Senator BAILEY. I think we should get the law in a very specific and definite way. I am not in favor of any more law than is necessary with respect to anybody, but I would like to have any law that we have to be definite.

Mr. HESTER. We will be very glad to consider any criticism you have to offer.

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

Section 4 amends the present law which punishes killing or assaulting Federal agents while engaged in the performance of their duties. The effect of the amendment is to broaden the scope of the statute to punish assault upon or killing any officer, employee, agent, or other person in the service of the customs or internal revenue. The present law is limited to officers of these services.

I might say in this connection, Senator, that one of the reasons for this provision is because of a case that occurred in your own State, where a volunteer was called in to assist a revenue officer and was thrown into a vat of hot mash and lost his life. That is one of the cases that will be brought in. He will be an agent within the meaning of this, and it would be a Federal crime to do that. He had to be prosecuted under the State law.

Senator BAILEY. For throwing him into a vat of mash?

Mr. HESTER. Yes; and I am satisfied he lost his life because of that.

Senator BAILEY. Down in North Carolina that is held to be murder.

Mr. HESTER. There was another case recently where a policeman was called into service and lost his life. He was shot. His murderer could have been punished under the Federal law under this section here.

Senator BAILEY. What do you have here? You say, "All persons engaged in any such violation or in aiding in any such violation." You mean the violation of the Firearm Act there?

Mr. HESTER. No.

Senator BAILEY. It says "shall be held to be in possession or control of such device, firearm, or explosive." Does that refer to possession and control of a submachine gun? Now you are raising a presumption, it appears.

Mr. FORREST. Section (b) starts off, "Whoever, when violating any such law, has in his possession or in his control a machine gun, or any shotgun or rifle", and so forth, that relates back to the law of the United States relating to the manufacture, taxation, of transportation of or traffic in intoxicating liquor.

Senator BAILEY. Then you have there, "All persons engaged in any such violation or in aiding in any such violation shall be held to be in possession of such machine gun, shotgun, or rifle." Suppose I was driving down the road with some illicit liquor, it is presumed I am armed.

Mr. FORREST. It means if you were driving a car loaded with liquor and I was sitting beside you with a machine gun you would be jointly charged with the possession and intended use of the machine gun.

Senator BAILEY. That is not what the language says. You correct the language and make it say that. You could say "Any person in the same vehicle or in an accompanying vehicle."

Mr. FORREST. I see.

Mr. HESTER. We will take that up.

Senator BAILEY. I would be glad to have you correct that.

Mr. HESTER. We are happy to have your suggestion.

Section 5 gives courts having jurisdiction of proceedings involving seizure or forfeiture of any vessel or vehicle seized or forfeited under Federal law the power to refuse to order the return on bond to the claimant of the vessel or vehicle. The return on bond can be denied by the court in its discretion and upon good cause shown by the United States. The object of this provision is to remove mandatory requirements of return now a part of the present law. It has been shown that, in many instances, during the time the question of whether the vessel or vehicle is subject to forfeiture is being litigated, the claimant has, by filing bond, been able to repossess the vessel or vehicle and reuse it in law violation.

Senator KING. Is that in harmony with existing law under which returns may be made of seized property alleged to have been used in violation of law?

Mr. HESTER. The law today compels the court to return upon a bond being filed, that is about all. This makes it discretionary with the court, so as to make it impossible for the bootlegger to get his vehicle back and use it if the Government can convince the court that he should not have it returned to him.

Senator BAILEY. That is simply an order of confiscation. Have you got anything in here relating to mortgagees and the rights of mortgagees?

Mr. HESTER. No; I do not think we have.

Senator BAILEY. I think you should, and also the right of conditional salesmen. Most all the automobiles today are sold on that basis. I think the manufacturer or the salesman ought to be protected, if he is interested in the property.

Mr. HESTER. In what respect, Senator?

Senator BAILEY. You have it right here, to seize and take any vessel or vehicle "for the violation of any law of the United States, the court having jurisdiction of the subject-matter may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle."

If I am an automobile manufacturer and I should sell one to you on $15 down and $15 a month, I see it advertised that way, when it is seized you own only a $15 interest and I have got a $400 interest in it, and I am perfectly innocent. Why should I lose my equity?

Mr. HESTER. I see the point you have in mind.

Senator BAILEY. I think you should put a provision in there covering that. Write the provision right at this point.

Mr. BERKSHIRE. I think he has all the rights of the present law to come in and protect his interest. That does not deal with that situation, sir.

Senator BAILEY. Explain about his rights under the present law.

Mr. BERKSHIRE. Section 709 of the Revenue Act of 1926 or 1928 gives him the right to come in and petition for the remission or mitigation of the forfeiture of the car if he is an innocent mortgage holder.

Senator BAILEY. He has that right on the face of the law, but they can take the car and hold it 6 or 8 months and it would deteriorate to the point where it would not be worth anything. The Government can do that pending the trial, or they can take the car and sell it and give the proceeds to the original owner and he has no other remedy. That is the law now.

Mr. BERKSHIRE. Under the new act that has been passed at the last session, the enforcement act, he has the right to go into court right now.

Senator BAILEY. I would like it stated here. Just give the vendor his proper rights under the law.

Mr. HESTER. Under the liquor law and the repeal act which was passed I think at the last session (it was approved about the 27th of August) there is a provision in there which permits the owner to take his case in court.

Senator BAILEY. This is in addition to that and may affect the validity of that, or it might impair it.

Mr. HESTER. You have raised a good point here.

Senator KING. This is a subsequent act and it might modify existing law.

Senator BAILEY. Let us put the proviso in right at that point that will fully protect the vendors who are innocent.

Mr. HESTER. We would like to consider it and submit the matter to you.

Senator KING. You may do that. Proceed.

Mr. HESTER. Section 6 contains definitions of the terms vessel, vehicle, and firearm as used in title I of the bill.

TITLE II

Sections 201 and 202 amend sections 3287 and 3295 of the Revised Statutes, respectively, so as to permit distillers and their employees to do such marking and branding and such mechanical labor pertaining to gaging required under the sections——

Senator BAILEY. Where are you now?

Mr. HESTER. Title II, sections 201 and 202.

Senator BAILEY. Let us take section 6. You state, "as used in this title the word 'vessel' includes every description of watercraft used, or capable of being used." You do not mean that, do you?

Mr. HESTER. That is the definition of a vessel today.

Senator BAILEY. How about the airplane? You know that your words here that govern watercraft, in line 6, page 4, cover every description of watercraft used or capable of being used in water and air, but it seems to me that is confined to watercraft alone. A flying machine is not a watercraft and it would be outside of this law.

Mr. HESTER. It would be a "vehicle", line 9.

Senator BAILEY. Section 6 relates wholly to watercraft, to water transportation?

Mr. BERKSHIRE. That is correct. The word "vehicle" comes along and then we include the airplane.

Senator BAILEY. You have a subsequent section on that? This is just for watercraft, this section 6?

Mr. BERKSHIRE. Lines 9 and 10, Senator, I think would cover the thing that you have in mind, the aircraft.

Senator BAILEY. I see. You made a distinction. You have got the word "vessel" relating to watercraft and the word "vehicle" relating to aircraft.

Mr. BERKSHIRE. That is right.

Senator BAILEY. That is all right.

Mr. HESTER. I will repeat, under title II. Sections 201 and 202 amend sections 3287 and 3295 of the Revised Statutes, respectively, so as to permit distillers and their employees to do such marking and branding and such mechanical labor pertaining to gaging required under the sections, as the Secretary of the Treasury deems proper and determines may be done without danger to the revenue. By relieving the storekeeper-gager of the duties of performing manual work connected with marking and branding, he will be afforded much better opportunity to keep close surveillance over the activities of the distillers to see that they comply with the laws and regulations. This will also expedite the entry, tax payment, and withdrawal of spirits.

I would like to have Mr. Forrest, who is an attorney in the Alcohol Tax Unit and who has actually supervised this very activity in a distillery, explain it to the committee, if you care to have it.

Senator BAILEY. What I wish you would do for me is to explain why we should now correct the Revised Statutes, section 3287. Here is my point: We have just printed the statutes of the United States as of January 3, 1935. Now we begin to amend it. There is something in just having a book of laws that you can rely on and not change the fundamental laws and statutes all the time. These are trial laws here. If there is some reason for it I am willing to do it, but it must be a very good reason. When I pick up a law book I would like to know that the law is in there, I do not want to look up an amending act of Congress.

Mr. HESTER. There is considerable in what you say, Senator.

Senator BAILEY. If you practice law you know there is a great deal in what I am saying. You sit down with a book of law and then somebody brings in a little leaflet on a law that has been passed in the last 6 or 8 months.

Mr. HESTER. I would like to have Mr. Forrest explain this statute relating to the distillery.

Senator BAILEY. What was wrong with the old statute? What was the mischief that you are trying to correct?

Mr. FORREST. Under section 3287 as to entry gage, section 3295 as the withdrawal gage, and under section 3290 the storekeeper-gager was not permitted to allow anybody to use his tools or to put on the packages any marks, brands or stamps required by law, but in the interest of speeding up things in the cistern rooms upon entry, in the warehouse, and on the withdrawal, it was determined that if he could

do the matter of proofing, find out the proof in each package and then make his marks on his record, the employees of the distiller could take the hammer and make the marks on the package, the operations could be speeded up in that way.

Senator BAILEY. You are relaxing the old law?

Mr. FORREST. We are relaxing the old law to that extent. It being necessary to amend sections 3287, 3295, and 3290 to accomplish that we decided to restate section 3287, so as to make it a little plainer and to incorporate in it some of the requirements as to the branding and stamping that existed heretofore only in the gaging manual, which is a species of regulation. You will find that section 3287 has not been changed very much.

Are you gentlemen familiar with the operations of a distillery?

Senator BAILEY. I am; yes.

Mr. FORREST. I just wondered whether my brief explanation fully acquainted you with these physical labors, because they are physical labors.

Senator KING. In the main this is merely a reproduction of the existing law?

Mr. FORREST. A reproduction of the existing law, with the addition that after the storekeeper-gager has determined the basis for taxation the distiller's man may take the hammer, so-called, and make the marks on the bung-stave, to be looked at and checked by the storekeeper.

Senator BARKLEY. The storekeeper or his employee need not perform any manual labor in connection with the stamping of these packages?

Mr. FORREST. That is correct.

Senator BAILEY. I wish to make a correction. I am not at all familiar with a lawful distillery. I know a great deal about the illicit distillery. I would not be up-to-date at all on the modern distillery.

Mr. FORREST. I didn't have that in mind.

Mr. HESTER. The real purpose is to increase efficiency in administration and economy.

Senator KING. Proceed.

Mr. HESTER. Section 3287 of the Revised Statutes is further amended to harmonize it with existing law and to include requirements as to marking, branding, and stamping which have been prescribed by regulations and gaging manuals for many years.

Senator KING. Is there anything further you desire to say concerning subdivision (b)?

Mr. HESTER. Yes; there is one other provision there.

As herein amended, section 3287 will also permit the Secretary, by regulations, to prescribe the standards of fill of casks and packages at each distillery, thereby facilitating the entry of spirits into the warehouse and reducing the amount of detail work to be performed by the storekeeper-gager. The advantage of having the standards of fill prescribed is that it assures that each cask will have a definite amount run into it from a cistern, thus obviating a good deal of the detail work connected with the weighing of the casks.

That is just another one of the requirements that is going to speed up the work and result in increased efficiency and economy.

Senator BAILEY. Going back to section 201, would you gentlemen get a copy of the existing law and make a comparison between that and the proposed change, so we will know just exactly what

changes are proposed? You are going over this with great rapidity. I would like to know the details of the changes.

Senator BARKLEY. Suppose you put a copy of the existing sections in the testimony here?

Mr. FORREST. Yes, sir.

Mr. HESTER. We have that in the committee report.

Senator BAILEY. Mr. Parker calls my attention to the fact that in the report of the House the changes are indicated here in brackets.

Mr. BERKSHIRE. That is correct.

Mr. PARKER. The material in brackets is omitted and the material in italics is the new matter.

Senator BAILEY. Let it appear in this record this morning that on pages 12 and 13 of the House report the changes are indicated as stated in section 201. That will be all right.

Section 203 amends section 3290 of the Revised Statutes by relieving storekeeper-gagers of liability to penalties if distillers are authorized to perform the duties which may be imposed upon them by regulations prescribed under the authority of sections 201 and 202.

TITLE III

Section 301 is amendatory of section 3262 of the Revised Statutes, which now requires each distiller to own the distillery property in fee, or to secure the written consent of the owner of the fee, and of any mortgagee, judgment creditor, or other person having a lien thereon, to the use of the property for distilling purposes. This consent must stipulate that the lien of the United States for taxes and penalties shall have priority over such mortgage, judgment, or other encumbrance, and that in the case of the forfeiture of the distillery premises or any part thereof the title to the same shall vest in the United States discharged from such mortgage, judgment, or other encumbrance. The amendments are (1) that if the distiller who is not the owner of the fee cannot secure the consents and stipulations now required by law, he may, in lieu thereof, with the approval of the Commissioner of Internal Revenue, file a bond, and (2) that the lien imposed by section 3251 of the Revised Statutes on the distillery premises shall not attach by reason of distilling done during any period included within the term of any bond so filed.

At the present time there is a criminal penalty for any storekeeper-gager who permits the distiller to do any of the work which he is now authorized to do, and with the permission of the Secretary of the Treasury under this section they relieve him of that penalty.

Mr. FORREST. Do you offer sections 3295 and 3290 also for the stenographer?

Senator BAILEY. I haven't got that far yet.

Mr. FORREST. That has to do with the withdrawal gage. Section 3290 follows section 3295.

Senator BARKLEY. Why is this bill written so that section 203 means section 3290 and section 202 means section 3295?

Mr. FORREST. Because the entry gage comes first, that is section 3287 Revised Statutes, then withdrawal gage, section 3295 Revised Statutes, and section 3290 deals only with the duties to be performed by the storekeeper-gager. That seems to be the logical sequence.

Senator BARKLEY. Of course in the Revised Statutes, when there is another volume printed, there is no reason why that should not come in chronological order.

Mr. FORREST. I cannot see any reason why we cannot transpose that.

Senator BARKLEY. You see the value of it.

Mr. FORREST. Yes.

Senator BAILEY. We will just suggest that.

Mr. HESTER. I covered section 301. Section 301 is amendatory of section 3262.

Senator BAILEY. Now, I will have to confess I am a little confused on that. I do not understand it.

Senator KING. Has a situation developed under existing law under which the Government has been defrauded of revenue, or under which persons have escaped paying a legitimate tax?

Mr. HESTER. No; this is merely in the interest of the industry, where the distiller is not the owner of the fee.

Senator BAILEY. "No bond of a distiller shall be approved unless", and so forth. Go ahead.

Mr. HESTER. Where he is not the owner of the fee and cannot secure the consent of the mortgagee, or judgment creditor or other lienholder, or if the distiller's property is forfeited to the United States, the Government shall have prior rights. If he cannot secure that—we are now amending the law to permit him to give a bond. This is in the interest of the distiller. The Treasury Department feels that this can be done without endangering the revenue in any way.

Senator KING. It would protect a distiller who perhaps has a recalcitrant person interested in the property?

Mr. HESTER. That is right. He simply cannot go into the business today if he does not get the consent, so we are giving him the opportunity, if he cannot get the consent, to file a bond.

Senator BAILEY. If I get it right, prior to the acceptance of a bond the distiller must show, first, that he is the owner in fee, unencumbered, and second that he is occupying the mortgaged premises and then he must have proper papers executed by the mortgagee.

Mr. HESTER. If he is the owner in fee he cannot put up a bond. If he is the owner in fee the lien attaches.

Senator BAILEY. I get that. Here is what it says:

No bond of a distiller shall be approved unless (1) the distiller is the owner in fee.

That is the first clause. There is no difficulty about that. If he owns the property he gives his bond and then the right of forfeiture applies; he goes there at his risk.

Mr. HESTER. That is right.

Senator BAILEY. Now let us see how it relates to the mortgagee. You have got to call him in; he has got to have notice, hasn't he?

Mr. HESTER. Yes.

Senator BAILEY. Have you got a provision here at all whereby an innocent mortgagee would be protected if there was some failure on the part of himself by reason of ignorance of this law on the part of the distiller? You mean to say you would take the mortgagee's rights away from him?

Mr. HESTER. No, not if he did not consent.

Mr. BERKSHIRE. He does not have to consent.

Senator BAILEY. If I own a mortgage on a piece of land, I am the mortgagee and you are the distiller; you go ahead and occupy the premises; I rent it to you innocently; nothing is done by me; I am the mortgagee; I do not know what is going on over there. Would the Government take my mortgage?

Mr. BERKSHIRE. No, sir; unless you consented in advance, unless you had knowledge of it.

Mr. HESTER. That provision is old law, Senator. It has been on the books for many years.

Senator BAILEY. We had a good deal of difficulty about it in North Carolina by the Government undertaking to enforce forfeitures on lands of innocent holders of mortgages, and also on land that was held in fee.

Mr. FORREST. In the case of bootleg stills, sir?

Senator BAILEY. Yes.

Mr. FORREST. They were probably proceeding under section 3281 which provides that where the distilling operations are conducted illegally, the right, title and interest of any proprietor of the land who has knowledge or notice of or suffers or permits it to be so used shall be forfeited. We do not go any further than that. Section 3251 makes the tax on the distilled spirits a first lien on the equipment with which it is produced, the spirits and the land and buildings, and section 3281 makes the property forfeitable if the person having an interest knew it. We do not go that far here, sir. If the person does not consent he is not bound.

Mr. HESTER. Does he not have to submit his consent at the time he files his notice?

Mr. FORREST. The distiller submits with his notice the consents of various persons interested and then the local officers in the various districts run the titles.

Mr. HESTER. In other words, before he can start the business he must do that.

Senator BAILEY. All this is gone through with reference to the giving of bond?

Mr. HESTER. Yes, sir.

Senator BAILEY. He does not get the bond unless he files in connection with the notice the written consent of the owner. Suppose he should fail to do it and you would not know it, the Government would not know it and the owner would not know it, the distiller is an occupant and he has got his bond, you have no way of knowing where the mortgage is, you are not going to look up titles.

Mr. FORREST. We do look up the titles.

Senator BAILEY. You look up the titles to all the premises?

Mr. FORREST. Yes, sir. When I was in the district I did, sir, and when I was legal adviser in the Baltimore district if the distiller submitted his bond, or the brewer, and if we found the mortgage or the judgment was not mentioned we called him up about it and asked him to explain.

Senator BAILEY. You always looked up the title before you issued the bond?

Mr. FORREST. Before we approved the bond; yes, sir.

Senator BAILEY. Then the liability would be on the Government, I take it, in that instance.

Mr. FORREST. No matter where the liability rested I should say it would not rest on this innocent mortgagee or judgment creditor who knew nothing about it and had not assented.

Senator BAILEY. I would like to have a provision in the law directly and explicitly protecting innocent parties who own the premises.

Mr. HESTER. All right.

Senator BAILEY. You can put it in there.

Senator KING. You refer to a section which, as I understand your plan, might be denominated illicit distilleries, under the terms of which the innocent person would be protected and foreclosure might not be had, or forfeiture, unless he had knowledge of the illicit act. Now the suggestion which is made by Senator Bailey would not, of course, and ought not to conflict with an existing law.

Mr. FORREST. We would write it to apply only to this type of legal distillery where there was a possibility of a person having an interest other than the distiller.

Senator BAILEY. I do not know how far you are going in the distilling business, but you are going pretty far, and if you do you will have a lot of title work to do.

Mr. FORREST. There are only about 180 distilleries.

Senator BARKLEY. Are you referring now to the legal distilleries?

Mr. FORREST. Yes sir.

Senator BAILEY. Once it gets to be a money-making business you will have a lot of people going into it. The distilling of liquor is a very simple thing, it requires little capital. That is the reason we have so much difficulty in removing it. You can take an old bucket and a pipe and you can make something that makes you drunk.

Mr. FORREST. I think either you or I could run the average title in 6 hours, don't you think?

Senator BAILEY. Yes, I think so. We have a revenue office. I should think you have a lawyer there.

Mr. FORREST. We do have a lawyer attached to each district office. A great many of the investigators have been with this business so long that they are pretty good lawyers too on the matter of titles, records, and so forth.

Senator BAILEY. The whole idea is to get the thing so fixed that you can forfeit the premises, isn't it?

Mr. FORREST. That is not the idea at all.

Senator BAILEY. Don't you get the consent of the mortgagee here?

Mr. BERKSHIRE. That is the old law at present. The idea here is not to reach that situation at all. Situations have arisen where we found it impossible to approve an application and notice and bond at all, because some mortgage holder did not give his consent. All we can do is just turn it down. We found situations where we thought we ought to approve it, but we haven't had a law to do it with. This will let us go ahead and have a bond in lieu of that and permit them to open it up. That is all this is intended to be done.

Senator BAILEY. I think, if I read the law right, as you have written it here on page 10, section 2, line 6,

> The written consent of the owner of the fee, and of any mortgagee, judgment creditor, or other person having a lien thereon, duly acknowledged, that the premises may be used for the purpose of distilling spirits, subject to the provisions of law.

and so forth,

and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment,

and so forth, the object must be to get the consent.

Mr. HESTER. That is the present law. That is what the law always has been.

Senator BAILEY. What are you repeating it in here for?

Mr. FORREST. Because we were told it would be good legislative practice, where we are cutting up the statute and amending it, to restate it so we would not have to consult several books to find out what was the revised form of the entire statute.

Senator BARKLEY. This is simply rewriting such provisions as you put in, leaving the original language as it is?

Mr. FORREST. That is right.

Mr. BERKSHIRE. There is a great deal in here that they thought should be restated. In the House we merely offered certain suggestions and in drafting it they thought it was better draftsmanship to repeat the section.

Senator KING. You refer to a section where certain amendments are made to existing law?

Mr. BERKSHIRE. Yes.

Senator KING. And the House, when they considered the matter, decided to leave the section and add such amendments as the committee deemed appropriate?

Mr. BERKSHIRE. That is right.

Senator BARKLEY. What sections deal with the foreign corporations doing business in this country?

Mr. HESTER. Section 403.

Senator BARKLEY. They are required to proceed in a certain manner and also to give bond?

Mr. HESTER. Section 403, that is the last section in the bill.

Senator BAILEY. I am not satisfied about your legislative practice, but I will waive that for the present. I think the way you have got the law on the books is a very good idea, to let it stay there and not repeat it. We will let that go at this time.

Senator KING. That has been the practice, whether it is a good practice or bad practice, in many of our statutes, since I have been here.

Mr. HESTER. Section 302 permits 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. In the event of waiver, the section further authorizes the Secretary 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. Under the present law distilleries are required to produce 80 percent of their spirit-producing capacity or to pay a delinquency assessment. Upon waiver of survey, the output of distilleries will be very greatly increased with the same equipment.

Now I think we might amplify that statement by an explanation as to the provisions which are waived.

Senator BAILEY. You are giving the Secretary of the Treasury certain discretions to waive features of the law?

Mr. HESTER. Yes, sir. This is now the law, Senator, with reference to the industrial alcohol plant and fruit brandy distilleries. We see no reason why it should not be extended to whisky distilleries.

Mr. FORREST. I will give you just a little history; not much. When the distiller files a notice with the district supervisor it is the practice now to send a representative of the Commissioner and a representative of the district supervisor to the distillery, to measure each fermenting tub and the mash container in which they mix the mash, to determine the true spirit-producing capacity of that distillery for each day of 24 hours, in order to keep the distillery to the spirit-production capacity that has been fixed. It is provided by a section of the law, I think it is 3285, that in a sweet-mash distillery the fermenting tub shall not be used oftener than once in every 72 hours, or three days, and in a sour-mash distillery not oftener than once in 96 hours.

Senator BAILEY. That is the present law?

Mr. FORREST. That is the present law. So if a distiller using the sweet-mash method is able to ferment out his mash in 24 hours, or 30, or 36, that fermenter would stay empty until the morning of the fourth day, when he can put some material into it. I understand modern methods are so advanced that the distillery can get along with less than 72 hours.

Section 3309 provides that after the spirit production capacity of the distillery has been fixed at, we will say just for illustration, 100 gallons a day the distiller must produce 80 percent of that, or 80 gallons per day, or pay a deficiency assessment by way of tax on the difference between 80 and what is made. In other words, if the distiller makes only 75 gallons he has to pay a deficiency assessment on 5 gallons at $2 per gallon.

Senator KING. It would be better then to use his appliances to the fullest extent?

Mr. FORREST. And to be honest. Section 3310 fixes the time when the fermenting period shall start, when it shall finish, and so on, and section 3311 of the Revised Statutes provides when a man wants to cut down his capacity so that the surveyed rates shall not keep running against him for a deficiency, he may close out certain tubs, in other words suspend operations on certain of these tubs. He files a notice with the district supervisor on Tuesday morning, January 14, and says, "I want to close out tubs 3, 6, and 9," and the Government man comes there and sees they are empty, he closes the valve and goes home. Next Saturday morning he notifies the district supervisor that he wants to open it up on Monday. The inspector goes up there to investigate, or to inspect, and he opens up the valves, and they fill them and resume the original surveyed capacity. The use of the tubs ceases tomorrow morning and their use is resumed again next Monday morning. It is for the purpose of relieving the distiller of these so-called survey requirements that this section is added.

The distillation is a continuous process. Everything is locked, sealed, and closed. The spirits go over to the cistern room, which is also locked. The buildings are of solid construction with only one door opening to the outside, the windows are barred, the roof is barred. If it has a skylight, that is barred too. The door is locked securely with a Government lock, the key is in possession of only one man, that is the storekeeper-gager in charge of the cistern room. We

think there is no possibility of loss in that regard. We should relax—if the Secretary of the Treasury finds it can be done—we should relax the so-called survey requirements.

Senator BAILEY. And there make liquor in larger volume?

Mr. FORREST. Yes.

Senator BAILEY. We will have more and cheaper liquor.

Mr. FORREST. If it will speed up production, in view of the fact that has had a great deal to do with the overhead, the liquor should be cheaper.

Senator BAILEY. I said "more and cheaper."

Mr. FORREST. Yes.

Senator KING. I suppose it would be better under those circumstances.

Mr. FORREST. I could not say as to that, sir.

Senator KING. You may proceed.

Mr. HESTER. Since the amount of the distiller's production bond is now predicated upon 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 the production bond is given to insure the payment of the tax and is measured by the tax on the distilled spirits that can be produced in 15 days, and this relaxes that requirement, to accord with the other change.

At the present time, by virtue of the survey requirement, the restrictions of section 3267 of the Revised Statutes as to 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, is essential. Section 304 amends section 3267 so as to authorize the Secretary, in the event the survey requirements are waived, to relieve distillers of such of the restrictions as to cisterns, and to provide for such equipment in the cistern rooms, by way of tanks, and so forth, and the number and use thereof, as he shall deem necessary to protect the revenue. This is simply in line with the other section.

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 be first approved. 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 merely an extension of the theory of the old law which applied only to distillers.

Senator KING. Assume some individual had violated a misdemeanor statute of the United States, or of the State, particularly during the prohibition years——

Mr. HESTER. It has to be a felony.

Senator KING. It has to be a felony?

Mr. HESTER. It has to be a felony with respect to the violation of the prohibition law, that would be prohibiting the manufacture, sale, and transportation. It would have to be a felony.

Senator BAILEY. Have you a common definition of a felony under the laws of the United States?

Mr. FORREST. Yes. Any offense for which a person may be sentenced to more than a year.

Senator BAILEY. That is a felony in accordance with the description?

Mr. FORREST. Yes, sir.

Senator BAILEY. It sends him to the United States prison?

Mr. FORREST. The penitentiary.

Mr. HESTER. And the first part, of course, relates to a violation of the taxing laws as such.

Senator KING. Supposing there had been a pardon by the President of the United States for a violation of the former prohibition statutes, would this law apply and would he be denied the opportunity to engage in this business?

Mr. HESTER. I should say, with a reservation and with an opportunity to look it up, offhand, that a pardon would wipe out the offense, in contemplation of law.

Senator KING. I wish you would look into that.

Mr. BERKSHIRE. I think it has been so construed and held.

Senator BAILEY. That refers to any crime for which a punishment is 1 year in prison?

Mr. FORREST. Over a year.

Mr. HESTER. One year and a day. That is well settled in criminal law.

Senator BAILEY. I notice the law on embezzlement by bank officers is described as a misdemeanor but the punishment is the punishment of a felony.

Mr. FORREST. I do not have the section of the criminal code here, but I can get it.

Senator BAILEY. I do not care to raise any talk about that.

Senator KING. Proceed.

Mr. HESTER. Just one further thought in connection with this section. This provision, it should be noted, is merely an extension of the theory of the old law which applied only to distilleries.

Section 306 amends section 2 of the "Bottling-in-Bond" Act of March 3, 1897, so as 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 foregoing requirements.

Section 307 amends the various provisions of law relating to the bonded period for spirits and the loss allowance thereof by redeclaring those laws as they existed prior to wartime and national prohibition. The purpose of this section is 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. This is necessary because of the act of February 6, 1925, which extended the bonded period indefinitely and granted additional loss allowances for such time as the spirits remained in bond, for the reason that during prohibition spirits could not be freely withdrawn. The redeclaration makes those laws effective as of December 6, 1933, and provides that additional allowances for loss, between December 6, 1933, and the 30th day after the enactment of this act, shall not be invalidated. It further provides that distilled spirits 8 years of age or over which were in bonded warehouses on December 5, 1933, may remain in bond, and when withdrawn, may be given loss allowances up to and including the 30th day after the date of the enactment of this act.

Now the situation is simply this: Before prohibition the bonded period was 4 years. You could not sell liquor as bonded liquor until it had been in the charred keg for 4 years. Then you had an allowance. The Government granted you an allowance for losses of evaporation, and so forth and so on. Every few months you got a certain allowance. That allowance was given you up to 7 years and the allowance then stopped. At the end of 8 years you had to take the liquor out, you had to take your distilled spirits out and pay a tax on them. Because of prohibition, in February 1925, Congress passed an act which extended indefinitely the 8-year period. When, on December 6, 1933, the eighteenth amendment was repealed we were afraid that by this February 1925 act Congress had extended indefinitely the period when you could take your liquor out and have your allowances. This redeclares the law as of December 6, 1933. You get your allowances up to 7 years, you must take your liquor out at the end of 8 years, but all liquor that was over the 8-year period on December 6, 1933, in warehouses is not affected by that provision, and you are allowed allowances, the allowances will continue although the liquor has been there over 8 years, up to 30 days after the enactment of this bill into the law. So your allowances will stop at that time, but you may continue to leave your liquor in. That only applies with respect to the liquor that has been in there 8 years.

Senator BAILEY. Then the whole idea is to set a time or period for the bonding of liquor spirits; you get no advantage by going beyond 8 years?

Mr. HESTER. That is right.

Senator BAILEY. What is your purpose?

Mr. HESTER. That simply is old law, and we are redeclaring the old law.

Senator BAILEY. I am not especially interested, but I would like to know why we should put a premium on 8-year-old liquor and not put a premium on 16-year-old liquor?

Mr. HESTER. Let me call upon Mr. Berkshire, who is the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit.

Mr. BERKSHIRE. There isn't any purpose in keeping it, so far as the quality of the liquor is concerned, more than 8 years.

Senator BAILEY. It does not improve after that?

Mr. BERKSHIRE. It does not improve after that materially, if at all. The allowances run that long. Of course they may continue to keep the liquor 16 years.

Senator BAILEY. It might be some advantage?

Mr. BERKSHIRE. There may be a commercial advantage, but the Government is not interested in it. I think 8 years is long enough.

Senator KING. May I ask one question for information. As I understand it, the bill which came over from the House, 9185, was under consideration for a number of weeks by the Committee on Ways and Means?

Mr. HESTER. A number of months. I think they took up consideration in March.

Senator KING. Were the hearings extensive?

Mr. HESTER. Yes, they were extensive hearings.

Senator KING. And were distillers and those who are interested in this character of legislation permitted to appear and did they appear?

Mr. HESTER. Yes; I dare say every gentleman here this morning was present at those hearings.

Senator KING. In a general way did the bill which passed the House meet the valid objections which were offered?

Mr. HESTER. I think I can, with practically one or two exceptions, say that that is the case. The Ways and Means Committee, after the public hearings, considered it extensively in executive session and it seems to us when the bill was finally enacted by the House it met the objection of the industry. I would be surprised if some of the industry does not come up here and say they are in favor of the bill. There may be a few objections which perhaps we can iron out.

Senator KING. Proceed.

Mr. HESTER. Section 602 of the Revenue Act of 1918 provided for the removal of alcohol and other high-proof spirits from registered distilleries for the purpose therein stated. At that time alcohol and other high-proof spirits of 160° or more were produced at whisky distilleries. At the present time alcohol and other high-proof spirits of 160° and more may legally be produced and warehoused only in industrial alcohol plants established under title III of the National Prohibition Act and regulations thereunder. By section 308 it is intended so to amend the law as to extend the privileges of producing and warehousing spirits of less than 160° of proof at whisky distilleries, and granting the privileges thereunder.

Section 3293 of the Revised Statutes is amended by section 309 so as to permit the Secretary of the Treuasury to accept monthly or annual warehousing bonds from distillers in the penal sum of not less than 50 percent of the tax on the distilled spirits on deposit in the warehouse at any one time, or such higher sums as the Secretary of the Treasury may prescribe. Under the present law, distillers' warehousing bonds are required to be in sum equal to the total tax on spirits on deposit. It is believed, however, that a bond under this section would afiord adequate protection since surreptitious removals of spirits would be discovered before the losses were such as to reach the maximum of the bond required under this section. It simply reduces the premium on these bonds.

Section 310 amends section 3302 of the Revised Statutes so as to relieve the storekeeper-gager of the necessity of recording certain

data relating to the operations of the distillery which is deemed unnecessary. The section further authorizes the Secretary of the Treasury to relieve storekeepers-gagers of the duty of recording the time when any fermenting tub is emptied of any ripe mash or beer when the survey is waived

Senator BAILEY. Let me ask you there, the provision for a daily account is merely a provision whereby the distillery may be checked, is it not?

Mr. HESTER. That is right.

Senator BAILEY. Are you satisfied with that provision?

Mr. HESTER. We are not waiving that provision. The only thing we are waiving is this: The keeping of a record of all fuel used and from whom purchased, of all repairs made on said distillery and by whom and when made, the names and places of residence of all persons employed in or about the distillery, that is all we are taking out there. They are obsolete provisions.

Section 311 amends section 3303 of the Revised Statutes by relieving distillers of the necessity of recording certain data required under existing law but no longer considered necessary. The section further provides that whenever the Secretary of the Treasury shall relieve the distiller of the survey, he may likewise relieve the distiller from the requirements of the section relating or incidental to the survey.

Section 312 amends section 3831 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 so 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.

Senator KING. Under whose jurisdiction?

Mr. HESTER. The receiver of the court.

Section 313 accomplishes two major purposes: First, it amends certain provisions of law 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; secondly, it 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 revenues. The purpose of the first amendment is to prevent the shipment of fermented malt liquor in bulk containers to depots and warehouses, there to be further manipulated, which would increase the danger of frauds upon the revenue, and increase the cost of supervision without any corresponding benefit to the Government. The amendment does not prohibit the packaging of beer in cans when run from the brewery to the bottling house by pipe line or barrel. In this respect canned beer is treated in the same fashion as bottled beer. The purpose of the second amendment is to permit the use of such tapping devices, to be approved by the Commissioner, as may be consistent with the protection of the revenue.

Senator BAILEY. On that point, why did you allow the brewer to tap in either one or two bung holes? One will carry the stamp and the other will not. In the event it does not go through the one

that carries the stamp it requires that you shall cancel the stamp by writing or printing thereon. What is the necessity of the two bungholes in the barrel?

Mr. HESTER. It simply is a matter of convenience.

Senator BAILEY. I do not get that. It might be or might not be a matter of convenience. I just want to know why you have two bungholes?

Mr. FORREST. I can see, sir, where a stamp might become so soiled that when he drove the spigot into it he might drive the dirt into the beer, he might drive it through the other spigot hole, and it is conceivable that some saloonkeepers might have good reasons for wishing a choice of taps. It depends upon whether they are laying the keg down or standing it on end.

Senator BAILEY. He can be required, for his own convenience, to lay the keg so that one bung would be sufficient to tap the barrel. If he goes ahead and puts the bung against the wall that is his lookout. That would be a matter of storage.

Mr. HESTER. Is your question directed to whether or not the two would endanger the revenue?

Senator BAILEY. In one case, where you tap the barrel, you destroy the stamp; and in the other case, when you tap the barrel, you do not destroy the stamp.

Mr. FORREST. He is required to destroy it.

Senator BAILEY. One is automatic, and one is of necessity. Here is a package of cigarettes. I cannot open the package of cigarettes without destroying the stamp. That is the whole idea. It is put across the top. Now you have got a barrel and should not be able to open it without destroying the stamp, but the way the law is drawn you can open the barrel without destroying the stamp.

Mr. BERKSHIRE. That is wrong, then.

Senator BAILEY. You can say that you can cancel the stamp by writing or by printing, but that is not automatic. One is automatic, and the other is voluntary.

Mr. BERKSHIRE. It is certaily not contemplated they can tap the barrel without destroying the stamp.

Senator KING. I suggest that may be checked up.

Mr. HESTER. We will give consideration to it.

Mr. BERKSHIRE. If it does not do that, then it is wrong, that is all there is to that.

Mr. HESTER. 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. This makes it uniform. It now provides it must be a willful violation.

Section 3335 of the Revised Statutes is amended by section 315 to require more complete information to be supplied by brewers in

their notices than is now required by law, for the purposes of enforcing tax liability, affecting 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.

Section 316 amends section 336 of the Revised Statutes by permitting the Secretary of the Treasury to prescribe the penal sums 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. 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 it 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, it will be seen that the present bond required of brewers is excessive and imposes an unnecessary hardship as to premiums. In addition, the section provides that not only must the brewer furnish a new bond once every 4 years, but must furnish a new bond whenever required so to do by the Commissioner.

Senator BAILEY. What is the idea here, that Congress should pass an act on liquor that is not intoxicating liquor?

Mr. HESTER. It did it on 3.2 beer. It simply said "3.2 beer."

Mr. BERKSHIRE. That is repealed.

Senator BAILEY. We appear on record as saying that is not intoxicating.

Senator BARKLEY. Real beer contains more alcohol.

Mr. BERKSHIRE. Not for taxing purposes, Senator.

Mr. HESTER. We collect the tax on the beer regardless of what the alcohol content is.

Senator BAILEY. I will agree we classified it as intoxicating from 1892 down to about 2 years ago, then we classified it as nonintoxicating. Now we are classifying it as intoxicating. It bothers a man just to know what the word "intoxicating" means.

Mr. BERKSHIRE. We do not know anything about 3.2 any more.

Senator BAILEY. You do not make any distinction?

Mr. BERKSHIRE. That is correct.

Mr. HESTER. This bill does not classify beer as intoxicating liquor. It refers to it as fermented malt liquor.

Senator BAILEY. This is a bill to regulate intoxicating liquor.

Senator BARKLEY. It also says "for other purposes." That includes beer.

Senator KING. Is the same tax levy imposed upon 3.2 beer as would be imposed upon 4-, 5-, or 6-percent beer?

Senator BAILEY. That is right.

Mr. HESTER. Yes.

Senator KING. A man that has strong beer, then, would pay no more than a man who had weak beer?

Mr. HESTER. That is right.

Section 3340 of the Revised Statutes is amended by section 317 to provide for the forfeiture of brewers' 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 forfeiture, and this amendment is considered necessary in aid

of the collection of the revenue. Similar provisions of law exist as to distillery premises.

Senator KING. Was there any suggestion made in the hearings before the House that there should be a distinction between non-intoxicating beer and intoxicating beer, as to the amount of license which would be paid, or tax which would be paid?

Mr. HESTER. I have no recollection on that.

Mr. FORREST. Section 608 of the Revenue Act of 1918, which at that time assessed a tax of $6 a barrel, was amended by the Liquor Tax Act of 1924 to make it $5 a barrel, and that act provided [reading]:

> That there shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half of 1 percent or more of alcohol—

And anything under that would not be subject to the tax.

Mr. BERKSHIRE. This did not tax at all the near beer.

Senator KING. Proceed.

Mr. HESTER. 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 forfeiture, 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 further provides that the brewery premises shall consist of the lands and buildings described in the brewer's notice, notice when he is going to start business, and that such premises shall, as to breweries established after the enactment of this act, be used solely for the manufacturer 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 provides that brewery bottling houses established after the date of the enactment of this act shall 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 provides that notwithstanding such amendments, where established breweries and brewery bottling houses are, on the date of the enactment of this act, being used by the brewer for other purposes, such use may be continued by such brewer. The section further provides that the bottling house of any brewery shall not be used for the bottling of the product of any other brewery. A penalty of $50 is provided with respect to each day upon which any brewery or brewery bottling house is used contrary to the provisions of this section.

This amendment is considered necessary because of the danger to the revenue occasioned by the conduct of other businesses on brewery premises and in brewery bottling houses. Such business necessitates the presence in the brewery and brewery bottling houses of employees who have a part in the making or bottling of fermented malt liquors, and increases the danger of fraudulent removal of un-taxpaid malt liquors. During prohibition, many breweries built up other businesses in their brewery premises, and it was deemed equitable to permit such businesses to be continued. However, as to breweries

and brewery bottling houses established after the date of the enactment of this act, only the businesses enumerated in the section will be permitted.

This simply means that on and after the date this act becomes effective breweries can make beer, near beer, yeast, recover carbon dioxide and dry spent grain. It eliminates the soft drink business, after this act goes into effect, with respect to any new breweries, but it is not retroactive in effect.

Senator KING. Then a brewery, so-called, that now manufactures soda water and soft drinks and at the same time beer would not be affected by this bill?

Mr. HESTER. That is right.

Senator KING. But in the future a person that was manufacturing beer could not, on the same premises, manufacture soda water?

Mr. HESTER. That is right. I do not like to take up your time, Mr. Chairman, but I would like to have Mr. Berkshire, the Deputy Commissioner of Internal Revenue, make a statement for the record as to why this provision or this prohibition as to the future should be enacted into the law. May he do that?

Senator KING. I will be glad to have him do that.

Mr. BERKSHIRE. I do not know there is any necessity for any statement of that sort. We think it is rather apparent that it certainly does not lend itself in any way which would assist in the collection of the revenue, and you can conceive of many instances where it would confuse the proper supervision. There is too much business being negotiated around there. In a brewery establishment we know what to look for when we go in there, and if you conduct every other sort of business in there it would merely confuse an inspector going in there and attempting to make his inspection of the premises, with trucks driving in and out, with a lot of other employees than those who may be employed in connection with the ordinary brewery operation.

Mr. HESTER. It would permit the mixing of beer with soft drinks too.

Mr. BERKSHIRE. Yes; that is possible.

Mr. HESTER. They might bring nontaxed beer into the brewery and bottle it and take it out.

Mr. BERKSHIRE. It makes it very much easier to defraud the Government of its revenue, there is no doubt about that.

Senator BAILEY. I do not follow you on that. I do not see why a new brewery, as well as the old one, should not be allowed to have the use of the premises to make ice cream or anything else. I do not like to limit a man's use of his property.

Mr. BERKSHIRE. That always has been done. If we do it with respect to distilleries we should do it with respect to breweries. We certainly would not want in a cistern room, where distilled spirits are being drawn off, we would not want at the same time to have them manufacture other products and have all kinds of employees bottling Coca-Cola, manufacturing Coca-Cola, or have tanks of any kind of soft drinks in there, and confuse that with the process of distillation directly.

Senator BAILEY. If that is so why give the present breweries this privilege?

Mr. BERKSHIRE. We just merely did not want to confiscate an investment that was already made. During prohibition large amounts have been invested in converting the breweries, and it may be they are entitled to consideration.

Mr. HESTER. They were driven into this business.

Mr. BERKSHIRE. They were driven out of this business and into the other business.

Senator BAILEY. I would much rather let everybody have the same chance and be on the same footing. This makes a distinction based on use.

Mr. BERKSHIRE. We are rather inclined to the belief that there is something to our contentions that it does confuse the orderly supervision of these plants to have every kind of manufacturing take place there.

Senator BARKLEY. Does this privilege extend to any breweries who did not change the type of their product during prohibition days? Many of them were driven to manufacture other things during prohibition. Of course, they could not make beer, but they made ice cream and various kinds of drinks. I imagine they have resumed the manufacture of beer and some of them want to retain the nonintoxicating activities. Those who did not of course would not have to, but if anybody retained it you think they should be entitled to keep it. The object here is to permit them to go ahead and do it, but ultimately the whole thing would be simply a brewery in the future?

Mr. BERKSHIRE. That is correct.

Mr. HESTER. A penalty of $50 is provided with respect to each day upon which any brewery or brewery bottling house is used contrary to the provisions of this section.

Senator KING. Is that a civil penalty?

Mr. HESTER. Yes; it would be a civil penalty.

Senator KING. It would not be a crime?

Mr. HESTER. Oh, no.

Mr. BERKSHIRE. You would have to sue for it.

Senator BAILEY. On the top line it says "shall be fined."

Senator KING. What line were you referring to?

Senator BAILEY. The first line on page 31.

Mr. FORREST. It says "shall be subject to a penalty."

Senator BAILEY. The statement that it was a civil penalty is not correct, because a fine is not a civil penalty.

Senator KING. What does that mean?

Senator BAILEY. "Shall be fined not more than $50." That is not a civil penalty.

Mr. HESTER. That is correct. I made a misstatement then.

Senator BAILEY. You will correct that, then, will you?

Mr. HESTER. Yes.

Senator BAILEY. Make that a civil penalty.

Mr. HESTER. You are making the suggestion that that should be changed and made a civil penalty rather than a criminal penalty?

Senator BAILEY. Yes. He is not convicted of a crime.

Mr. HESTER. I am glad you corrected me on that.

Section 318 authorizes 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 revenues. 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 amends section 605 of the Revenue Act of 1918, and is a provision parallel to section 317, relating to the business of rectification.

This section provides that the premises of a rectifier shall be as described in his notice, and that it shall be used exclusively for the business of rectification, the bottling of liquors rectified by him thereon, and the bottling of wines and spirits without rectification. In the event that rectifying premises in existence on the date of the enactment of this act are being used for purposes other than those described above, that use may be continued for not more than 60 days after such date. A penalty similar to that contained in section 318 is prescribed.

Do you want any explanation on that?

Senator KING. No.

Mr. HESTER. 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 distilleries 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.

Section 321 requires every retail liquor dealer to keep records, in such form as he desires, of all intoxicating liquors 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.

Senator BAILEY. You intended there to impose a fine?

Mr. HESTER. Yes, sir. The only record he would have to keep, Senator Bailey, would be to keep a spindle and put his invoices on the spindle, if he wanted to. There are no elaborate records required at all.

Section 322 amends section 3237 of the Revised Statutes.

Senator BAILEY. Let me suggest something there. You state here "each willful violation of the provisions." Well, that may be a violation of the general provisions. Do you intend to say for each failure to preserve any record of an invoice, for instance, if I went to a man's place and found he lost one or he concealed one, would that failure to keep it be a violation?

Mr. HESTER. If it was willful and we could prove it.

Senator BAILEY. Why not put it down there? Why not make it specific?

Mr. HESTER. We will be glad to look into that.

Mr. BERKSHIRE. I think that is what it means.

Senator BAILEY. I would not think so. The language preceding it is rather general. The rule of the criminal law is you must be specific otherwise you cannot convict.

Senator BARKLEY. The last sentence provides for willful violation.

Senator BAILEY. Each willful violation to keep such records, invoices, or bills. That does not say any record, any invoice, or any bill.

Mr. HESTER. That is a good suggestion. 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.

Sections 323 and 324 amend subsections "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

Senator KING. Do you increase the present taxes?

Mr. HESTER. No, not at all. The amendments further provide 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. These amendments are considered desirable because hotels frequently serve large quantities of liquors for banquets, thereby incurring special tax as wholesale dealers.

The subsections are further amended by providing that wholesale and retail dealers in liquors and malt liquors who have paid special tax as such dealers shall not again be required to pay special taxes as such dealers on account of sales of fermented malt liquors to wholesale or retail dealers in liquors or malt liquors which are consummated at the purchasers' places of business covered by the stamps issued to the latter to denote the payment of the special tax. The purpose of these amendments is to permit wholesale or retail dealers in liquors or malt liquors who have paid the special tax as such dealers to sell fermented malt liquors to other wholesale or retail dealers at the latters' places of business without prior orders and without incurring additional special tax.

The situation is simply this: A wholesaler cannot sell off of his premises, and if he makes a sale to another wholesaler and goes down there to deliver some more liquors, the other wholesaler says, "I would like to have more than I ordered," he may make that sale there, under this amendment, without incurring a tax as a wholesaler at the point where he made the sale, and the retail dealers could do the same thing.

Senator BAILEY. Is it the idea here to draw a line between the retailer and wholesaler on five gallons?

Mr. HESTER. No, there is no line drawn between them.

Mr. FORREST. As to 5 gallons; yes, sir. Any person who sells the upper limit is a wholesaler.

Senator BAILEY. When one person sells to another person more than 5 gallons?

Mr. FORREST. He is a wholesaler.

Senator BAILEY. Does that mean one person in one day or one person at the same time?

Mr. FORREST. At the same time.

Senator BAILEY. That means he can sell him 4½ gallons as often as he pleases?

Mr. FORREST. Yes. It is just a matter of how much is purchased at the same time by one person.

Senator BAILEY. If I could sell 4½ gallons to you this morning at 10 o'clock, 4½ at 10:30, 4½ at 10:45, I could do right good business at the close of the day with you.

Mr. BERKSHIRE. We would probably question the transaction.

Senator BAILEY. I am not specially interested in it. You might fix that up. The people in my State can manufacture wine. Under your law they will all qualify as retailers. We will have no trouble in getting $25.

Mr. HESTER. We will have to go into that section.

Senator BARKLEY. There will be a line drawn between a retailer and a wholesaler. Any line is an arbitrary line. Suppose that there are circumstances where an evasion is in operation continuously, you have authority to look into that?

Mr. HESTER. That is correct, Senator.

Senator BAILEY. I think the language is rather general. Most of the criminal laws are construed strictly in favor of the defendant.

Senator KING. Has your experience demonstrated that there is no better line of demarcation than 5 gallons?

Mr. HESTER. That is correct.

Senator KING. That is the present law?

Mr. HESTER. Yes, and has been for many years.

Senator BAILEY. Five gallons to the same person on the same day. You have got the same time here.

Senator KING. Has there been any difficulty under the present law which fixes that?

Mr. HESTER. No. This is in the interest of the brewing industry and the Government believes that this amendment can be made without jeopardizing or endangering the revenue.

Senator KING. All right.

Mr. HESTER. 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 this amendment 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 (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.

Senator KING. On page 38, you do not think that a jump from $500 to $5,000, and with an increase in the maximum pentitentiary offense, is too severe?

Mr. HESTER. The situation is simply this, that the United States attorneys throughout the country will not prosecute under section 3450 because they say the penalty is not high enough.

Senator KING. Why will they not prosecute if the offense has been committed and they have evidence of the commission of the offense?

Mr. FORREST. Their statement is, Senator, that after they have prosecuted a case very vigorously a man may be only sentenced to pay a fine of $500 as the maximum, so they look around for another section of law under which they may prosecute him, for instance under the liquor taxing act of 1934, or under section 3296 of the Revised Statutes which has to do with the removal of distilled spirits from the distillery to a place other than the distillery warehouse authorized by law, but there you are under the difficulty that when you find the liquor you cannot prove what distillery it came from or what distillery warehouse it should have been removed to. It makes the proof a great deal more difficult.

Senator BAILEY. Isn't this to protect the licensed dealers?

Mr. FORREST. No, sir.

Senator BAILEY. As against the illicit dealers?

Mr. FORREST. It is to protect the Government against the tax cheater. Section 3450 provides whoever shall remove or conceal any article upon which there is a tax for the purpose of defrauding the Government of the tax, then these things shall happen, and that forfeiture shall be incurred.

Senator BARKLEY. Is this transportation across the State line?

Mr. FORREST. Any removal, deposit, or concealment.

Senator BAILEY. If a man makes liquor unlawfully, without a license, in my State and he moves it in any way he falls under this law?

Mr. FORREST. Not only under this law, but under section 3281, for carrying on the business of a distillery without giving the bond required by law, in an attempt to cheat the Government out of its tax. In seeking to move the upper limit of 3450, moving it upward, we went to 3296, which has to do with removal to a place other than the distillery warehouse, and we found the upper limit was $5,000 as to fine and imprisonment 3 years, and so we made it the same here.

Senator BAILEY. I am in agreement with you on that. You ought to increase the penalty with a view to bringing all the manufacturers under the law.

Mr. FORREST. I thought one of you asked the question.

Senator KING. Yes.

Mr. HESTER. Section 326 amends section 203 of the Liquor Taxing Act of 1934 so as 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.

Senator KING. Mr. Hester, you have a considerable manuscript before you and I suppose it would take some little time for you to conclude your statement.

We will adjourn subject to the call of the Chair and those who wish to be heard will keep in touch with the secretary, because the chairman of this subcommittee will keep in touch with him, and he will advise you as early as possible.

Senator KING. Senator Walsh is present, and desires to bring a matter to the attention of the subcommittee before we adjourn.

Senator WALSH. Mr. Chairman, I present a memorandum from Haffenreffer & Co., Inc., of Boston, with reference to H. R. 9185.

I shall appreciate the subcommittee's considering these statements and the suggestions made therein before action is taken with a view to reporting H. R. 9185.

(Memorandum referred to is as follows:)

A MEMORANDUM RELATIVE TO A PART OF BILL H. R. 9185

This memorandum is confined to that part of the bill which offers a refund of taxes to brewers who, after repeal, had paid the tax and bottled substantial quantities of their beverage which later they destroyed under Government supervision at the brewery premises because it was unmarketable. The law requires that the tax be paid by brewers prior to the beverage's being transferred to the bottling house and in the case of the unmarketable beer above referred to the tax was paid and thereafter the beverage was bottled and became unmarketable because of its condition. The present law offers no method of getting a refund for taxes paid in such circumstances. The taxes paid are often referred to as stamp taxes, as for instance the present Federal tax on malt beverages which is a tax of $5 a barrel; and where the beverage is sold in barrels it is represented by a stamp affixed to the barrel. Where it is sold in bottles the stamps are canceled and returned to the Government. The present law relating to the redemption of stamps is contained in 31 Statutes at Large 177, being a law enacted May 12, 1900, but this law is confined to a refund in respect of spoiled, destroyed and useless stamps.

The statute is as follows:

"SEC. 1424. *Redemption of stamps.*

"(a) *Authorization.*—The Commissioner, subject to regulations prescribed by the Secretary, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected."

The Government in its taxing acts has generally allowed for a refund of taxes improperly paid. This is true of the Federal income tax (Revenue Act of 1934, sec. 322) and of the estate tax, the gift tax, and other taxes such as the capital stock tax and the excess profits tax. It is also true as to the taxes for documentary stamps.

In the event a corporation, upon the issue of its shares, has through error affixed to the stub of the stock-certificate book and canceled stamps to a larger amount than required by law, it is always possible to obtain a refund of such excess.

Furthermore, special relief has been given to the manufacturers of tobacco products of a kind similar to that requested by the brewers. The statute granting this relief to the tobacco interests is 46 Stat. 1510 approved March 3, 1931, and is as follows:

"SEC. 898. *Redemption of stamps.*

"Internal-revenue stamps affixed to packages of tobacco, snuff, cigars, or cigarettes which, after removal from factory or customhouse for consumption or sale, the manufacturer or importer withdraws from the market, may, under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, be redeemed if issued after December 31, 1931, and if claim for their redemption is presented by the manufacturer or importer within three years after the year of issue as indicated by the number or symbol printed thereon by the Government, irrespective of the date of their purchase. Beginning with the year 1933, stamps of any issue shall not be sold until those of the previous year's issue have been disposed of or later than one year after the year of issue."

In justice there is no reason why the refund should not be allowed. Nothing of value has inured to the benefit of the brewer, in fact, he has lost the cost of brewing the beverage and of placing it in bottles. It would seem that although the excise tax on beer is laid upon the brewer at the time the beverage leaves the

brewery, nevertheless the privilege for which the excise is exacted is the privilege of making beverage which will ultimately find its way into commerce and be consumed by the public. Where it still remains on the brewery premises and is of a kind that cannot be marketed it seems to me that the brewer has not had the privilege for which the excise is exacted.

The right to refund should be limited so that no fraud will be perpetrated upon the Government and in the event the beverage is destroyed under Government supervision it would seem that the Government would be protected against fraudulent acts. In the case I have in mind all of the beverage was on the brewery premises and the Government inspector was present and satisfied himself that the product was unmarketable and remained on the premises until all of the beverage had been destroyed, that is, dumped into the sewer, and thereafter the Government agent made an affidavit of the facts which had occurred. The tax paid on such beverage seems to me to be unjustly paid and that the law should provide a means whereby it can be refunded.

At the present time the beers and ales are under much better control than they were immediately after prohibition was repealed and the possibility of refunds in the future amounting to any appreciable sum have accordingly been minimized. The repeal of prohibition created a tremendous demand forthwith for beers and ales and such of the brewers as then had breweries in operation tried to meet this demand and accordingly at the time some of the product was not as well under control as it is now. As will be recalled, the demand was very insistent and this in a way placed an obligation upon the brewers to satisfy it and the brewers in such circumstances should not be penalized where some of their product turned out to be unmarketable and they felt it ought to be destroyed, by having to pay the stamp taxes upon such product.

The taxes are severe, amounting to $5 a barrel of 31 gallons, and accordingly if any appreciable part of the product was unsalable the tax thereon was appreciable.

It seems to me therefore that that part of the bill which permits a refund for the stamp taxes paid in respect of beverage in the year 1933 which became unmarketable, not because of the lack of alcoholic content but because of some inherent quality, should be refunded to the brewer and the act should include relief for any time since the repeal of prohibition.

F. V. BARSTOW.

JANUARY 11, 1936.

(Whereupon, at 12 noon, the committee adjourned subject to the call of the Chair.)

LIQUOR TAX ADMINISTRATION ACT

TAXES ON WINES

WEDNESDAY, JANUARY 15, 1936

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

The subcommittee met, pursuant to call, at 10 a. m., in room 310 Senate Office Building, Senator William H. King presiding.

Present: Senators King (chairman), Barkley, Bailey, Clark, and Capper.

Also present: C. M. Hester, Stewart Berkshire, Norman C. Forrest, and Dr. O. V. Emery, of the Treasury Department; and L. H. Parker, chief of staff, and C. F. Stam, counsel, Joint Committee on Internal Revenue Taxation.

Senator KING. The committee will resume its hearing. You may proceed, Mr. Hester.

STATEMENT OF C. M. HESTER, TREASURY DEPARTMENT—Resumed

Mr. HESTER. Section 327 provides that full tax-paid fermented malt liquor lawfully removed from breweries to brewery bottling houses, which has become unsalable without fraud, connivance, or collusion on the part of the brewer, and without removal from such bottling houses, may be destroyed in the presence of a representative of the Bureau of Internal Revenue, and the tax paid thereon may be refunded to the brewer or a credit allowed therefor, provided that the brewer files a claim for such refund within 90 days after the destruction of such fermented malt liquor. The section is made retroactive to March 22, 1933, and provision is made that where such fermented malt liquor became unsalable and was destroyed before the date of enactment of this act, the brewer must file his claim within 90 days after such date. Since the tax-paid fermented malt liquor on which refund is sought may not be removed from the bottling house, and must be destroyed in the presence of an officer of the Internal Revenue, that would appear to be no opportunity for fraud upon the revenues. This was not a Treasury amendment, but a committee amendment.

Section 328 amends section 3246 of the Revised Statutes by providing that a wine maker 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 existing law such exemption is granted only to vinters 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, and the further reason that provision is made in the F. A. A. bill for the manufacture of citrus-fruit wines, 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 from the dregs or marc of percolation shall not again be used in the production of medicine or flavoring extracts for internal use to the possible injury of the users.

Section 329 amends the third paragraph of section 11 of title III of the National Prohibition Act to permit the tax-free withdrawal of alcohol for the use of clinics operated for charity and not for profit. Since the same privileges are extended to governmental agencies, both Federal and States, to scientific universities, laboratories using alcohol exclusively in scientific research, hospitals, and sanitariums, there is no reason why the same privilege should not be extended to charitable clinics as well.

Sections 330, 331, 332, and 333 were enacted into law by sections 11, 12, 14, and 15, respectively, of the Federal Alcohol Administration Act, approved August 29, 1935, Public, No. 401.

Senator KING. I do not quite understand. You say they were enacted into law?

Mr. HESTER. Yes; they were taken out of this bill when it was pending before the Ways and Means Committee and were inserted in the F. A. A. bill in the Senate and were enacted into law.

Senator KING. Those provisions ought not to be found in this bill.

Mr. HESTER. Well, they should now be stricken out.

Senator KING. Which ones are those?

Mr. HESTER. Sections 330, 331, 332, and 333. I made a mistake when I said they were taken out of this bill while it was pending before the Ways and Means Committee; they were inserted in the F. A. A. bill over here.

Senator KING. That would comprise then what sections?

Mr. HESTER. Sections 330, 331, 332, and 333. They should be dropped out of this bill.

Senator KING. Part of page 41, page 42, page 43, page 44, and page 45, page 46, and down to what page? Down to section 334 on page 47?

Mr. HESTER. That is right.

Senator KING. Were those provisions fully covered in the F. A. A. Act?

Mr. HESTER. Yes.

Senator KING. Are there any provisions in this act that are covered in the F. A. A. Act?

Mr. HESTER. Yes; there is one other. I was coming to that. It is section 402 of this bill, title IV. This section is now embodied in section 9 of the Federal Alcohol Administration Act, except that section 402 provides for selling forfeited liquors, whereas section 9

contains no such provision. The section that was incorporated in the Federal Alcohol Administration Act provided for the disposition of forfeited liquors, and as it appears in this bill it also provides that they may be sold. That has been eliminated from the section as enacted into law in the F. A. A. Act.

Senator KING. What suggestions have you with respect to section 334 of this bill?

Mr. HESTER. Section 334 amends section 618 (b) of the Revenue Act of 1918, so as to permit the production of citrus-fruit wines on bonded winery premises and authorizes the transportation and use of such citrus-fruit wines as distilling material, and that the alcohol removed from such wines if evaporated and not condensed and saved shall not be subject to tax, but if saved shall be subject to the same law as alcoholic liquors. Credit will be allowed on the tax due on any alcohol or brandy so saved to the amount of any tax paid upon distilled spirits or brandy used in the fortification of the liquor from which the same is saved.

Senator KING. In the hearings before the Ways and Means Committee was there opposition to the provision of section 334?

Mr. HESTER. I do not think that there was any opposition. I am satisfied there was no opposition.

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.

Section 336 repeals the tax imposed on grape concentrate under section 601 (c) of the Revenue Act of 1932. This section is a committee amendment.

Senator KING. Section 336?

Mr. HESTER. Yes; 336 is a committee amendment.

Under section 337 the amount of intoxicating liquor which may be imported free of customs duty by travelers returning from abroad is limited to 1 wine gallon. Returning travelers have been able, by the liberal exemption of $100 contained in the present tariff law, to import liquors from nearby and other foreign countries without payment of duty, and 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 lose 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), to include the value of the free amount in the ascertainment of the total $100 exemption, and to grant free importation of 1 wine gallon only once in 30 days as in the case of the general exemption in the present law.

Senator KING. Is that correct, "that up to but not exceeding $100 in value", for personal or household use, shall be admitted free of duty?

Mr. HESTER. That is the law today, and the customs court has held that you can bring in $100 worth of liquor.

Senator KING. Are you proposing to amend that?

Mr. HESTER. Yes. The Ways and Means Committee has limited it to 1 gallon. You can bring in $100 worth of merchandise free of

duty, but included in that merchandise there can only be 1 gallon of liquor.

Senator KING. Supposing you bring in no products other than distilled spirits?

Mr. HESTER. You would have to pay a duty on everything above 1 gallon. In other words, it reduces the $100 exemption to 1 gallon if you attempt to bring in $100 worth of liquor.

Senator KING. The amendment you speak of is not included in section 337 as found on page 48 of this bill. It reads:

Provided further, That up to but not exceeding $100 in value (including distilled spirits, wines, and malt liquors aggregating not more than one wine-gallon) * * * shall be admitted free of duty.—

You think that that provision limits or modifies the $100 provision?

Mr. HESTER. Yes.

Senator KING. Proceed.

Mr. HESTER. Title IV: Section 401 amends section 3354 of the Revised Statutes so as to eliminate the words "other vessel." As amended, the section permits the withdrawal of fermented malt liquors only in hogsheads, barrels, or kegs. The purpose of this amendment is identical with the first major purpose accomplished under section 313.

This section further amends section 3354 of the Revised Statutes by permitting the Commissioner of Internal Revenue to provide some manner for the payment of the tax on fermented malt liquor removed from a brewery bottling house by means of a pipe or conduit other than by the cancelation or defacement of stamps covering the amount of the tax. Under the present law the brewer turns over to the Government officer stamps, which the latter deface, 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 method of payment of the tax which will involve less expense to the Government.

Senator KING. There is nothing to indicate the character of regulations which should be promulgated. That is to say, there is a very wide discretion given to the Commissioner in that regard.

Mr. HESTER. Yes; that is true. At the present time beer goes from a brewery to the brewery bottling house through a pipe line, and there is a meter that checks that beer, the quantity of the beer as it goes from the brewery to the brewery bottling house. At the present time the brewery has to buy stamps, and the Government officer stands there and cancels those stamps.

The purpose of this is to eliminate the stamp business and permit the Commissioner to accept cash or certified check. Is there some other provision, Mr. Berkshire?

Mr. BERKSHIRE. No other mode of payment, without endangering the revenue. There may be a bushel of stamps standing there and they would be punching holes through them. The object of the stamp was to go on the package originally. When this other means of measuring beer was devised they only had one way of taxpaying it. There may be a thousand barrels calling for a thousand stamps.

He stands there and defaces these stamps. It just does not quite meet the present situation.

Mr. HESTER. The meter is a recent innovation, isn't it?

Mr. BERKSHIRE. That is right, since repeal; and it is working very satisfactorily to the industry and the Government.

Senator KING. Proceed.

Mr. HESTER. I have referred to section 402 as being incorporated in section 9 of the Federal Alcohol Administration Act.

Senator KING. That would mean, then, that beginning on line 21, page 49, of this bill, and extending to page 50, should be eliminated because they had incorporated it in the Federal Alcohol Act?

Mr. HESTER. That is right.

Senator KING. So we will run our pens through that section, with the subdivisions thereof.

Mr. HESTER. Yes.

Senator KING. Now, you proceed on page 51 of the bill.

Mr. HESTER. Yes, sir. Section 403 imposes an embargo upon the importation or bringing into the United States of any distilled spirits, wines, or fermented malt liquors produced, manufactured, rectified, sold, or marketed by any person against whom there has been instituted, or against whom process has been issued for the institution of, any proceeding by the United States, based upon a claim arising out of the customs or internal-revenue laws in connection with an alleged bringing into the United States of liquors, and of any liquors in which such person has any interest, and of any liquors produced, marketed, and so forth, by any plant or business outside of the United States in which he has a substantial interest, direct or indirect, until such person submits to the jurisdiction of the proper court and furnishes security to insure payment of the claim.

Senator KING. Is not this legislation retroactive? Is not this proposal retroactive?

Mr. HESTER. No; at least not in the sense that the section for the first time imposes customs duties and internal-revenue taxes on importations made during the prohibition era.

Senator KING. Are you punishing persons in the United States who, during the period of prohibition, manufactured or sold intoxicating liquors.

Mr. HESTER. Yes. This section is designed with the view to compelling foreigners and nonresidents to submit to the jurisdiction of our courts and adjudicate our tax claims against them. It makes no discrimination between American citizens and foreign citizens.

Senator KING. Are you collecting from American citizens millions of dollars for the millions of gallons of liquor that were manufactured and sold during the prohibition period? Are you collecting from them?

Mr. HESTER. Suits and investigations are under way to accomplish that very thing. The situation is simply this: Some of these people are outside of the jurisdiction of the United States, some American citizens are outside of the jurisdiction of our courts at this time, so this bill is designed to include them as well as foreigners. It makes no discrimination.

Senator KING. It seems to me there might be some objection to this provision, and it ought to be given very careful consideration.

Mr. HESTER. The situation is, Senator, that it is the duty of this Government, whenever the revenue has been defrauded, to investigate such cases and prosecute. That is exactly what the Government is doing at the present time. The difficulty is that our courts cannot get jurisdiction over these people.

Senator BAILEY. Let me call your attention to the fact that whoever drew this section drew the whole thing, consisting of a page and something more, in one sentence. It is very difficult for a man to understand one sentence that is a page long. Senator King, suppose you and I sit down and draw one that has got short sentences so a human being can understand.

Senator KING. Senator, may I say, without desiring to be critical, that many of the Federal acts are so mystifying and so mysterious that even the courts would not understand them.

Senator BAILEY. It is the very essence of the law that the people who have to live under it must be able to understand it. That is the theory of the law. I have read this twice, and I do not know whether it would hang me or not. I want to go over this. I do not understand it.

Senator KING. I think I understand the purpose of it. Suppose that some person in Mexico or Cuba during the reign of Volstead had shipped into the United States a barrel of liquor, your proposition is now that that person may not be permitted any liquor into the United States conformable to law unless he agrees, in advance, to submit himself to the jurisdiction of the court for alleged infractions of the prohibition law under the Volstead reign?

Mr. HESTER. To be frank with you, the bill would cover a case of that kind if the infraction also involved a violation of the internal-revenue and customs laws, but it is not designed primarily to deal with such an individual.

Senator KING. Well, it would. You do not differentiate between a corporation and an individual. Both are subject to the law, I suppose.

Mr. HESTER. That is true, but the individual at the present time would have to own a substantial interest in a liquor industry in a foreign country. This will be a civil proceeding to recover taxes.

Senator KING. I do not understand that you could differentiate between a corporation and an individual. Suppose an individual should come forward and say, "I lived in Cuba and I shipped to the United States a barrel of whisky in violation of the prohibition law. Other people were doing it, who were manufacturing it in the United States, and some American came down and I sold him a barrel of whisky which was shipped into the United States. I am a legitimate manufacturer of liquor here in Cuba, or Mexico, and I want to ship into the United States." You would not permit him to do that unless he agreed in advance to submit himself to the jurisdiction of the court with reference to this antecedent activity; is that right?

Mr. HESTER. If I may answer you this way, without being discourteous, that would be an extreme case.

Senator KING. It would include an individual of that kind?

Mr. HESTER. Yes; it would include an individual of that kind, if he had been a smuggler. He would have to be classified first as a smuggler and defrauder of our revenue.

Senator KING. Would not he be a smuggler? Would not he have violated the law?

Mr. HESTER. He might have sold his distilled spirits in Cuba not knowing it was to be shipped into the United States. He might not be a party to the illegal importation.

Senator KING. Suppose instead of it being an individual it is a corporation that shipped the barrel of liquor in; that corporation was still in existence and was carrying on a business under the authority of the Cuban Government, had a license so to do, then that corporation might not export to the United States any liquor without agreeing in advance to submit itself to the jurisdiction of our courts with reference to that antecedent act?

Mr. HESTER. The answer to your question is "yes."

Senator KING. Suppose that that corporation—returning again to the illustration from Cuba—should sell all of its property, franchise, and whatnot to another corporation or sell to other individuals; and those individuals, using the same corporate name, wanted to do business in the United States; would they be forbidden to do so without in advance submitting to the jurisdiction of the United States?

Mr. HESTER. The test under this section is ownership at the time it becomes effective as law.

Senator KING. However, if a corporation existing under the Volstead Act had shipped into the United States in violation of the act, and that corporation should, after the passage of this act, dispose of its assets—that is, sell all of its stock to other persons—would you pursue the corporation then under this act?

Mr. HESTER. Yes; you would, because that would be the same as disposing of assets in defraud of creditors, and the section is framed to meet just such a situation.

Senator BAILEY. I read here [reading]:

> Whenever the Secretary of the Treasury finds that there has been instituted, or that process has been issued for the institution of.

That is in the past tense, and anything that he may do in the future by way of setting up that connection; that is right, isn't it?

Mr. HESTER. Yes.

Senator BAILEY. That takes in all. Then it says, "Any proceeding." Of course, that is any proceeding for the assessment of taxes. That would include it, would it not?

Mr. HESTER. Yes; I think it would.

Senator BAILEY. I think so. An assessment of taxes is a proceeding.

Mr. HESTER. Pardon me just a minute. You say the assessment of the tax would be a proceeding?

Senator BAILEY. Yes.

Mr. HESTER. It would have to be a process issued out of the United States court.

Senator BAILEY. You can write it that way. "Any proceeding" would include almost anything. What you want is legal terms, not dictionary words. "Any proceeding" means anything. Let us get it down to the terms of the law. If you said "any proceeding in

court", you would define it, you would restrict it, but, "any proceeding" means anything, so far as I can understand it.

Mr. HESTER. Of course, that was our intention.

Senator BAILEY. Well, write your intention in the bill then. Put in "any proceeding in court."

Senator KING. But they do not limit it to that.

Senator BAILEY. This bill says—

whenever the Secretary of the Treasury finds that there has been instituted, or that process has been issued for the institution of, any proceeding by the United States, based upon a claim arising under the customs or internal-revenue laws in connection with an alleged importation or bringing into the United States of distilled spirits, wines, or fermented malt liquors, against any person—

that is an individual or corporation—

whether or not a resident of the United States, and that such person has, or at the date of the enactment of this act had—

that is your past tense, that is your retroactive provision—

a substantial interest, direct or indirect, in any plant, establishment, or business outside of the United States for the production, manufacture, rectification, selling, or marketing of distilled spirits, wines, or fermented malt liquors.

That is, any person that has a substantial interest. He might have some stock. Do you intend to take in the stockholder in this proceeding?

Mr. HESTER. Well, if he has a substantial interest in the concern, yes; that is true.

Senator BAILEY. You wrote it. Suppose you tell me what you mean.

Mr. HESTER. The substantial interest owner must also be the smuggler and defrauder.

Senator BAILEY. What?

Mr. HESTER. That is true.

Senator BAILEY. That means a stockholder?

Mr. HESTER. Yes, it does.

Senator BAILEY. All right. You can institute an action here against a stockholder. Some poor devil dies and has a little stock and he leaves it to his child, or his widow and you can issue an action against him. You say they have to have a substantial interest. Let us see how that works out. It says:

and that such person has, or at the date of the enactment of this act had, a substantial interest.

Then you say—

the Secretary shall publish such information.

How shall he publish that information? Tell me.

Mr. HESTER. He will publish that through Treasury bulletins that are sent out to all customs officials, importers, et cetera.

Senator BAILEY. Does he take the trouble and pains to send it to the stockholders? He just prints it in his bulletin here and nobody reads it.

Mr. HESTER. All importers get that, Senator.

Senator BAILEY. All the stockholders would have to get it now.

Mr. HESTER. Sir?

Senator BAILEY. All the stockholders would have to subscribe to your bulletin. This takes in everybody. The importer might get

it. I might own stock in some importing business and I would not know what to do.

Mr. HESTER. The words "substantial interest" are intended to refer only to the smuggler and defrauder.

Senator BAILEY. Better put it down that way, that you would have to have a direct interest then. A stockholder has an interest in the importation of liquor. Now you take the American institutions as they are, I could not say of my own knowledge but I have heard that there are a number of them that have plants in Canada and the United States. That is true, is it not?

Mr. HESTER. That is true.

Senator BAILEY. And their stock is sold on the market every day.

Mr. HESTER. That is true.

Senator BAILEY. If I buy the stock I notice that I could get into this situation, you could serve it on me. Suppose I bought 500 shares of stock in one of these corporations?

Mr. HESTER. That might not be a substantial interest.

Senator BAILEY. The trouble is you are not the judge. If you were I would be all right, but that thing passes immediately down here into the hands of the Bureau and God Almighty only knows who is the judge. It is certainly somebody who is not elected by the people or responsible to them, but somebody that is appointed. Let us make it definite.

Mr. HESTER. We would be very happy, if you could just spare the time to sit down with us and criticize it; we would be delighted to go into it with you.

Senator BAILEY. I am criticizing it here. It is before us now. I do not make any apology for that. I will sit down privately and go over it with you, but when you come to a meeting like this you should always come with the idea that we will be very frank with you.

Mr. HESTER. I appreciate that and I welcome your criticism.

Senator KING. Let me say frankly that retroactive legislation, retrospective measures, are to me rather abhorent, speaking generally. We have had laws, and they have had laws in Great Britain that were retroactive under which property would be taken away from the people and their lives often jeopardized.

Senator BAILEY. He goes on here and says, "shall publish such information as will, in his judgment", that is the judgment of the Secretary of the Treasury, "sufficiently identify such person and such plant." That brings the person out into the publication and describes his interest, I take it?

Mr. HESTER. That is right.

Senator BAILEY. All right. You are involving a lot of people in things that are perfectly innocent. It happens I do not own any of these stocks, but if I did I would not want my name published up there and spend the balance of my life trying to explain it. It further says, "after such publication no distilled spirits, wines, or fermented malt liquors produced, manufactured, rectified, sold, or marketed by such person, or in which he has any interest." Now, we have got your "interest" and "any interest" means one share of stock, down here on your line 19.

It further says, "or produced, manufactured, rectified, sold, or marketed, in or by any such plants, establishment, or business, shall

be imported or brought into the United States, unless and until such persons submit to the jurisdiction of the court of the United States." Now, you bring me right in there. I have got to go in and submit to the jurisdiction of the court. Then it goes on, "in which such proceeding has been instituted." Well, it might be a court off here in the State of Washington; I would have to go over there. It says, "in which such proceeding has been instituted." The Secretary can institute the proceeding where he pleases. It further says, "out of which such process has been issued, and, to secure payment of the claim", the person must secure the payment of the claim, not the institution but the person owning stock, "furnishes to the Secretary of the Treasury."

Mr. HESTER. The person who is sued, Senator.

Senator BAILEY. You say you can bring in any person. I do not think there is any question about that. You get down to any person with any interest. I will take you at your word, that you are going to make it "any substantial interest." Make it definite. Although a man has a thousand shares in a distillery that has plants across the line over here, you publish him on the ground that the distillery has not performed its duty as laid down by the Secretary of the Treasury, you institute a proceeding. Now, that person with a thousand shares is required to give security such as the Treasurer may require, but not in excess of double the amount of the claim. Well, the claim might be for $1,000,000. Suppose I have got 5,000 shares of stock, how helpless am I? What can I do?

Mr. HESTER. It is a question of fact for the court as to whether or not you have a substantial interest.

Senator BAILEY. That would not do a bit of good. I would not trust the court on that. I would not buy stock. I would not deal with it for that reason. Whether the interest is substantial or not might be a question for the jury—a question of fact. I think we have got to redraft this.

Mr. HESTER. We will be very happy to do that. You are not objecting to the policy?

Senator BAILEY. I am in favor of the United States getting the taxes, but I am not in favor of turning the Bureau loose on the American public any more than I have to.

Mr. HESTER. There is no such intention, Senator. We shall be very glad to review this with you.

Senator BARKLEY. Let me ask you about that. I am sorry I got into it after the discussion. Did you go into the necessity of having a double bond?

Senator BAILEY. No.

Senator BARKLEY. Why is it necessary, in order to guarantee that the Government should get its revenue, to have a bond double the amount of the claim?

Senator BAILEY. Whether there is a double or single bond, as the act is written you would get anybody in America who has a substantial interest. I know that these shares are sold on the stock exchange. I read the stock list every morning. I do not intend to vote for any act which would bring a whole lot of innocent stockholders into a situation like this. I will vote for an act that will require anybody on earth who sells liquor in America to pay the

taxes that the Government demands through an act of Congress, but I want it to be specific.

Mr. HESTER. It was our intention to limit the "proceeding" to the "substantial interest" owner, the smuggler and defrauder, and to publish only his name and that of the corporation in which he owns the "substantial interest", and further to require only the smuggler and defrauder to give security. And we shall redraft the section so as to spell out these intentions.

Senator BAILEY. Here is what I am driving at. I am tired of general law. I want specific laws which anybody can understand. We are dealing with 130,000.000 people in America and we have got to deal with them just as they are. I will be glad to sit down with you and go over it.

Mr. HESTER. Thank you; we shall be very happy if you will do so. With respect to your question, Senator Barkley, it was felt that that would be reasonable and should be left to the Secretary of the Treasury to determine what security the United States should have, but if it is objectionable to you, we will be glad to consider your objection.

Senator BARKLEY. That is a measure in order to secure the Government in its claim, which may be shaved down considerably after negotiations, after proceeding. You are going to require everybody to put up security, but not in excess of double the amount of the claim. Most of the bonds are given by surety companies anyway, they would be good for the amount of the claim. I do not see the necessity for doubling the bond. Do you make any distinction between companies that have property out of which a claim could be collected and those who have none?

Mr. HESTER. You mean in the United States?

Senator BARKLEY. Anybody. Suppose it is a foreign corporation or a domestic corporation, and they have enormous property out of which you could collect most any reasonable claim, do you think it is necessary to require them to give bond, as much as it would be necessary for a man who had nothing out of which you could make any money, or who was in debt?

Mr. HESTER. Of course if he were in the United States and had assets here and the court could get jurisdiction. It might not be necessary to exercise embargo power.

Senator BARKLEY. You require that they come into court and submit that to the court, so the court does get jurisdiction, otherwise they cannot continue to do business. There is no question of the jurisdiction if they do not do that. I do not think there is any obligation on the part of the Government to show them any particular favors, but if they come in voluntarily and make their appearance to the court and submit to its jurisdiction and have property out of which any claim you might assert could be collected, ought not the Secretary of the Treasury or somebody have the discretion to decide whether any bond at all should be given?

Mr. HESTER. That is a very good point that you have raised. It is a very good point.

Senator BARKLEY. The only object of the bond is to insure the collection. If they have got property, why require them to give bond?

Mr. HESTER. You have raised a good point, and we will consider it.

Senator BARKLEY. I wish you would consider that.

Mr. HESTER. With respect to requiring a bond in double the amount of the claim, that is a usual provision in many of our laws. For instance, today a brewer has to give a bond in triple the amount of his tax, and we are now suggesting that it be reduced to what, Mr. Berkshire?

Mr. BERKSHIRE. Equal to the beer tax.

Mr. HESTER. That was three times.

Mr. BERKSHIRE. It was three times, and we propose to make it equal to the tax.

Mr. HESTER. We are reducing that now.

Senator BARKLEY. I think that, really, the requirement for triple or double under ordinary circumstances is unnecessary.

Mr. HESTER. We will be very happy to consider that.

Senator BAILEY. Let us get that point clear. I do not want to be captious.

Mr. HESTER. You are not captious, Senator.

Senator BAILEY. I am not going to let you consider that we are captious. We write the law here.

Mr. HESTER. I did not mean to say that. I mean we are merely trying to come in here and be helpful.

Senator KING. Before leaving this provision, so that I may understand its full significance, recurring again to the suggestion which I made of a corporation, a valid corporation organized under the laws of Mexico or Cuba, engaging in a legitimate business under that law, a manufacturer, say, of rum in Cuba, or wine and liquors in Mexico, and during the prohibition days the company in Cuba sold liquor that came to the United States, and the company in Mexico sold liquor which came to the United States in violation of the law; in the meantime, 10 or 12 or a number of years have passed; that corporation has passed into the hands of other individuals, or the majority of the stock has passed into the hands of other individuals legitimately; now, would you require that that corporation, which is owned entirely by different persons from those who owned the stock under the prohibition days, or the majority of the stock, is now owned by entirely different individuals, or the minority is owned by entirely different individuals, would you require that corporation, under those circumstances, to submit itself to the jurisdiction of the court in the manner indicated in this bill before any business could be done?

Mr. HESTER. Well, the new corporation——

Senator KING. I am not suggesting a new corporation. I have given three illustrations: First, where all of the stock is passed into the hands of individuals, or the majority of the stock has passed into the hands of individuals, and the board is now entirely different, or a minority of the stock has been acquired by individuals in good faith, what would you do in each of those cases?

Mr. HESTER. If some of the old owners of the stock still retained their stock and that constituted a substantial interest when this act went into effect, and that company was engaged in the distilling business, until the person owning the substantial interest had come in here and submitted himself to the jurisdiction of the court his corporation could not import liquors into the United States.

Senator KING. Supposing he could not control the corporation; supposing his interest was such that he was unable to control its policies, are you going to penalize those who own the corporation now because some individual who was with the corporation under the prohibition days and that corporation then shipped some liquors into the United States in violation of our laws?

Mr. HESTER. If he still owned a substantial interest in it the embargo would be applied as against the liquors produced by that corporation.

Senator KING. Suppose, as an illustration, that Senator Bailey and Senator Barkley—if my colleagues will forgive me—and myself owned a corporation in Cuba, we three people shared it, and during the prohibition days we had manufactured some good rum and part of it found its way into the United States, we still were operating in Cuba and our corporation was still manufacturing rum, and suppose Senator Bailey and Senator Barkley wanted to do business in the United States, in good faith, they wanted to comply with the laws, and you refused to let the corporation do business because I refused to come in here and submit to the jurisdiction of the court as a stockholder, what would you say in that case?

Mr. HESTER. This section would cover that type of case, if you owned a substantial interest. The reason we use the words "substantial interest" is because we could not fix any certain percentage of stock, because it could be shifted.

Senator KING. I understand that. Your construction of the law is that it is retroactive in character. It would penalize innocent persons who had acquired stock in an innocent way, and for value, within recent years, you penalize them.

Senator BAILEY. Suppose you do not have any jurisdiction outside of the United States, you cannot have a domestication, you cannot have an agent and service, probably, but you could have an agent and service with a bond.

Mr. HESTER. Yes.

Senator BAILEY. All right. Now, you have an agent and service with a bond. You eliminate any precedent. You simply put the embargo on the foreign corporation that is not paying its proper taxes in this country.

Mr. HESTER. That is right.

Senator BAILEY. You require them to come in. You put the embargo on the institution that is doing this business, you require them to give a bond. If you have the situation of an agent and service with powers to give bond, then you are sufficiently protected, are you not?

Mr. HESTER. That is right.

Senator BAILEY. Let us draw it that way.

Mr. HESTER. Let me add this: This bill is designed primarily to cover the case of a small-time racketeer who has risen to be a great smuggler and is now out of business, or is going out of business, so far as production is concerned, but he has all of his assets in American-type whisky (only salable in the United States) and he is sending it into this country. He is selling it, it is being purchased in this country, the title passing in the foreign country. He is dissipating his assets, sending them in here in the form of American-type liquor in competition with the domestic product.

Senator BAILEY. He is shipping it across the border, is he not?

Mr. HESTER. Yes.

Senator BAILEY. Does not it fall, in the first place, under the tariff law?

Mr. HESTER. He has to pay his customs duties, that is true.

Senator BAILEY. If he does that, and they are his assets and you have a claim against them, you can seize those assets, because immediately they pass the border you can levy upon them; they are then domestic.

Mr. HESTER. The trouble is he handles it in such a way that the whole transaction takes place in a foreign country.

Senator BAILEY. The goods cross the border.

Mr. HESTER. That is true; but when they cross they belong to the American concern and the American concern pays the duty, the importer pays the duty.

Senator BAILEY. The moment he pays the duty you have the goods identified, then.

Mr. HESTER. That is true, but we are unable to reach those goods.

Senator KING. Why?

Mr. HESTER. It has been tried, and we have not been able to do that, because they belong to the American concern.

Senator BAILEY. He may be made to declare where he got it.

Mr. HESTER. We are able to follow them; we know where they are coming from.

Senator BAILEY. Then we could enact a law so that you could reach the original seller, upon notice to the buyer that he buy under caveat emptor with respect to the goods in this country.

Senator KING. That is not the case he is driving at now, as I understand. Mr. Hester, it is a case like this: Suppose during prohibition days I lived in Canada, or I lived in the United States but I manufactured liquor in Canada and shipped it in violation of the law to the United States and I am continuing now my business, you will refuse to permit me to ship into the United States unless I come in and submit myself to the jurisdiction of the court, so that you may not only collect upon the liquor that is coming in now but you may collect on liquor which I may have brought into the United States 10, 12, or 15 years ago.

Mr. HESTER. That is correct.

Senator KING. You want to make it retroactive.

Mr. HESTER. Senator, I do not want to irritate you about that, about using the word "retroactive."

Senator KING. I just want to get the implication of this bill.

Mr. HESTER. You do not take the position, do you, that legally this is retroactive?

Senator KING. I am not disposed to have you interrogate me as to what position I take. I say some features of this bill are retroactive, if I understand you correctly.

Senator BARKLEY. Would this apply to a case where a legitimate manufacturer in any foreign country—it may be embarrassing to mention particular countries, but let us take Canada or Mexico—would this apply to legitimate manufacturers that were substantial manufacturers insofar as their country was concerned, suppose they did not send across the border directly to the United States, but

suppose they sold their product to concerns or persons in another foreign country and the title passed to the purchaser in the foreign country, but in a roundabout way that liquor found its way into the United States from the second foreign country, or from any foreign country other than the one in which it was manufactured? Of course, you might assert a claim against the manufacturer if you could prove that there was a conspiracy between him and the purchaser from him who ordered it to be brought into this country. You might assert a claim for taxes, or import duties, or whatever your claim might consist of.

In that case would this provision apply so that it would affect the original manufacturer of the product against whom you might assert a claim, hoping you could prove a direct connection, and he was using some stool pigeon in the foreign country as his agent to bring it into the United States in violation of law? Would you, in that sort of a case, want to require the original manufacturer to give this bond to secure the payment of the tax, if you could prove ultimately that it knew it went to the United States and it was simply guilty of a subterfuge in using some second purchaser denominated as the original purchase, I might say, and that original purchaser brought it into the United States in violation of law? How would this apply to that situation?

Mr. HESTER. Is your premise that the original manufacturer did not smuggle anything in during prohibition?

Senator BARKLEY. Yes.

Mr. HESTER. Then he would not be affected for the simple reason that the embargo would be placed upon the concern in the foreign country in which the defendant named in the proceeding had a substantial interest. On the other hand, if the company you referred to did not do any smuggling during prohibition, but the individual or corporation who is being sued in the United States owned a substantial interest in that concern, there would be an embargo placed upon its liquor imports.

Senator BARKLEY. Of course, there might be a very strong suspicion that any manufacturer of liquor in a foreign country whose sales increased very materially during prohibition to somebody in another foreign country, which ultimately go into the United States, there might be suspicion that they knew their product would get here, but unless they were parties actually to the smuggling and had knowledge of it and conspired to promote it, I am wondering whether you would feel justified in embargoing such original manufacturer on the suspicion that he did have some connection, although it could not be proved that he actually directly smuggled liquor into this country.

Mr. HESTER. Of course it would be an abuse of authority by an executive officer if he did not have some very good basis for acting, and in the case that you cite it would appear that there would not be any basis for action.

Senator BARKLEY. Suppose the actual smuggler did not have any interest at all in the concern that manufactured the liquor?

Mr. HESTER. If the actual smuggler did not have any interest in that concern then there would be no embargo at all.

Senator BAILEY. You asked Senator King whether he took a certain view in reference to this section?

Mr. HESTER. I realize now that I should not have made the inquiry.

Senator BAILEY. I will say, if you ask me what view I take, I would not quarrel with you about that. You asked if Senator King took the view that this section was retroactive. Don't you take the view that it is retroactive?

Mr. HESTER. Well, it is retroactive in the sense that it affords a remedy to compel persons to submit to the jurisdiction of our courts on old claims.

Senator BARKLEY. You could not bring a suit on a claim that did not exist.

Senator BAILEY. Let me call your attention to the language.

Mr. HESTER. I see the point you have in mind. I will answer your question in the affirmative.

Senator BAILEY. That you do take the view that it is retroactive?

Mr. HESTER. Yes; it applies to past as well as future claims, and therefore is retroactive and prospective in operation.

Senator BAILEY. I can go back as many years as the tax is unpaid. I do not recall that there is any statute of limitation upon taxes in the United States, so it could go back for 50 years.

Mr. BERKSHIRE. Not where there is a fraud; there is no statute.

Senator BAILEY. Is there a statute about anything? I happen to know of an income-tax case now pending in which the man failed to pay his income taxes or make a return for 17 years, but he is going to the penitentiary and the Government is going to take his estate for the taxes. In the very nature of things the Government is not going to bar the collection of taxes by statute. There is no statute, no bar by statute for failure to pay taxes. Do you know of any?

Mr. PARKER. The statute starts to run when he files the return.

Senator BAILEY. This would be a case where there was no tax paid. Do you know of any instance right here now in the liquor tax—is there a statute in existence that bars a tax at any time or after any period?

Mr. BERKSHIRE. There is a statute which averts the assessment of the tax after a certain length of time if there is no fraud.

Mr. FORREST. Section 1109 of the Revenue Act of 1926 seems to assert you may be assessed at any time. May I read it?

Senator KING. Yes.

Mr. FORREST (reading):

> In case of a false or fraudulent return with intent to evade the tax or the failure to file a return within the time required by law or any willful attempt in any manner to defeat or evade the tax, the tax may be assessed or proceeding in court for the collection of such tax may be begun without assessment at any time.

Senator BAILEY. That is what I thought.

Senator BARKLEY. I thought we had some limitation fixed in one of the recent revenue acts with respect to going into income-tax reports. We had a 5-year limitation on something. What was that? I think after the returns were filed we made a limitation of 5 years to go back and investigate them.

Senator BAILEY. You can get the difference there. A man comes in and files his return, he puts the Government on notice, and the Government does not act within 5 years. That is not the case here. This is the case of failing to pay the tax generally.

Mr. STAM. That law does not apply to the income tax.

Senator BAILEY. I just brought that in to compare this with the income-tax statement. If I may just say one word, it is retroactive for an unlimited time in the past.

Mr. HESTER. That is right.

Senator BAILEY. I do not see why you are so astonished because our chairman, Senator King, might have thought it was retroactive.

Mr. HESTER. I realize now that I should not have propounded the question, and I apologize for having done so.

Senator KING. Take a corporation in Cuba that manufactured rum and sold it to A and B and C, individuals, and A, B, and C brought it into the United States in violation of the Volstead Act; as I understood you, that corporation might not do business here unless it would come in and voluntarily submit itself to the jurisdiction of the court with respect to claims which you might assess, which you might have asserted in the past or you might assess in the future?

Mr. HESTER. No, Senator. We would have claims against A, B, and C.

Senator KING. I am speaking about the corporation.

Mr. HESTER. We would have claims against A, B, and C, but unless A, B, and C had a substantial interest in the corporation we could not place an embargo on the liquor imports of that corporation.

Senator KING. Even though that corporation may have suspected that A, B, and C intended to transport that liquor to the United States?

Mr. HESTER. If the claim was also against the corporation in addition to A, B, and C, we could impose the embargo. Otherwise we could not.

Senator BARKLEY. You could not substantiate a claim against the original corporation unless you showed collusion.

Mr. HESTER. Yes; we would have to show collusion in the smuggling.

Senator KING. Even in advance of the trial, in advance of proving that the corporation had knowledge that the liquor was to be shipped into the United States, you would bar the corporation from coming into the United States, in advance of proving in the court that it did sell to A, B, and C, knowing or suspecting that A, B, and C intended to ship the liquor into the United States?

Mr. HESTER. If the results of investigation indicated that the corporation was involved, then the answer to your question would be "yes."

Senator KING. Then because of some investigation which some agent had made, an investigation that perhaps was imperfect, an investigation perhaps prompted by a zealous desire to establish himself in the good graces of the Department, and perhaps he had omitted to get all the facts but got some suspicious circumstances, you would proceed and debar the corporation, though perhaps a full investigation would indicate it was not in any way amenable to the law?

Mr. HESTER. Whether or not the embargo would be placed upon it would be for the Secretary of the Treasury to decide, and it would be an abuse of discretion on his part to bar a corporation from importing liquor, placing an embargo on the liquor imports of the corporation, unless he was satisfied the corporation was the smuggler and a "proceeding" had been instituted against it, or that the smuggler owned a "substantial interest" in such corporation.

Senator KING. What remedy would the corporation have? Supposing there was a gross abuse of discretion based upon some fallacious report, an untrue report by some zealous officer of the Government?

Mr. HESTER. A person always has a remedy in such a case.

Senator KING. What remedy would the corporation in Cuba have?

Mr. HESTER. It could petition the Supreme Court of the District of Columbia to review the action of the Secretary of the Treasury to determine whether or not there had been an arbitrary or capricious exercise of the discretionary power invested in him by law.

Senator BAILEY. In the meantime the person would have an embargo placed against him under this act.

Mr. HESTER. That is true.

Senator BAILEY. We will rewrite this.

Senator KING. Proceed with the next. Have you any questions to ask on this bill, Senator?

Senator BAILEY. I would like to say that our friends the representatives of the Treasury Department should rewrite this section in line with the discussion this morning. We will be glad to consider it further.

Senator KING. Senator Capper, have you any questions to propound?

Senator CAPPER. No.

Senator KING. Have the Treasury officials who are here anything further to submit to the committee?

Mr. HESTER. In conclusion I would like to point out that the provisions of section 403 are not without precedent. In fact, the policy embodied in those provisions is closely comparable to that expressed in provisions which have long been in force, having appeared in the Tariff Act of 1922 and in modified form in the Tariff Act of 1913. These are contained in section 511 of the Tariff Act of 1930, which provides as follows [reading]:

> If any person importing merchandise into the United States or dealing in imported merchandise fails, at the request of the Secretary of the Treasury, or an appraiser, or person acting as appraiser, or a collector, or the United States Customs Court, or a judge of such court, as the case may be, to permit a duly accredited officer of the United States to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise, then while such failure continues the Secretary of the Treasury, under regulations prescribed by him, (1) shall prohibit the importation of merchandise into the United States by or for the account of such person, and (2) shall instruct the collectors to withhold delivery of merchandise imported by or for the account of such person. If such failure continues for a period of one year from the date of such instructions the collector shall cause the merchandise, unless previously exported, to be sold at public auction as in the case of forfeited merchandise.

The purpose of section 511 is to impose an embargo against any importer who fails to furnish the Secretary of the Treasury, or other

proper officer, with information contained in his books, papers, or records which is necessary for the purpose of ascertaining the value or classification of any merchandise imported by him. It is to be noticed that the embargo relates not only to merchandise, the value and classification of which is under consideration, but any merchandise imported by the importer or for his account. The penalty imposed even relates to merchandise which has been previously imported, but which remains under customs control. It can thus be seen that Congress has over a period of years adhered to a policy of using an embargo as a penalty where an importer refuses to permit the ascertainment of customs duties properly due the United States. Section 403 is based on the very same principle. An embargo is directed against any person who refuses to permit the United States to obtain an adjudication in a proper judicial proceeding of the amount of customs duties and internal-revenue taxes owed by such person. Although it is true that the provisions of section 403 also require that security be given for the payment of a claim asserted by the United States, while such provision is not contained in section 511 of the tariff act, nevertheless it would seem that the absence of such provision in that section may be readily explained by the fact that the United States is amply protected by its lien on any imported merchandise in its custody, the duties on which remain unpaid.

The use of an embargo as a device for protecting the interests of the United States is also to be found in section 338 (b) of the Tariff Act of 1930, which reads as follows:

> If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has, after the issuance of a proclamation as authorized in subdivision (a) of this section, maintained or increased its said discriminations against the commerce of the United States, the President is hereby authorized, if he deems it consistent with the interests of the United States, to issue a further proclamation directing that such products of said country or such articles imported in its vessels as he shall deem consistent with the public interests shall be excluded from importation into the United States.

It will be observed that under either of the provisions just referred to, the rights and interests of innocent parties may be affected. But this result is justifiable on the ground that the interests of the United States should be afforded protection even though incidental hardship may result to innocent parties. The same justification is present with respect to the provisions of section 403 (a).

Moreover, unless section 403 is enacted into law and foreign corporations are thereby compelled to adjudicate the revenue claims of this country against them, innocent holders of stocks in such corporations will profit at the expense of the revenue of the United States. Obviously, foreign corporations established during prohibition for the purpose of manufacturing solely American-type whisky and selling it in the United States without the payment of customs duties and internal-revenue taxes, and which are no longer engaged in the business of manufacturing whisky but have all of their assets invested in American-type whisky manufactured by them during prohibition (which is salable only in the United States), should not be permitted to sell such whisky in the United States without agreeing to submit to the jurisdiction of our courts to adjudicate our tax claims against them, notwithstanding some of

the stockholders in such corporations may be innocent holders of stock.

Senator KING. Thank you very much, gentlemen. Are there any witnesses here who desire to be heard this morning?

Mr. MCCABE. Mr. Chairman, we would prefer, if it meets with the pleasure of the committee, to have Mr. Blanchard make his statement first.

STATEMENT OF GEORGE BLANCHARD, UNITED STATES BREWERS' ASSOCIATION, WASHINGTON, D. C.

Mr. BLANCHARD. Mr. Chairman, referring to one statement made by Mr. Hester on Monday relative to the agreement of the industry, so far as the malt-beverage end of it is concerned, wherein he stated that he would be much surprised if the industry involved in this bill did not come forward with a statement that they were in agreement with the provisions of the bill.

Now, in the main, I might say on behalf of the association that I represent that we are in agreement with the main purpose of the bill but decidedly in disagreement with some features. In that connection, may I state very briefly that we desire to do everything that is possible to protect the revenues of the United States, not only from the standpoint of the Government but from the competitive standpoint in our own industry, which is highly competitive. It is necessary that a brewer in a competitive field know that his competitor is paying his taxes.

By the same token, however, nothing should be contained in this bill unless it is essential and necessary to protect the revenues of the United States.

I desire to point out some very important features that would place a serious burden upon the industry if enacted into law, and, at the same time, those features are not necessary in order to protect the revenues of the United States.

Now, there is a rather minor matter, and it does not concern the revenues of the United States; but I call your attention to the title of the bill, where it says "to insure the collection of the revenue on intoxicating liquor"; we suggest, after the word "intoxicating", the addition of the words "and fermented malt beverages."

Senator BARKLEY. Why do you distinguish it? Is it your contention that beer is not intoxicating?

Mr. BLANCHARD. It is our contention that fermented malt beverages go into an entirely different class. When you go into any establishment and ask for a drink of liquor, they never give you beer.

Senator BARKLEY. Intoxicating liquor is a general term applying to all liquors, and beer is a liquor that is intoxicating. You do not mean to contend that beer is not intoxicating, do you?

Mr. BLANCHARD. Yes. I contend further, Senator, that taxes are not levied upon intoxicating liquors as such. If you levy a tax upon an intoxicating beverage you designate it not as such intoxicating liquor but as distilled spirits of a certain class, rectified liquor, wine, or malt beverages.

Senator BARKLEY. I agree that there is a different type of liquor and it may be all right to mention it, certainly, but I am not going to

agree to write any language in here that presumes that beer is not intoxicating liquor, because that is not true.

Senator BAILEY. Did not the Senate vote that way?

Senator BARKLEY. They voted 3.2. That is not beer.

Mr. BLANCHARD. Senator, may I say this, in that connection, we are not attempting to define in this act, we are not attempting to write in this act that beer may not be intoxicating, but there are certain types of beer which we do seriously contend are not intoxicating.

Senator BARKLEY. That may be true. As a matter of fact, the Supreme Court of Wisconsin, and I think they ought to know, held beer to be intoxicating, and that decision was upheld by the Supreme Court of the United States.

Mr. BLANCHARD. There are various beers, however, that have a lesser alcoholic content.

Senator BARKLEY. I wanted to get that clear. As far as I am concerned, I would not be willing to write into law a suggestion that beer is nonintoxicating liquor. Some beer may be, near beer may be, but that is not beer. There is beer that is intoxicating, we all know that.

Mr. BLANCHARD. That is correct, I agree with you thoroughly.

Senator BAILEY. So there would be no objection to making a change then to describe the whole business?

Senator BARKLEY. I do not think the title makes much difference.

Senator BAILEY. I do not either.

Mr. BLANCHARD. I make the same suggestion in section 1, "this act may be cited as the 'Liquor Tax Administration Act,'" I suggest the words "and malt beverage" be inserted after the word "liquor" in the first line of section 1.

Now, if you will turn to page 28, I will discuss, in connection with that section, which is section 316 of the bill, some very important matters. This bill fixes a minimum bond requirement in the following language:

> Every brewer, on filing notice as provided by law of his intention to commence or continue business, shall execute a bond to the United States in such penal sum, in proportion to the production capacity of the plant, as the Secretary of the Treasury shall by regulations prescribe, but in no event shall such sum be less than $1,000.

May I respectfully submit to you that this should also fix a maximum bond, and my suggestion is that that be placed at $100,000, with the additional protection to the Government as follows——

Senator KING. Isn't that a rather heavy bond?

Mr. BLANCHARD. Not in view of the fact that the Treasury may prescribe the amount within the limit of $1,000, and if my suggestion is adopted, $100,000.

Senator KING. What is the maximum that has been required by the Treasury?

Mr. BLANCHARD. Three times the amount of the monthly production tax, and you can readily understand, Senator, that some breweries with a large capacity would have a greater liability to the Government than a small brewery where the limited capacity may run as low as 25,000 barrels per year.

Senator BAILEY. We have the right under this act to seize the property of the brewery upon the failure of paying the taxes.

Mr. BLANCHARD. That is correct. There is a forfeiture provision.

Senator BAILEY. That is true of the provisions in any State tax.

Mr. BLANCHARD. Probably.

Senator BARKLEY. Is there any bond required now?

Mr. BLANCHARD. Yes.

Senator BARKLEY. What is the maximum that has been required of any concern?

Mr. BLANCHARD. I will give you the language.

Senator KING. In the past what has it been?

Mr. BLANCHARD. Not in excess of $100,000, under the present regulation.

Senator BAILEY. What we wish is to get a bond sufficient to insure the collection of the tax in any event.

Mr. BLANCHARD. That is correct. May I read the langauge which I propose? I think you will see it does the job thoroughly.

Senator KING. Go ahead.

Mr. BLANCHARD (reading):

Provided, That if under such regulations, the penal sum of the bond exceeds $100,000, the brewer shall give bond to cover such excess, which additional bond may be given without surety or collateral security.

In other words, that the Treasury may fix a limit somewhere between the $1,000 minimum and $100,000 maximum. Then if the liability exceeds $100,000 the Treasury may call upon the taxpayer to give his own bond, but not with surety. You will see my purpose. We would like to fix the maximum surety features of this bond in order that we may not be up against the difficulty that we have in paying the surety bonds. It is a matter of expense to the brewing industry, and we are perfectly willing to give all of the bond that the Treasury may require to protect the revenues of the United States, but to fix the limit of the surety only.

Senator BAILEY. Are you not running into a penal section there, against any officer of the Government having anything to do with the securing of a bond?

Mr. BLANCHARD. Yes.

Senator BAILEY. Or the directing from whom the bond shall be purchased?

Mr. BLANCHARD. Yes.

Senator BAILEY. I think we ought to have it in there.

Senator KING. Is not $100,000 rather excessive?

Mr. BLANCHARD. It would be for a small brewery, but we are perfectly willing to take our chances on that, because we know the Treasury Department will not exact an exorbitant bond. We are not worrying about that feature of it. In other words, a small production brewery will naturally have a smaller bond, but there are some breweries in the United States where $100,000, at certain seasons of the year, is not at all excessive, and will be required.

Senator BARKLEY. Would not the fact that the tax might amount to more than $100,000, or the liability, and therefore a bond for a larger sum is required—would not that carry with it the implication that it ought to be assured?

Mr. BLANCHARD. Ordinarily I might say "yes", except for the fact that the brewery itself must give a bond to the Treasury for that excess.

Senator BARKLEY. In other words, in a case where the Government had to proceed to collect the tax, the Government would rely on the bond of the surety for the first $100,000 and then on the brewer for all above that without security?

Mr. BLANCHARD. That is right; and if the brewer could not give a satisfactory bond beyond $100,000, of course, the bond would be rejected.

Senator BARKLEY. Your language would give the brewer the privilege of giving his own bond, and the statute would fix the kind of bond the brewer would give?

Mr. BLANCHARD. Up to $100,000 surety, and beyond that the statute would fix the amount to be given by the brewery.

Senator BARKLEY. Would the solvency of the brewery itself enter into the question of whether he should be allowed to give a bond without security?

Mr. BLANCHARD. The Secretary of the Treasury could always use discretion in fixing the amount.

Senator BAILEY. How would it affect the credit of the institutions that you represent if an inadequate bond were given? That would mean taking the property and destroying the credit, would it not?

Mr. BLANCHARD. That is true.

Senator BAILEY. It would be the effect of this bill to do that, would it not?

Mr. BLANCHARD. Under the forfeiture provision.

Senator BAILEY. So the banks loaning the money would know that they can look to the property for security?

Mr. BLANCHARD. That is true.

Senator BARKLEY. How many breweries are there in the country, without naming them, who would be liable to a tax that would require in excess of a $100,000 bond to secure its payment?

Mr. BLANCHARD. Possibly 8 or 10.

Senator KING. Well, at any one time would a brewery ordinarily owe more than $100,000 tax?

Mr. BLANCHARD. No, Senator.

Senator KING. It pays the tax how often?

Mr. BLANCHARD. They buy their stamps; they have them on hand in advance for all their immediate production requirements.

Senator BAILEY. They are paid instantly, then?

Mr. BLANCHARD. Beg pardon, sir?

Senator BAILEY. They are paid instantly; they cannot dispose of the goods unless they have paid the tax.

Mr. BLANCHARD. That is it exactly. The tax is all paid prior to the release of the goods.

Senator BAILEY. It is like the tobacco tax. You have to have the stamp to sell the goods.

Senator KING. So that they are not in default at any time?

Mr. BLANCHARD. It is only that the brewery might attempt to evade the tax by using stamps over or not stamping beer. The history of the brewing industry for years and years indicates there has never been any more than a negligible amount of that. There has never been any difficulty about that, so far as the Government was concerned, in collecting the revenue.

Senator KING. The point I had in mind was, having prepaid the amount, the brewery is never in default.

Mr. BLANCHARD. That is true. When I said the liability in a very few instances could amount to $100,000, of course, I was taking the extreme case of a brewer putting cut, under large production, the amount of beer that might mean a tax up to that amount. I will say frankly that $100,000 will at all times protect the revenue of the United States.

Now, in the same paragraph, on page 28, line 12, you find the words [reading]:

once in every four years, and whenever required so to do by the Secretary of the Treasury, or such officer as may be designated by the Secretary of the Treasury, the brewer shall execute a new bond in the penal sum fixed in this section.

I want to suggest striking out the words, "once in every 4 years", so that if a bond is satisfactory at the end of the 4-year period after it is given it shall not be necessary for the brewer to give a new bond, because we have the language, "whenever required so to do." It might be every week, if the Secretary of the Treasury thought it necessary.

Senator BARKLEY. I suppose it was put in there to cover the case where the security had become insufficient during that period. Suppose the surety company goes out of business or becomes insolvent, would you still require the Government to keep the bond in force 4 years?

Mr. BLANCHARD. That is protected by the following language, "and whenever required so to do by the Secretary of Treasury", so if a surety company went bad today the Secretary of the Treasury could order a bond tomorrow.

Senator BARKLEY. You wanted to strike that out.

Mr. BLANCHARD. No; just the words "once in every 4 years."

Senator BARKLEY. Oh, yes.

Senator KING. So the Treasurer could require a new bond every day if he wanted to, under the language you are submitting?

Mr. BLANCHARD. That is right.

Senator KING [reading:]

Whenever required so to do by the Secretary of the Treasury, or such officer as may be designated by the Secretary of the Treasury, the brewer shall execute a new bond.

Mr. BLANCHARD. To get this absolutely correct, "once in every 4 years and" are the words to be striken.

Senator KING. What is your next suggestion?

Mr. BLANCHARD. Page 30, the use of the brewery premises.

Senator KING. What line?

Mr. BLANCHARD. It starts in line 3, Senator. May I read the suggested language in my proposed amendment?

Senator BARKLEY. Are you substituting a whole section or just a part of it?

Mr. BLANCHARD. Practically a whole section. I will correct that. It is a part of it, with some modifications. My amendment would read as follows: This is an amendment to section 317 (d) [reading]:

The brewery premises shall consist of the land and building described in the brewer's notice and shall be used solely for the purposes of manufacturing beer, larger beer, ale, porter, and similar fermented malt liquors, cereal beverages containing less than one-half of 1 percent of alcohol by volume, vitamins, ice, malt——

Senator KING. Did you eliminate the word "and", "vitamins and ice"?

Mr. BLANCHARD. I struck out the word "and."

Senator KING. You left out the word "and."

Mr. BLANCHARD. Yes; and I have inserted vitamins, ice malt syrup, malt; of drying spent grain, then I struck out the words "from the brewery", "and recovering, and processing", "and processing" is new, "carbon dioxide and yeast"——

Senator KING. "And recovering" you struck out?

Mr. BLANCHARD. No; I left that in, and I add the words "and processing."

Senator BAILEY. You have broadened the statute so far.

Mr. BLANCHARD. Here is new language—

of storing bottles, packages, and supplies necessary or incidental to all such manufacture; for the purpose of manufacturing such other commodities or byproducts as may be incidental to the manufacture of any such fermented malt liquors.

Senator KING. What kind of product is that? I did not get the preceding words.

Mr. BLANCHARD. Byproducts.

Senator KING. Is that the only amendment you suggest?

Mr. BLANCHARD. No; I am going to suggest the striking out of everything with reference to the bottling houses.

Senator BARKELEY. Bottling, did you say?

Mr. BLANCHARD. Bottling. For this reason, that the bottling house is separate and distinct from the brewery premises. The brewery premises are defined in the notice which the brewer gives. It is referred to as 27 (c), and the bottling house is not a part of the technical brewery premises. Before any beer can be bottled in the bottling house, which is separate from the brewery premises, it is all tax-paid, and when it once reaches the bottling house it must of necessity be tax-paid. It goes either through meters, which are under the lock and key of the Gevernment inspectors, or from Government storage tanks, which are likewise under the lock and key of the Government inspectors. So that once fermented malt beverages reach the bottling house they are tax-paid, and there is no opportunity for tax evasion. The history of the brewing industry shows that there never has been a case where the bottling house has been involved in any attempt to defraud the United States Government of its taxes.

So my purpose in suggesting the changed language with reference to the brewery premises and the bottling houses is to broaden the language of the bill with reference to the use of the brewery property, technically speaking, and to wipe out the language with reference to the bottling houses.

Senator KING. You do not want the bottling house to be described as a part of the premises of the brewery?

Mr. BLANCHARD. Well, may I suggest in that connection, that I am afraid it does, even under the language I suggest, and if this general idea does meet with your approval I think there should be a revision there, because in the notice under 27 (c) given by a brewer, when he engages in business or is licensed to do business, or permitted to do business, he does describe both the technical brewery

premises and bottling house by metes and bounds, or some such methods as may be described.

To use this language, "the brewery premises shall consist of the land and building described in the brewer's notice" might, strictly interpreted, include the bottling house. I want that kept separate and distinct, if possible.

Senator KING. Conceding the bottling premises, the bottling mechanical contrivance is a little different from the building in which the beer is brewed, it is all in the same place, in the same compound?

Mr. BLANCHARD. That is right, except that, under existing law, the bottling house must be across a street from the brewery.

Senator KING. What objection would there be to characterizing it as a part of the brewery?

Mr. BLANCHARD. Except as you might then include it for the purpose of a definition and restrict its use, and there certainly should not be any restriction on the bottling house, because many of these breweries now are bottling soft drinks, and under this language you would make necessary the building of a separate bottling house for the bottling of soft drinks.

Senator KING. Would that be true with respect to institutions which during prohibition manufactured soft drinks and then obtained a license or permission to manufacture and bottle beer under the new act and resume the manufacture of beer?

Mr. BLANCHARD. Except, Senator, as this language exempts breweries now in existence.

Senator KING. Yes.

Mr. BLANCHARD. And makes it apply in the act to new breweries, and, of course, classifies them, as Senator Bailey pointed out on Monday, into two distinct groups, the new and old. Now, the old brewery has a right that the new brewery could not enjoy.

Senator BAILEY. This whole point that you make relates to subsection (c) on page 29, in which the Government is given the power—

> for flagrant and willful removal of taxable malt liquors for consumption or sale, without payment of tax thereon, all the right, title, and interest of each person, who has knowingly suffered or permitted such removal or has connived at the same, in the lands and buildings constituting the brewery premises shall be forfeited by proceeding in rem in the district court of the United States having jurisdiction thereof.

Now, would you except the bottling house from that?

Mr. BLANCHARD. If they refer to brewery premises.

Senator BAILEY. The brewery premises is referred to in subsection (c) and then is defined in (d). The effect of your suggestion would be to except the bottling house, which is a part of the property of the brewery. I do not follow you on that. I do not see why we should not take in all the property.

Mr. BLANCHARD. I am not now objecting to application of the forfeiture provision to all the property.

Senator BAILEY. Then, your point would be you would just confine section (d) to a mere description?

Mr. BLANCHARD. That is right, Senator.

Senator BAILEY. What is the good of that? What is the necessity for just having that description? The description is written in this

law in order that we may get all the property. Now, you want to write one just to be accurate, is that right?

Mr. BLANCHARD. To be exact, that is exactly what I mean.

Senator BAILEY. You agree with me that that would not be very material. I am willing to describe the brewery premises any way you please, provided we take in all the property of the brewery under the right of forfeiture. That is the object of the bill. We want to collect the taxes.

Mr. BLANCHARD. That is perfectly all right. Let the forfeiture provision apply to all the property.

Senator BARKLEY. Do you object to the provision in line 13, "and cereal beverages containing less than one-half of 1 percent of alcohol by volume"?

Mr. BLANCHARD. Yes.

Senator BARKLEY. You do?

Mr. BLANCHARD. Yes.

Senator BARKLEY. Why?

Mr. BLANCHARD. Because that language would prevent the bottling of soft drinks in the bottling house.

Senator BARKLEY. Do you think that a new brewery, that was not required to do something else during prohibition days, should be permitted to bottle soft drinks?

Mr. BLANCHARD. So far as the protection of the revenue is concerned, yes, Senator.

Senator BARKLEY. This is a matter beyond the protection of the revenue. Of course, it may not be our business to go beyond that in this bill, but as a matter of fairness and justice to industry, under this language if we strike out that provision they could bottle any soft drink manufactured by somebody else. It could be brought there and bottled.

Mr. BLANCHARD. That is right.

Senator BARKLEY. Do you think that is right? That might be a very serious loophole through which revenue could escape, if he could bring stuff in from outside and have it bottled, if it is not manufactured on the premises.

Mr. BLANCHARD. No beer can come in there until the tax is paid.

Senator BARKLEY. Theoretically that is true. Of course, when the beer goes out of the brewery into the bottling house, which is on the same tract of land owned by the brewery, of course, that is tax-paid. Suppose somebody on the outside made beer and sends it in there to be bottled? I am not intimating that a reputable brewery would do that, of course.

Mr. BLANCHARD. It is done now, Senator. Wholesalers are having beer bottled.

Senator BARKLEY. I am speaking, of course, under the guise of soft drinks being bottled and they bring in real beer.

Mr. BLANCHARD. Of course, if any brewer is going to do that he will do it regardless of any law.

Senator BAILEY. It is written so the law will not set up two things. We should have equal protection under the laws of the United States. The past actions do not affect the present conditions.

Senator BARKLEY. If you were starting from the ground up I would agree with you about that. Here is the situation: A lot of

legitimate breweries were met with a condition in which they either had to abandon their property or convert it into something else.

Mr. BLANCHARD. That is true.

Senator BARKLEY. They converted it into soft-drink manufacture, some into ice-cream plants, and other food manufactures, and one thing and another. Now, if we require them to reconvert their property, to take it out of that manufacture, the manufacture of the things which they could do under prohibition, it seems to me that it would probably work an injustice. I think we will probably work out of that end of the business and have breweries altogether, I think we will gradually work out of that.

Mr. BLANCHARD. Gradually, that is true, Senator.

Senator BAILEY. Do you think fixing a time limitation might bring it within the rule?

Mr. BLANCHARD. The difficulty with that is we have some breweries at the present time that have a very substantial soft-drink business and will continue in the soft-drink business, and continue legitimately with no chance of defrauding the United States Government, even though they use the same bottling houses.

Senator KING. Furthermore, as an objection to the suggestion made by Senator Bailey—if you will pardon me—it may be that in some States where they now permit the manufacture of beer they may adopt a prohibitory statute, but they may permit the manufacture of soft drinks, and it would seem to me that to compel breweries that now manufacture both beer and soft drinks to abandon, within a definite period, the manufacture of soft drinks, they might be caught later on with having a brewery on their hands, having been compelled to abandon their soft drinks, and then the State pass a prohibition law so that they then would have neither the right to manufacture soft drinks or beer.

Senator BAILEY. I am willing to take it either way, fix a time limit for the whole class, no special class, or give both classes the same opportunity.

Mr. BLANCHARD. I will accept that second alternative, so far as I am concerned.

Senator BAILEY. I do that subject to serious objections raised by the Treasury. If they should say that this last alternative would adversely affect the collection of taxes I will hear them, but I have not yet seen wherein it would adversely affect the collection of taxes.

Mr. BLANCHARD. I think I am safe in saying that this is a matter, I am sure, we can work out with the Treasury Department.

Senator KING. I suggest you and the Treasury officials confer before the committee finally makes its report here.

Mr. BLANCHARD. In order to complete the record now may I just add the additional suggestions, in order to make the language conform to what I have already suggested?

Senator KING. Let me suggest this: Why do you expand the section by using the words "malt sirup" and "malt extracts" and "processing carbon dioxide"?

Mr. BLANCHARD. Recovering carbon dioxide may not permit the processing. As long as they are specified we do not want to do anything that may stop the advance of the arts and sciences of brewery development in the recovery of byproducts. There are constant

changes. For instance, there are investigations going along today in many of the breweries on the subject of vitamins.

Senator BARKLEY. A and B?

Mr. BLANCHARD. All of them.

Senator KING. I see no objection to that.

Senator BAILEY. Let me call your attention to one word. You have the word "solely" in line 5, "used solely for the purpose of manufacturing beer," and so forth. That word "solely", as confined within that portion of the premises used in bottling soft drinks, that portion would not be liable to levy an execution or forfeiture. It says "solely."

Mr. BLANCHARD. That is true.

Senator BAILEY. That portion in which you use it.

Mr. BLANCHARD. Unless bottling is part of the process of manufacturing beer, lager beer, and so forth.

Senator BAILEY. I am not so wise about these things. I imagine a man could so arrange, one of these men who are making soft drinks and also making beer, could always fix it so no part of his premises could be used solely, he could put something of his soft-drink business into that end of it.

Mr. BLANCHARD. That is true.

Senator BAILEY. I think that is a very necessary connection, otherwise you have given a man who has a double business, the soft-drink and beer business, a decided advantage. He might escape forfeiture.

Mr. BLANCHARD. We do not want to do that, Senator. I think this whole language must be rewritten in order to get a correct interpretation.

Senator BAILEY. I know you do not intend a misinterpretation.

Senator KING. He stated in the beginning he felt that the whole premises should be subject to forfeiture, the bottling works as well as the other.

Senator BAILEY. This says "solely."

Senator BARKLEY. This following language here simply makes it clear by permitting them to use the bottling house, and so forth, for bottling soft drinks, where they have already been doing it, or are doing it on the date this act becomes effective.

Mr. BLANCHARD. That is right.

Senator BARKLEY. It does not exempt them from any of the provisions in the section above.

Mr. BLANCHARD. That is right, Senator.

The next suggestion, omit beginning with the words "the brewery bottling house", line 10, page 30, through the words "product of any other brewery", line 23. That wipes out everything from line 10 to the word "any" in line 23.

Senator BARKLEY. That would require then these breweries which have been making soft drinks or other things during prohibition to immediately stop making those things and become breweries solely?

Mr. BLANCHARD. That is correct, Senator.

Senator BARKLEY. Do you represent those breweries here?

Mr. BLANCHARD. I represent an association of breweries. I will not attempt to speak for the rank and file of the breweries, but I happen to know the situation in my home State—Wisconsin,—where we have at least 8 or 10 breweries that are manufacturing soft drinks and bottling them in the brewery bottling house.

Senator KING. I do not understand the purpose of this. What do you mean by that?

Mr. BLANCHARD. Just to make it conform to what I have already stated, Senator. This strikes out the language which relates to the bottling house and removes the restrictions which I have already indicated to you were placed upon the bottling house by the language as written in this subsection (*d*). I merely state that for the purpose of the record in order to show what the mechanics will be if you decide to make this amendment which I propose. Strike out this language in order to effect the very object I have been talking about.

Senator KING. As I understand you, you are willing that all breweries shall be permitted to manufacture and bottle soft drinks?

Mr. BLANCHARD. That is correct.

Senator KING. And you are also willing that the soft-drink part and the bottling part, though you differentiate the bottling from the brewery, shall be subject to forfeiture for any violation of the revenue law?

Mr. BLANCHARD. That is correct.

Senator BARKLEY. The effect then would be that all breweries, regardless of the date of their establishment, could manufacture anything that they wanted to, in addition to beer and bottle it.

Mr. BLANCHARD. That is right, Senator, within the prescribed limits of this section.

Senator KING. But all their premises would be subject to forfeiture for violation of law.

Senator BARKLEY. Do you think that the revenue law could be enforced effectively with that? Now, I am implying no impeachment of the integrity of the reputable breweries, but there are fly-by-night breweries, as you probably know.

Mr. BLANCHARD. Yes, Senator. It has been done for years and years. There would be no reason why it would affect the collection of the revenue of the United States.

Senator BARKLEY. Prior to prohibition did any substantial number of breweries manufacture soft drinks and other things outside of beer?

Mr. BLANCHARD. I would not attempt to answer that, Senator. I know what the situation is now.

Senator BARKLEY. I did not accuse you to be of such antiquity in age as to know what happened before prohibition, because I do not.

Mr. BLANCHARD. Thank you, Senator.

Senator KING. You are familiar, I suppose, with the brewery premises. I was wondering if you can conceive of any injury to the revenue or any way by which the revenue upon beer might be evaded; that is, the payment of tax evaded, if soft drinks were manufactured on the same premises?

Mr. BLANCHARD. I would say I can conceive of no change in the situation, so far as the revenue is concerned, if soft-drink bottling is permitted.

Senator KING. For myself I do not see how that could effect the revenue.

Mr. BLANCHARD. I do not want to deal with imagination, I want to deal with the facts as they are.

Senator BARKLEY. It might remotely affect it in the case of some unscrupulous men who might juggle the soft drink and beer so you could not tell where one was and the other one was, or a sort of liquid shell game, I might call it.

Mr. BLANCHARD. I can only answer that as I answered before, that if I was going to cheat I would cheat anyway.

Senator KING. I cannot conceive where a man manufacturing beer would want to put soft drinks into beer bottles, or would want to put soft drinks into beer or put beer into soft drinks.

Senator BARKLEY. He will not do the latter, but he might want to do the former.

Senator KING. As a practical matter he cannot.

Mr. BLANCHARD. I now direct your attention to section 323 (d) on page 35 and to section 324 (f) on page 38. Eliminate the period at the end of each of the paragraphs referred to and add thereto the following:

Or on account of the sale of such malt liquor when consummated at the purchasers residence in consequence of an oral or written standing order to call at such residence.

Senator KING. Where does that language appear?

Mr. BLANCHARD. I am adding that to both of these section that I referred to.

Senator BAILEY. That is (d) and (c)?

Mr. BLANCHARD. (d) on page 35 and (f) on page 38.

Senator KING. Where does the language that you just read appear on page 35?

Mr. BLANCHARD. It does not appear. I am proposing it as new language.

Senator KING. Where do you suggest it appear?

Mr. BLANCHARD. At the end of each paragraph.

Senator BARKLEY. At the end of line 13?

Mr. BLANCHARD. At the end of line 13, page 35, and on line 14, page 38.

Senator KING. Strike out the period?

Mr. BLANCHARD. Strike out the period.

Senator BAILEY. Let us see what the language is. What is the language you suggest?

Senator BARKLEY. In the present language the limitation is to the purchaser's place of business.

Mr. BLANCHARD. That is right.

Senator BARKLEY. You want to extend it to his residence?

Mr. BLANCHARD. I want to extend it to all residents on standing written or oral order, so that sales may be made at the home where a standing written or oral order has been placed with the brewery or wholesaler.

Senator KING. Suppose that the local regulations of cities or States forbid that?

Mr. BLANCHARD. Then the State law would govern. The fact of the matter is, this is, in effect, the interpretation which is placed on the antihawking bill in the State of Pennsylvania. They have an antihawking or peddler's bill in the State of Pennsylvania, and under the interpretation given that language in the Pennsylvania State

law, this is an attempt to write into the Federal law what interpretation is given to the antipeddling law in the State of Pennsylvania.

There are two aspects to this. I think the Treasury officials will say, if you ask them, that so far as the protection of the revenue is concerned, there is no problem involved in this suggestion. As a social matter it is an entirely different question. It raises immediately the question as to whether or not the peddling of beer from house to house, the so-called button pushing and solicitation of beer orders, should be allowed. Under the present Federal set-up it cannot be done. This language would soften it to the extent it could be done upon receipt, by the wholesaler or brewer of a standing written or oral order. I shall not attempt to go into the social phases of it.

Senator BARKLEY. What do you mean by a standing written or oral order?

Mr. BLANCHARD. In other words, Senator, if I gave an order to a brewery to deliver to my home once a week, on Thursday, a case of beer, that would constitute, under this language, a standing order and would be permissible under Federal law. Now, if, on the other hand, they deliver a case a day under an order of that kind I assume immediately that might be called to the attention of the supervisor and then the law could be invoked to prevent it.

Senator BAILEY. I do not believe I get you. The statute reads now that the wholesaler or retailer who has paid the special tax shall not be required to pay an additional special tax as a dealer if the sale was consummated at the place of business. Now, the way you have it he would not have to pay any special tax if he delivered it to the home?

Mr. BLANCHARD. That is right.

Senator BAILEY. That would enable the delivery at the home.

Mr. BLANCHARD. That is what I am seeking to do.

Senator BARKLEY. How would that affect competition with those who are compelled to pay a license for a retail business?

Mr. BLANCHARD. They would all be in the same class and could deliver to the homes on order.

Senator BARKLEY. You, as a brewer, would sell to a retailer?

Mr. BLANCHARD. That is right.

Senator BARKLEY. You pay a tax on that before you sell it.

Mr. BLANCHARD. You mean the gallonage tax?

Senator BARKLEY. The tax you are required to pay as a brewer.

Mr. BLANCHARD. That is an occupational tax.

Senator BARKLEY. I am talking about the tax on beer. Before it is bottled, we will say, you pay the tax. Then it is bottled. You sell the bottled beer by the case, or by the hundred cases, to the retailer, who, in turn, is required to pay some tax, which I might call an occupational tax. Under this language you would be permitted to go around the retailer and deliver to homes of consumers without the payment of an additional tax.

Mr. BLANCHARD. That is right.

Senator BARKLEY. Do you think that would be fair to the man who paid a special tax to permit him to do the retail business?

Mr. BLANCHARD. He could do the same thing.

Senator BARKLEY. He has paid the tax, which you have charged him, which was included in your price to him; he had to pay that.

Mr. BLANCHARD. The brewer pays that same tax.

Senator BARKLEY. I did not understand your language would require him to pay it.

Mr. BLANCHARD. He has paid it.

Senator BARKLEY. He has paid the tax on the beer?

Mr. BLANCHARD. Yes; he has paid an occupational tax.

Senator BARKLEY. All of that is included in the price the brewer makes to the retailer.

Mr. BLANCHARD. Yes.

Senator BARKLEY. Of course, that means the retailer has paid the tax by paying you the price. In addition to that he has got to pay the occupational tax of his own as a retailer.

Mr. BLANCHARD. That is right.

Senator BARKLEY. You would not have to pay the occupational tax.

Mr. BLANCHARD. Oh, yes; we pay the occupational tax.

Senator BARKLEY. Not under this language.

Mr. BLANCHARD. I do not mean the retailer's license in the sense that a State may impose it, or a municipality.

Senator BAILEY. Isn't there anything in this law that requires the tax to be paid in addition to the taxes set up upon the delivery?

Mr. BLANCHARD. Oh, yes, Senator. I will tell you how this works out. It will not take very long to do it. Under the present law—this language here is a modification of doing business. If a brewer pays an occupational tax he can deliver case beer, but the order must come into the brewery for that case beer, and if he delivers it to Tom, Dick, and Harry without an order under the present law he must have an occupational tax at each place where he delivers the beer.

Senator BAILEY. The place of delivery is considered the place of consumption?

Mr. BLANCHARD. That is right.

Senator BARKLEY. Of course, if it is all delivered in the same town he only pays one occupational tax. He would not have to pay a separate tax for every separate case of beer he sold to the house, he would pay only one occupational tax for the privilege of selling, is that true?

Mr. BLANCHARD. That is right.

Senator BARKLEY. As a brewer you pay the brewery tax on the beer, then you pay, in addition to that, an occupational tax for the privilege of doing that. There are two taxes that the brewer has paid, and you collect that tax indirectly out of the retailer to whom you sell, it is all added in the price, so he has really paid the two taxes. He would be required to pay an additional tax for the privilege of retailing the beer for which he has paid you, but you could deliver that same beer to homes in the town that you manufacture the beer without paying the retailer's license tax, under this language, is that right?

Mr. BLANCHARD. Yes; under this language you could make delivery to the home.

Senator BAILEY. Are you seeking to get the privilege of delivering beer to the home and denying that privilege to some local dealer?

Mr. BLANCHARD. No, sir; I am not.

Senator BARKLEY. You do not deny it, but you could sell it to the home cheaper than the local dealer could, because he paid you all

the tax you paid on it, and you pay to the city no such additional tax.

Mr. BLANCHARD. I do not think in the competitive field it makes a particle of difference. I do not believe that problem is involved at all. It does not go to the question of unfairness to the retail dealer, I am sure of that, because delivery to the home is certainly not within the contemplation of any retail dealers paying any more license. He has got the same beer, because he will buy from the brewery or wholesaler at a cheaper price than will be delivered to the consumer at the home. He is exactly in the same competitive position as the wholesaler or retailer.

Senator BARKLEY. You take in towns where there is no brewery, but there are numerous retail dealers in beer by the bottle or by the case, or in any other quantity; there would be a question of competition there, would there not?

Mr. BLANCHARD. I do not think so, Senator, because the retailer buys at a cheaper price.

Senator BARKLEY. You do not know, when you sell it to him, whether he is going to deliver it to some home by the case or sell it by the bottle.

Mr. BLANCHARD. That is true. He sells it in both ways.

Senator BARKLEY. In many cities where there are breweries, thousands of people will order a case from a retail dealer and have it delivered at the home. He has paid for the privilege of doing that. You ask now to be permitted to do that without paying an additional tax.

Mr. BLANCHARD. I ask that the privilege which we have now, by reason of paying special tax as a wholesale or as a reail dealer in malt liquor, be extended, without the payment of an additional special tax, at each home where the delivery is made.

Senator BARKLEY. That does not require an amendment anyway, that I know of.

Mr. BLANCHARD. It would.

Senator BARKLEY. Under this act here?

Mr. BLANCHARD. It would, unless additional language is inserted. It says,

except where there is an order.

Senator BAILEY. I did not get that. I asked you if there was such an act somewhere else. I do not see it here in this language.

Mr. BLANCHARD. It is right in this language, Senator.

Senator BAILEY. In this section (d)?

Mr. BLANCHARD. That is right. By virtue of the operation of the occupational taxes if I deliver to your home, or a dozen homes, without an order, I would have to pay the occupational tax at each place where the delivery was consummated.

Senator BAILEY. You may be right, but I do not see it.

Senator BARKLEY. All this language does is to say that the brewer, who has already paid all the taxes on the manufacture of his beer, shall not be required to pay an additional tax if he delivers the goods to the purchaser's place of business.

Mr. BLANCHARD. That is right.

Senator BARKLEY. You want it to provide that he shall not pay an additional tax if he delivers at the home?

Mr. BLANCHARD. That is right.

Senator BARKLEY. Which would permit you to go around the purchaser who might have a place of business and who might have to pay a special tax, you could go around him and deliver to his customers without the payment of an additional tax.

Mr. BLANCHARD. The only way I can answer that, Senator Barkley, that just does not occur in the competitive field where this is no conflict at all.

Senator BARKLEY. That might be a matter of custom, but it might occur.

Senator BAILEY. Where is that language which imposes a tax upon a wholesale or retail dealer upon consummating a sale at a residence?

Mr. BLANCHARD. It is not stated in definite language.

Senator BAILEY. You cannot impose a tax by implication.

Mr. BLANCHARD. Yes; you can, Senator.

Senator BAILEY. I beg your pardon.

Mr. BLANCHARD. I will withdraw my statement. I know you can levy a tax by implication. Let me read this to you:

> No wholesale or retail dealer in liquors who has paid the special tax as such a dealer shall again be required to pay special tax as such dealer on account of sales of beer, lager beer, ale, porter, or other similar fermented malt liquor to wholesale or retail dealers in liquors or wholesale or retail dealers in malt liquors consummated at the purchaser's place of business.

That is the entire set-up. This is a new proposal, also, as you read this bill.

Senator BAILEY. It would not apply in the affirmative. You say he shall not pay an additional tax. That does not mean that he shall be required to pay an additional tax.

Mr. BLANCHARD. Let me state how the present laws read without attempting to quote it.

Senator BAILEY. All right.

Mr. BLANCHARD. If I am a brewer and I make a delivery of a case of beer to a wholesaler without an order, the consummation of that sale is at the wholesaler's place of business, and the law says I must pay a tax, an occupational tax at the place where the sale is consummated, so that if I went about to my customers who are wholesalers, there might be a dozen in a town, and without a previous written order on case beer, made deliveries to 12 individuals in that town who were wholesalers, without previous order again, I would pay 12 occupational taxes in addition to the one I already pay as a brewer.

Senator BAILEY. That is in the present law?

Mr. BLANCHARD. That is in the present law.

Senator BAILEY. That is not in this section.

Mr. BLANCHARD. This section removes that limitation, and I am proposing additional language which likewise would obviate the necessity.

Senator BAILEY. It would allow the wholesaler or the retailer, upon having paid the tax, to deliver beer in bottles in cases or cans or barrels at residences without additional tax.

Mr. BLANCHARD. That is right.

Senator BARKLEY. Is that the statement?

Mr. BLANCHARD. On a standing written or oral order. They can do it now, if they have an order for it, unless there is something in the

State law to prevent it. Where you have an order for it, that removes the consummation of the sale from the home, where it is delivered to the place of business, where the occupational tax applies by virtue of the order itself. In other words, I interpret the consummation of the sale as having been met by the occupational license.

Senator KING. Would this suggested amendment have any effect in those cities in which there is no brewery?

Mr. BLANCHARD. I do not see how that can happen from any standpoint.

Senator KING. The brewery would not make a delivery in a home?

Mr. BLANCHARD. No.

Senator KING. A brewer in Washington would not deliver beer to a home in Baltimore?

Mr. BLANCHARD. It would not make any difference. The brewer would not be in this business, but the wholesaler would be in this business.

Senator BAILEY. The brewer could set up a local subsidiary to deliver the goods.

Mr. BLANCHARD. Where it is not prevented under the State law; yes, via a wholesaler.

Senator BAILEY. I see beer advertised in these days, as a basis of general circulation, being sold in cans?

Senator BARKLEY. Have you read "Fortune?"

Senator BAILEY. No; I have not read 'Fortune." Is that not in contemplation, that there shall be some sort of delivery by the brewery across the country, by rail or trailers to the home? What is the object of that advertisement? Is not it an appeal directly to the reader that you can order so many cans of beer direct?

Mr. BLANCHARD. You can.

Senator BAILEY. That is the object of that advertisement. Now, what have you to say about that in its relation to the retailer? Do you intend to give him a chance?

Mr. BLANCHARD. Oh, yes; there isn't any question about that. I will have to answer your question in the same manner. There isn't any competitive feature involved here, I am quite sure.

Senator BAILEY. That is competition in itself.

Mr. BLANCHARD. Of course the reason for that now is the can feature of beer is in its infancy.

Senator BARKLEY. This language, as I get it, means that if a wholesaler or retailer sold to another wholesaler or retailer he shall not be required to pay a special tax.

Mr. BLANCHARD. No; he shall not be required to pay an additional special tax.

Senator BARKLEY. He shall not be required to pay an additional tax; that is what I mean. Now, this language does not permit either a wholesaler or retailer, by implication, to sell, by delivery to homes, without the payment of an additional special tax.

Mr. BLANCHARD. That is right.

Senator BARKLEY. You want them to do that?

Mr. BLANCHARD. My language would do that, Senator.

Senator BARKLEY. I assume this wholesale or retail dealer does not necessarily mean to include the brewer or manufacturer?

Mr. BLANCHARD. That includes brewers and wholesalers, because, of course, they are permitted to do it now, if they have an order.

Senator BARKLEY. Yes. This language covers transactions between wholesalers and retailers and other wholesalers and retailers.

Mr. BLANCHARD. The present language of the bill?

Senator BARKLEY. Yes, sir; it is limited to them.

Mr. BLANCHARD. That is right.

Senator BARKLEY. You want it enlarged so as not only to include transactions between wholesalers, retailers, and other wholesalers and retailers but wholesalers and retailers and home owners over the town or over the country?

Mr. BLANCHARD. They can do that now if they have an order. This will extend the order provision only. It will simplify the method of making delivery to the home.

Senator KING. "Extend the order provision"—what do you mean by that?

Mr. BLANCHARD. It will extend the privilege so it may be done not alone by written order for each case of beer the housewife may want, but on a standing order. That is the only effect it has.

Senator KING. For my information—I have forgotten the amount—what are the taxes now required under the Federal law from wholesalers and retailers? Of course, we understand the tax by the breweries. What tax does the wholesaler have to pay—what Federal tax? Of course, he is subjected to the State tax.

Mr. BLANCHARD. Yes; $50.

Senator KING. Regardless of the quantity which he sells?

Mr. BLANCHARD. That is right; if he is a wholesaler, the quantity he may sell is defined.

Senator KING. That is the only tax he pays to the Government—that is the only tax the wholesaler pays?

Mr. BLANCHARD. That is right.

Senator BARKLEY. The quantity he may sell to any person is defined, but the total aggregate sale is not defined?

Mr. BLANCHARD. That is right.

Senator KING. What does the retailer pay?

Mr. BLANCHARD. $25.

Senator KING. Then, in addition to the tax which we have referred to, the States and municipalities may enforce additional taxation?

Mr. BLANCHARD. Yes. This has no bearing whatsoever on other licenses.

Senator BAILEY. It appears to me what we are driving at refers to section 3236. Section 3236 of the general provisions of our revenue act is as follows:

> Whenever more than one of the pursuits or occupations hereinafter described are carried on in the same place by the same person at the same time, except as hereinafter provided, the tax shall be paid for each according to the rate severally prescribed.

Is that the statute that you referred to?

Mr. BLANCHARD. That is the one.

Senator BAILEY. I want that in the record.

Mr. BLANCHARD. The number is what?

Senator BAILEY. Section 3236, the internal-revenue laws of 1927.

Mr. BLANCHARD. The section is 3244.

Senator BAILEY. Well, let us see what that says. Let us read this into the record, because when we get over to the Senate and have a discussion we will wish to know what it is.

Section 3244. [Reading:]

Special taxes are imposed as follows:

First: Brewers shall pay $100. Every person who manufactures fermented liquors of any name or description for sale, from malt, wholly or in part, or from any substitute therefor, shall be deemed a brewer: *Provided*, That any person who manufactures less than 500 barrels a year shall pay the sum of $50.

That appears to be amended. Section 9, title I, of the Liquor Taxing Act of 1934, amends that, but I do not see where that definition, which I have just read, contains any of the suggestions that you just made.

Mr. BLANCHARD. May I call your attention to section 3235?

Senator BAILEY. Please read it for the record.

Mr. BLANCHARD (reading):

Payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register.

That is the key to the entire situation, so far as my suggestion is concerned.

Senator BAILEY. You wish to read into that that the wholesaler and retailer, having paid the license tax and occupational tax, can thereafter sell the beer at the residence without an order; is that right?

Mr. BLANCHARD. Not without an order, but with a standing order.

Senator BARKLEY. In other words, when a man takes out a license he designates where his place of business is.

Mr. BLANCHARD. It is described; yes.

Senator BARKLEY. He cannot sell liquor at some other place than that without paying an additional tax.

Mr. BLANCHARD. That is correct.

Senator BARKLEY. You want it fixed so a sale to the home or a delivery to the home will be constructively regarded as a sale in his place of business?

Mr. BLANCHARD. That is correct, Senator.

Senator BAILEY. It is constructively so now. If I order a case of beer from a brewer that is constructive consummation of the sale at the brewery, isn't it?

Mr. BLANCHARD. That is with an order; yes.

Senator KING. Or at the retailer's place of business.

Mr. BLANCHARD. That is right.

Senator KING. And you would amplify the law so that there may be a standing order; that is, that on Thursday morning, to use your expression, each Thursday morning there shall be delivered by the brewer or wholesaler or retailer at your residence a case of beer.

Mr. BLANCHARD. Yes.

Senator KING. You only modify the existing law by stating there shall be a standing order?

Mr. BLANCHARD. Yes. May I say you cannot do that now except on a definite order for a definite amount of beer.

Senator KING. Yes.

Senator BAILEY. Let me ask you for information. Would not all of this that you are driving at lead to beer chain stores attached to breweries, just as the Standard Oil sell gasoline all over the country, or the fuel oil, or the Texas and Gulf, and all others, through their local stations? Would not you be able to sell beer through local stations and deliver to the home and thereby eliminate the independent retailer?

Mr. BLANCHARD. You would have to have a branch, Senator, that would promote that.

Senator BAILEY. They do have branches. There are branch stores all over the country.

Mr. BLANCHARD. Some States now do not permit branches.

Senator BAILEY. Then you leave that up to the State. While we are writing the national act, why not write it nationally?

Mr. BLANCHARD. There are some things, Senator, that you cannot, I take it, write into the national act.

Senator BAILEY. That was thought recently. We can write anything we please now.

Mr. BLANCHARD. Well, as a matter of good, sound business, there are some things that should not be written into a Federal act.

Senator BAILEY. When you get into the region of what you ought or what you ought not to write you get too deep for me.

Senator KING. Let us proceed.

Mr. BLANCHARD. Now, turn to page 39. Without going into the details I refer you to section 327, subsections (a), (b), (c), and (d), which set up a method of refunds for breweries for fermented malt liquor where it is fully tax paid, lawfully removed from the brewery to the bottling house and destroyed in the presence of the Government officer, without fraud, connivance, or collusion on his part, there may be refunds.

Let me call your attention to the situation which exists in the brewery industry with reference to leakage and wastage. Leakage at the bottling house in the operation of bottling, and wastage in the barrels of beer. For instance, in bottling it is said you get 13.7 cases of beer out of a barrel. Thirty-one gallons is the standard barrel. In the process of bottling you only get something like 13.46 to 13.5 cases. In other words, you have a leakage and wastage approximating 3 percent—I am speaking now of the industry as a whole—upon which you have paid taxes at the rate of $5 per barrel. In other words, there is a leakage and wastage in every bottling operation in every brewery, regardless of the type of equipment used, whether it is new or old, and that is rather uniform throughout the industry. To be sure, it varies in different plants, but it is rather uniform at around 3 percent.

Senator KING. Is that conceded by the Treasury Department, that there is that wastage?

Mr. BLANCHARD. Well, I do not want to guess as to what they might say as to that. I think they concede that the records are fairly accurate.

Senator BARKLEY. How many cases did you say you are supposed to get out of the barrel?

Mr. BLANCHARD. Approximately 13.7.

Senator BARKLEY. And the way it is you get only about 13.5?

Mr. BLANCHARD. 13.45 to 13.5.

Senator BARKLEY. On every barrel then you waste about two-tenths of a case?

Mr. BLANCHARD. The difference between 13.45 and 13.7. I haven't figured out the exact percentages. I am only taking hearsay testimony from brewers that this figures out in the neighborhood of 3 percent.

Senator BARKLEY. I do not think it would figure 3 percent when you lose only two-tenths of a case.

Mr. BLANCHARD. As I say, Senator, I haven't figured it out.

Senator BARKLEY. That would be about two bottles.

Mr. BLANCHARD. I think that calculation is not correct, Senator.

Senator BARKLEY. How many bottles in a case?

Mr. BLANCHARD. Twenty-four.

Senator BARKLEY. You might lose four bottles.

Mr. BLANCHARD. On a $220,000,000 tax payment it is a considerable loss, Senator.

Senator BAILEY. You pass on the tax anyhow.

Mr. BLANCHARD. The tax is part of the cost of the beer.

Senator BAILEY. You make your profit, you make your money. They are all in the same boat. The competitive features are eliminated. Assuming the loss is 3 percent, that is a universal loss. The beer is sold after the consumer pays the tax.

Mr. BLANCHARD. Like any tax; yes.

Senator BARKLEY. He has paid the tax on the gross manufacture; it is paid before it starts toward the bottle.

Mr. BLANCHARD. That is right.

Senator BARKLEY. You pass on the tax. You pay before there is any wastage.

Mr. BLANCHARD. I would have to doubt the first, but we do pay the tax before the wastage occurs.

Senator BARKLEY. You would have to figure that tax.

Mr. BLANCHARD. If you figure a profit, naturally it is passed on.

Senator BARKLEY. Yes.

Mr. BLANCHARD. But there are many of these breweries that are now making no profit.

Senator BARKLEY. It is passed on anyhow. It is not the fault of the Government.

Mr. BLANCHARD. It is all part of the cost.

Senator BARKLEY. I wonder if that language might bring about confusion and you would have to have an inspector stand at every bottling machine to see how much wastage there was, or to measure it after, and, offhand, it would be rather difficult to administer.

Mr. BLANCHARD. If you administer it under a set-up of this kind, it would.

Senator BARKLEY. What is that?

Mr. BLANCHARD. If you administer it under a set-up as provided in H. R. 9185, it would be perfectly useless.

Senator KING. Senator, I am told that during the Spanish War, when the beer tax for war purposes was raised from $1 to $2 per barrel the act contained the following language: It provided a discount of 7½ percent shall be allowed upon all sales by collectors to breweries for the stamps provided for the payment of such tax. It stated a 7½-percent discount to cover the wastage in loss.

Mr. BLANCHARD. I would not want to go that far in making the statement.

Senator KING. That was the law at that time. In the same communication that has been sent to me there is contained this language:

In the light of present improved brewing practices a 7½-percent allowance would appear to be higher than necessary, but an adjustment of somewhere between 3 and 5 percent would cover the average loss of tax-paid beer above referred to.

So that if a percentage were allowed, a gross percentage, then it would obviate the necessity of the supervision to which Senator Barkley referred.

Mr. BLANCHARD. That is right. Of course, we want to avoid that. If this is to work out that way it would be useless as a standard to administer.

I do not want my suggestion to appear as a request for tax reduction. It is not. We are not asking for tax reduction, nor do we propose to, until such time as conditions warrant it. We do feel a $5 tax is naturally way out of proportion for an industry of this kind, where 50 to 60 percent of the cost of manufacture is in taxes. I do not want to be interpreted as requesting a tax reduction. May I ask your serious consideration of the possibility of working out a plan to cover the tremendous losses that the brewing industry is taking today as the result of wastage and leakage on beer which is tax-paid and never reaches the consumer, and upon which there is no chance for the brewers to recoup themselves for the $5 which they pay the Federal Government.

At this time I would like to request the opportunity of submitting some facts which we are gathering at the present time on the question of leakage and wasteage.

Senator BARKLEY. The question of leakage, does not that apply to all manufacturing and bottling, whether it is beer, whisky, or soft drinks?

Mr. BLANCHARD. That is right.

Senator BARKLEY. Is there any allowance for leakage in the matter of spirituous liquors, the tax is paid when it is removed?

Mr. BLANCHARD. Of course, I do not want the comparison to be made of the two industries, because of the fact that our bottling is tremendous as compared to the distillery industry of the country. It is just one of those businesses in which volume is the principal feature of the entire industry.

May I conclude?

Senator KING. You may prepare that memorandum and give a copy of it to Mr. Hester representing the Treasury Department.

Mr. BLANCHARD. Yes; I shall do that, Senator King. If you wish I can conclude in just a few minutes now.

Senator KING. Proceed then.

Mr. BLANCHARD. Page 49, title IV, subdivision (b), line 13, beginning with the word "or", it reads:

or in such other manner as may be prescribed by regulations issued by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

Senator BARKLEY. Suppose you read the whole subsection, then we will get a better idea.

Mr. BLANCHARD. I shall be glad to do it. I was trying to save on the record.

Senator BARKLEY. That section does not mean anything unless you read what has gone before.

Mr. BLANCHARD (reading):

Such section 3354 of the Revised Statutes, as amended, is further amended by striking out the first sentence of the second proviso thereof and inserting in lieu thereof the following: "*Provided further*, That the tax imposed by law on fermented liquor shall be paid on all fermented liquor removed from a brewery to a bottling house by means of a pipe or conduit, at the time of such removal, by the cancelation and defacement, by the officer designated by the Commissioner of Internal Revenue, in the presence of the brewer, of the number of stamps denoting the tax on the fermented liquor thus removed, or in such other manner as may be prescribed by regulations issued by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury."

Now, as part of that proviso deals with the manner of collecting the taxes and the defacement of the stamps, the following is entirely new language—

or in such other manner as may be prescribed by regulations issued by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury—

if this were adopted, that would permit the Secretary of the Treasury to promulgate rules and regulations entirely changing the method of collecting the taxes on beer.

The language is broad enough so that they might confront the industry some day with a request that they place a stamp on every bottle of beer, and I just submit to you that it should not be permitted by regulation of the Treasury. I am not intimating even that the present Treasury officials would attempt a change of that kind, but we are dealing with the future. I say if such a plan ever should be evolved, Congress ought to pass on it.

Senator BARKLEY. This language says:

Provided further, That the tax imposed by law on fermented liquor shall be paid on all fermented liquor removed from a brewery to a bottling house.

That is when it is paid, when it is removed from the brewery to the bottling house, and the method by which the payment is to be noted is by the cancelation of the stamps.

Mr. BLANCHARD. That is right.

Senator BARKLEY. I think this language he wants stricken out only refers to the method of denoting the payment.

Mr. BLANCHARD. If that is true, then it should say so, so it will not be broad enough to change the entire structure of paying taxes. I think we can work out the language with the Treasury Department so there can be no question raised in the future about its meaning.

Senator KING. You take that up with the Treasury officials. I think the interpretation that Senator Barkley has indicated is the one that should be placed upon the language. Mr. McCabe.

STATEMENT OF GEORGE P. McCABE, AMERICAN BREWERS' ASSOCIATION, WASHINGTON, D. C.

Mr. MCCABE. We are in substantial accord with the recommendations that were made by Mr. Blanchard this morning.

Senator KING. Mr. Blanchard represents the same organization?

Mr. McCabe. Mr. Blanchard represents the United States Brewers' Association, which is a national trade association, and I represent the American Brewers' Association. They are two different associations.

I gathered from the discussion this morning that there was some haze as to the amendment proposed by Mr. Blanchard which would allow the brewers to sell beer to the homes, and provided that it should be held that the sale was consummated at the home.

In practice now, as I understand it, the brewer takes out two stamps in addition to his brewer's stamp. He has a stamp as a wholesaler, he pays a tax as a wholesale dealer, and he pays a tax as a retailer. So far as Federal taxes are concerned, he is exactly in the same category as the wholesaler or retailer who is not a brewer.

The law which was read here by Mr. Blanchard provides that if a man does business at more than one place, he must have a special tax stamp for each place. This has been interpreted by the Treasury Department in some districts to mean that the brewer must have a specific written order on file in the brewery for each case of beer that is delivered to the home. If Mrs. Brown gives an order to the brewery in writing to deliver, during the 3 months of July, August, and September, a case of beer on each Saturday, it has been held that is not a valid order, and if the brewery makes a delivery to Mrs. Brown's home on that order it incurs a liability for another special tax stamp and incurs a penalty in addition.

Senator King. Do they hold that if Mrs. Brown should telephone to the brewery each day, or each week, say, Wednesday morning of each week, that would be all right?

Mr. McCabe. I think they do.

Senator King. If she should leave a written order, "Deliver it to me each Wednesday morning for 3 months", that would not be proper?

Mr. McCabe. Yes, sir. That rule, however, is not uniform. In some districts the supervisors recognize these so-called standing orders and do not attempt to collect an additional tax because of delivery on those standing orders.

The brewers are as one with the Treasury on the question of peddling. We do not believe there should be any peddling of beer. We do not believe beer drivers should go around ringing doorbells of apartment houses, and so on, saying "Don't you want a case of beer today?" The brewers do not wish to merchandise their product that way.

From time immemorable, of course, there have been brewers or breweries that delivered to homes. In my own home town, for example, at Ogden, where we have a brewery, a substantial part of the business of that brewery is making deliveries to the homes, and the brewery would not like to be deprived of that business. Breweries find it very difficult to get an order for each case of beer which is to be delivered. It is an expensive process. As a matter of fact, what the brewer does, if situated in a district where they require a separate order, the brewer has a solicitor who goes around and gets orders. So that I do not think that there is any practical advantage to the Treasury Department in the present ruling, and the amendment, as recommended by Mr. Blanchard, would not imperil the revenue in any way.

Senator Barkley. You said the breweries take out a retail license?

Mr. McCabe. Yes.

Senator BARKLEY. Are they called retailers?

Mr. MCCABE. Not unless they make retail sales of less than 5 gallons.

On the question of the power of the Secretary to make regulations changing the manner of evidencing the payment of the tax——

Senator KING. That is the last matter that the witness addressed himself to.

Mr. MCCABE. Yes; which Mr. Blanchard discussed. I think the construction of the statute as suggested by Senator Barkley is absolutely correct, that the provision goes only to the manner of evidencing the payment of the tax. The bill as drafted is practically a provision of the Revised Statutes now. The present provision says that stamps shall be canceled in the presence of a collector or deputy collector, and I think the language here is it shall be canceled in the presence of an officer or employee designated by the Commissioner, and it provides for that method, and then says, in words, "or any other method that the Commissioner may prescribe."

We are a little afraid of that. We think that the wording might give the Secretary power to say that in order to evidence the payment of this tax you must put a separate, additional stamp or label upon each and every bottle. That would be very destructive, because we have a great many bottles sold for a very small price.

So far as I know, the plan which the Treasury Department has in mind to put into effect, if it should become the law, has never been disclosed to the breweries, or to the representatives of the breweries and not knowing what plan they have in mind or whether they have any plan in mind, we do not think that the law should give them the power to do that.

Senator BARKLEY. Could the Secretary do that where the tax is already paid?

Mr. MCCABE. Sir?

Senator BARKLEY. The tax is already paid and the evidence of it has been denoted before the bottling comes into the picture. How could the Secretary make a regulation, under this act, that would require a separate stamp on each bottle?

Mr. MCCABE. He has already done it. He requires that on every bottle of beer now, on the label on the bottle, shall be marked "Internal revenue tax paid."

Senator BARKLEY. That is on the brewer's own label, he has got to print on his own label that the tax has been paid.

Mr. MCCABE. That is right.

Senator BARKLEY. That does not mean he has got to pay for another stamp. He just puts a few more words in the die that prints the label.

Mr. MCCABE. If we were required to put a special label on the bottle, or a stamp on it, it would be destructive, because the cost of the labor involved would be prohibitive.

Senator KING. Let me ask the representatives of the Treasury Department whether they place the same construction on the language as Senator Barkley does?

Mr. BERKSHIRE. Exactly.

Senator KING. It does not contemplate a revolutionary method?

Mr. BERKSHIRE. It is simply a simplification.

Senator KING. I think you better get together and make the language so clear that there will be no need for dispute.

Mr. MCCABE. I would like an opportunity to file a brief, Senator, if I may.

Senator KING. Do so right away.

Mr. MCCABE. Thank you.

(The brief referred to by Mr. McCabe is as follows:)

I desire to submit the following comments in addition to my testimony before the subcommittee on January 15, 1936:

On page 28 of the bill, line 1, after the figures $1,000, strike out the period and insert the following:

", and not more than $100,000, with surety: *Provided*, That, if the Commissioner of Internal Revenue shall determine that, in order to protect the revenue of the United States, it is necessary that a brewer shall file a bond in a greater sum than $100,000, then additional bond in a sum fixed by the Secretary of the Treasury shall be filed, but surety shall not be required for the excess over $100,000."

On page 28, line 12, strike out the words "once in every four years and." The effect of striking these words would be to allow the Secretary of the Treasury to require the brewer to file new bond whenever the Secretary deems it necessary, but does not make it mandatory upon the brewer to file new bond once in 4 years if the Secretary is satisfied with the existing bond.

On page 30, amend paragraph (d) of section 317 by adding appropriate language which, in addition to allowing the use of the brewery premises for use in the manufacture of beer, lager beer, ale, porter, and similar fermented malt liquors and cereal beverages containing less than one-half of 1 percent of alcohol by volume, will also permit the manufacture on the brewery premises of any ingredients which enter into the composition of the above products, specifically, malt and malt sirup.

On page 30, paragraph (d), the limitations on the use of the bottling house, lines 10, 11, 12, and through the word "volume" in line 13 should be eliminated, for the reason that this limitation is not necessary to protect the revenue, inasmuch as all taxes on malt liquors are paid before the malt liquors reach the bottling house, and it would be a serious loss to many brewers if mineral water, ginger ale, etc., were not allowed to be bottled in the bottling house. Many brewers do not bottle a sufficient quantity of beer to keep one bottling unit busy, and they fill out with bottled waters, etc. If this recommendation is adopted, the words "or brewery bottling house" in line 15, and the words "or the brewery bottling house is, on such date, being used for the bottling of soft drinks" in lines 18 and 19, and the words "and bottling house premises" in line 20, and the words "or bottling house" in line 24 should be stricken.

If the limitations on the use of the bottling house are continued in the bill, the above verbiage should *not* be stricken. The words "The brewery bottling house of any brewery shall not be used for the bottling of the product of any other brewery" found in lines 21, 22, and 23 of this paragraph should in any event be stricken. This is an extreme provision which might work very serious hardship on the brewer whose bottling house was destroyed by fire or other cause, because during the time that must elapse for the erection of a new bottling house, he would be unable to put any bottled beer on the market.

Page 35, paragraph (d), lines 6 to 13 inclusive: This section should be amended by adding appropriate language which will allow the wholesale or retail dealer in liquors to supply the home with malt liquors on a standing written or oral order, filed in the brewery, without incurring additional tax liability. Such an amendment cannot be construed as letting down the bars to permit peddling. It is merely recognition of a practice which in some parts of the country has been recognized by the Treasury as legitimate for many years past. The same language should be inserted at the end of paragraph (f) of section 324, page 38, at the end of line 14, to take care of wholesale and retail dealers in malt liquors supplying their customers with malt liquors at the home.

On page 49, paragraph (b) of section 401 should be amended by striking out or definitely limiting the following language found on lines 13 to 15 inclusive: ***"or in such other manner as may be prescribed by the regulations issued by***

the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury." This language would allow the Secretary of the Treasury to prescribe any method he chose for evidencing the payment of tax on beer for bottling. For many years this payment has been evidenced by the cancellation of stamps practically as provided in paragraph (b), lines 1 to 13. The authority conferred to make change is too broad, and there has been no disclosure to the brewers as to what method of evidencing the payment of tax the Commissioner has in mind. In House Report No. 1870 on H. R. 9185, the reason for the insertion of language which we ask be stricken, is given as a desire to reduce expense to the Government. If this language were enacted into law, the Commissioner of Internal Revenue might prescribe a method of evidencing payment of tax for bottled beer so expensive as to constitute a serious detriment and largely increased expense to the brewer.

Senator KING. Mr. Blanchard, have you anything else to say?

Mr. BLANCHARD. Nothing further.

Senator KING. Is there any other witness who wants to testify?

STATEMENT OF A. D. O'CONNOR, UNITED STATES BEER DISTRIBUTORS ASSOCIATION

Mr. O'CONNOR. On section 324, paragraph (f), we are in accord with the statement made.

Senator KING. What page of the bill?

Mr. O'CONNOR. That is page 38, line 6, section (f) of the bill. We are in accord with Mr. Blanchard and Mr. McCabe in that we believe that no special tax should be imposed upon delivery of beer where there has been a written order, either written or oral, a standing order, to the consumer trade.

Senator KING. You associate yourself with their recommendations?

Mr. O'CONNOR. Yes, sir.

Senator KING. Is that all you care to say?

Mr. O'CONNOR. That is all.

Senator KING. Are there any other witnesses? We will take a recess until 2 o'clock.

(Whereupon, at the hour of 12:50 p. m., a recess was taken until 2 p. m. of the same day.)

AFTER RECESS

At 2 p. m., pursuant to recess, the hearing was resumed as follows:

Senator KING. The committee will be in order. Congressman Fiesinger, we will hear from you now.

Mr. FIESINGER. Judge De Vries and Mr. Buck are here and they have some observations to make, so I ask that I defer until they make their statements.

Senator KING. Very well.

Is Congressman Buck ready to proceed?

Mr. DE VRIES. Mr. Chairman, it was understood I would be the first to present my statement.

Senator KING. That is all right, Judge. Will you speak on the so-called Johnson amendments?

Mr. DE VRIES. Yes; on the general consideration of H. R. 191, with one or two comments on H. R. 9185, then on the Johnson amendments; but I would like, Mr. Chairman, to first make some

general observations on the wine situation as it now exists in the United States.

Senator KING. Very well.

STATEMENT OF MARION DE VRIES, REPRESENTING THE WINE INSTITUTE

Senator KING. You may proceed, Judge.

Mr. DE VRIES. Mr. Chairman and gentlemen of the committee, I represent the Wine Institute.

That the committee may have before it a true picture of the wine industry and thereby more advisedly weigh the merits of the legislation proposed by the Wine Institute, a very brief statement of the wine situation in the United States will be made.

The Wine Institute comprises within its membership the production of more than 80 percent in gallonage of wines produced in the United States, and in its membership more than a majority of the owners of the vineyards of the United States.

The grape industry, which embraces as its avenues of distribution fresh grapes, raisins, wines, and grape brandy, includes all these as integral parts of a single industry, purely agricultural. Compared with other agricultural industries it is one of the first magnitude and importance. Thus the value of the basic commodity of the grape stock of the United States as fixed by the Year Book of the Department of Agriculture for the year 1934 is $35,500,000 as compared with an apple stock likewise estimated of $56,900,000, of barley likewise estimated at $65,095,000, sugar beets likewise estimated at $58,900,000, beans $23,226,000, and oranges at $53,625,000. Therefore the grape industry as a basic commodity takes its place among the agricultural industries of major national importance.

This industry represents an investment of between three and four hundred million dollars. It employs direct labor of from 60,000 to 100,000 employees and indirectly employs labor far in excess of those figures. It shares its gross income with perhaps the greatest variety of industries in the country. In earlier days, practically half thereof went for railroad shipments. Its products contribute to commerce and employment in every State of the Union and its gross income is accordingly distributed.

Wherefore, as an industry conducive to the commercial general welfare of the United States, by its promotion and development there is no industry, agricultural or otherwise, which thereto contributes more in proportion to its magnitude.

While during the 3 years antedating 1935 the annual grape crop was, owing to elemental conditions, short; during the year 1935 there was an average crop. The forecast of the California agricultural outlook, which has since been confirmed by the actual production of grapes in 1935, fixed the national production at 2,327,000 tons, of which 2,053,000 tons were of California production. This is divided into 362,000 tons of table grapes, 448,000 tons of wine grapes, and the balance of 1,243,000 tons of raisin grapes. Of these 362,000 tons of wine grapes, 135,000 tons of table grapes, and 260,000 tons of raisin grapes, making a total of 757,000 tons, were crushed in the

production of wine and brandy in the State of California in 1935. It is estimated that there were left on the vines in California alone during 1935, 60,000 tons of wine, 30,000 tons of table, and 30,000 tons of raisin grapes, making a total of 120,000 tons of surplus grapes in California alone which were not consumed by any of the three commercial grape outputs. Since the California production is approximately 90 percent of the United States, in order to complete the estimate, 10 percent should be added to the foregoing figures, wherefrom the unconsumed and therefore surplus 1935 grape crop of the United States was approximately 143,000 tons or the equivalent of 19,600,000 gallons of dry wine.

There was on hand in California on January 1, 1935, approximately 75,000,000 gallons of unconsumed wine. There was produced in California during 1935 about 55,000,000 gallons of wine. The eastern production added about 5,000,000 gallons or a total of 60,000,000 gallons. There was consumed in the United States in 1935, upwards of 35,000,000 gallons of tax-paid wine, leaving wine stocks on hand in bonded wineries and warehouses on January 1, 1935, of near 90,000,000 gallons, not including imported wine.

The average annual consumption of tax-paid wine in the United States for 10 years preceding prohibition was 51,000,000 gallons. With the tremendous surplus of wines on hand the question is, Is there a market for the same in the United States?

The potential field of consumption of wines in the United States may be illustrated by the fact that while France consumes on an average of 42 gallons of wine per capita per annum, Italy 25 gallons, Spain 22 gallons, Portugal 21 gallons, Chile 21 gallons, and the Argentine 71 gallons, the United States, outside of California, consumes less than one-half gallon per capita per annum. California, during the last year, consumed approximately 3 gallons of wine per capita.

Therefrom is drawn a valuable economic lesson. An unoccupied wine field is before us in the United States, the occupancy of which in any reasonable measure means a tremendously augmented commercial activity and an extremely extended tax basis. If all or a majority of the States reached only the goal attained in California, the wine consumption of the United States would be far in excess of the accumulated stocks and production in the United States, and the grape fields and wineries not alone of California, but of New York, Michigan, Missouri, New Jersey, Ohio, and many of the Southern States now rapidly developing grape and wine industries, would be scenes of renewed and great commercial activities.

It is obvious that of wines in California alone there was an accumulated added surplus during 1935 of several million gallons. Since the years preceding 1935 were exceedingly dry it is probable that that will be greatly augmented.

The raisin demand may be said to have reached its highest point. Discriminating tariffs and quota restrictions of foreign countries have decreased foreign markets and are limiting our foreign distribution. The consumption is not substantially increasing the market for fresh grapes. That market has reached its limit. Wherefore if the tremendous fresh grape and wine surplus of the United States is to be absorbed it must be through the channels of wine and grape brandy.

The long-established and presently continued policy of the Government has been to rehabilitate and develop the grape and wine industry. Long before repeal the Government made extensive advances running into millions of dollars to develop legitimate outlets for the product of the grape. During repeal many millions of dollars were invested in buying up grape surpluses. Since repeal that policy has been continued. Millions of dollars have been invested by the Government in the building of new and the rebuilding of old wineries and plants and generally in the development of outlets for this product of the grape. It therefore may be said that the development of this great agricultural industry is one which has received the distinct approval of and to which the Government is definitely committed on account of the vast investments it has.

As an agricultural industry worthy of the Government's support in the interest of the public welfare, the Wine Institute officered by a president, Mr. A. R. Morrow, one of the best-informed wine men of the country, of long years of wine experience and knowledge, and a board of directors thoroughly experienced and versed in the industry, has undertaken the rehabilitation and development of the industry. The Institute has made a survey of the wine industry of the United States and thoroughly explored every possible avenue of distribution and ascertained the impediments thereto with a view of rehabilitating the industry and placing it in a position of commercial success. In that effort in which neither labor nor expense has been spared, notwithstanding the financially crippled condition of those therein engaged owing to prohibition, it has been determined that the impediments to the development of the industry rest to a great degree in excessive taxes, State and Federal regulations antique and modern, which impede commerce in wines throughout the Union, and between the several States.

It was ascertained that taxes upon wines have been frequently laid without any regard to their true character as food products but as a high-powered alcoholic beverage. State taxes or State write-ups at from 50 cents to $1.10 per gallon were not uncommon. Very few States had the same tax rates. To this was to be added the war-time Federal tax on wines presently effective of 20 cents per gallon on sweet and 10 cents per gallon on dry wines. It should be explained that dry wines are those containing 14 percent or less of alcoholic content, usually about 11 percent, and sweet or fortified wines are those containing over 14 percent and not more than 24 percent alcoholic content.

These taxes were far in excess of the price at which millions of gallons of wine could be purchased naked at the winery, but necessitated a market selling price far above the ability to purchase wines by our great wine-consuming population. Accordingly, the Wine Institute undertook a Nation-wide campaign of education of the true character and dietic values, a reduction of taxes, State and Federal, and the removal of the harsh and wholly unnecessary restrictions upon and discriminations against the distribution of wines. These efforts have been predicated upon the sound economic doctrines that commerce and not taxes will restore prosperity; that high tax rates do not insure the greatest public revenue; that the tax rate which does not obstruct but permits commerce raises the most

revenue. The wine-tax rates, State and Federal combined, were and are so high that in many cases they resulted in an embargo upon any appreciable commerce in wines in certain States. These plain truths can be mathematically demonstrated.

Witness, those States having the lowest tax rates have consumed far more wine per capita in 1934 and 1935 than those States having high tax rates. In this particular, they may be broken down into several heads.

I will here insert a table showing the population, wine-tax rates, and consumption of wines for the several States for the first 10 months of the year 1935, such being all the presently available statistics for that year.

State	Population, 1930	Tax rate per gallon	Wine consumed	Gallon per capita
		Cents	*Gallons*	
New York	13,059,000	10	8,500,000	0.551
Connecticut	1,655,000	5,6	1,550,000	755
Florida	1,575,000	5,10	440,000	.279
Washington	1,608,000	10	700,000	.435
Nebraska	1,395,000	5,15	200,000	200
District of Columbia	497,000	0,10	100,000	200
Total	20,789,000		11,190,000	
State-store States with high write-ups.				
Utah	520,000	100	8,000	015
Michigan	5,093,000	50	500,000	.078
Virginia	2,446,000	[1] 50	136,000	.056
Pennsylvania	9,826,000	50	1,000,000	.102
New Hampshire	470,000	25	16,000	038
Iowa	2,485,000	75	50,000	020
Total	20,840,000		1,733,000	
High-tax States				
Illinois	7,876,000	10–25	1,000,000	.127
Colorado	1,056,000	12–24	300,000	.236
Minnesota	2,602,000	10–20	231,000	.090
Rhode Island	705,000	20	109,000	.154
Maryland	1,671,000	20	150,000	.089
Indiana	3,304,000	25	75,000	.033
Delaware	242,000	40	18,000	.074
Total	17,456,000		1,835,000	

[1] Since reduced to 14⅜ cents per gallon

In other words, 38,296,000 people of equal wine-consuming populations in States of high wine taxes and State write-ups ranging from 10 cents to 50 cents per gallon, consumed but 2,686,000 gallons of wine in the first 9 months of 1935, while 31,632,000, or about 7,000,000 less people in States having wine taxes from 2 cents to 10 cents per gallon consumed in the same time 30,513,000 gallons of wine, or approximately 15 times more.

From the foregoing, we deduce the following mathematical conclusions:

That the 12 low-tax rate States of the United States with a population of 50,000,000 people consume more than 90 percent of the wine consumed in the United States; that the amount of the consumption in different States, bearing in mind the character of the population thereof as natural consumers of wine, is dependent upon and controlled by the taxes thereupon laid, State and Federal.

Complete demonstration of the foregoing is had by the State of California wherein the tax upon all wine is but 2 cents per gallon,

the consumption of wine in said State, with approximately 6,000,000 population, is approximately 50 percent of the consumption of wine in the United States. Of course, bearing somewhat upon this proposition is the low cost of transportation to consumers in the State of California and the low cost of wine therein and other elements such as the sale thereof in bulk and the absence of heavy freight rates. All of these factors, however, conduce to the conclusion here sought, to wit, that the success of the wine industry of the United States which is distinctly an agricultural industry, is dependent upon bringing home to the wine consumer quality wines at reasonable prices.

California thus graphically illustrates the tremendous possibilities in the development of the grape and wine industry of the United States. By low taxes, high quality of production, and reasonable methods of distribution effecting the lowest possible cost to the consumer, California has increased the per capita consumption of wine to approximately 3 gallons.

Senator KING. Is not that in part due, and I ask for information, to the fact that California has as its inhabitants a large number of persons who have come from wine-growing countries of Europe, and their children, of course?

Mr. DE VRIES. In a measure that may be true, but I think it is not any more so than it is in the State of Pennsylvania and in the State of New York.

In the State of Pennsylvania with a write-up of 50 cents per gallon of the State store system, with a population of 9,000,000 people, very near that of New York, the people there consumed in 1934 only about 450,000 gallons of wine, and in 1935 only about a million gallons of wine.

Nor is this development of the industry in the United States and its benefits confined alone to the agricultural interests of California. The States of New York, Michigan, New Jersey, Missouri, and many of the southern States are extensively engaged in grape culture and wine production.

Therefore I say if we wish commerce in wines with its incidental results to the welfare of the Nation and greater revenues to the Government, reduce the wine taxes to a reasonable basis.

The truth of the fact that greater commerce and consequent revenues will be obtained by lesser tax rates upon wines is the lesson learned by the several States, largely indicated by the efforts of the Wine Institute. That such is true is witnessed by the fact that in the past 2 years no State has increased the State tax rate upon wine, dry or sweet but many States have reduced the State tax rate or write-up on wines, both dry and sweet.

Thus, the State of Connecticut has reduced its rate of 10 cents per gallon on both dry and sweet wines to 5 cents per gallon on dry and 6 cents per gallon on sweet. The State of Wisconsin has reduced its uniform rate of 25 cents per gallon upon wine to 5 cents per gallon on dry and 10 cents per gallon on sweet wine. The State of Missouri has reduced its rates from 20 cents per gallon on dry and 40 cents per gallon on sweet wine to 2 cents per gallon on dry and 10 cents per gallon on sweet. The District of Columbia has reduced its rate, having no tax upon dry wine, from 35 cents to 10 cents per gallon

on sweet wine. The State of Ohio has recently reduced its rate from 10 cents on dry and $1 upon sweet wine to 7 cents a gallon on dry and 10 cents a gallon on sweet wine. The State of Texas, profiting by the extremely low rate of 2 cents per gallon upon wines in California and the tremendous sales thereof under this low rate thereby bringing in more revenue than with high rates, has recently adopted legislation providing a tax of 2 cents a gallon on dry and 5 cents a gallon on sweet wines. The State of Maryland in that time has reduced its tax from $1.10 a gallon to 20 cents per gallon on sweet wine, having no tax on dry wine. Indiana has reduced State rate from 50 cents to 25 cents a gallon on all wine. Texas has just followed California with a rate of 2 cents on dry and 5 cents on sweet wines. North Carolina and Georgia have no tax on wines.

The present Federal taxes upon still wines, dry and sweet, are 10 cents per gallon on dry and 20 cents per gallon on sweet. Prior to 1916, there were no taxes on wines. The War Tax Act of 1916 laid a tax of 10 cents on sweet and 4 cents upon dry wines. This was increased in 1917 to 20 cents and 8 cents and reduced in 1928 to 10 cents and 4 cents.

Senator KING. When was the first Federal tax imposed on wines?

Mr. DE VRIES. During 1916.

Senator KING. It was passed in 1916 as a war measure?

Mr. DE VRIES. Yes, sir.

The present rate was enacted in 1934, of 20 cents on sweet and 10 cents on dry wine, higher than any war-tax rate on wines. In conjunction with State taxes in most of the States, these taxes are much greater than the prices at which millions of gallons of wine, dry and sweet, can be purchased in California today, and, in many cases, higher than California wines delivered in New York, freight paid. Millions of gallons of sound potable dry wines are being sold in California today at 11 cents per gallon, sweet wines at 28 cents per gallon naked at the winery. These are not cost prices. These are not profit prices. These are liquidation prices often to pay production taxes laid upon wines or to preserve these great properties, their long-suffering owners and feed the mouths of theirs and pay wages to their workmen. These are liquidation prices.

Open your eastern markets to this splendid health-giving product by reducing taxes and removing idle restrictions, and these conditions will be relieved and the arteries of national commerce commence to throb with activity. Lower rates of taxes mean more revenues and greater commerce.

Chief among the measures sponsored by the Wine Institute and before this committee for consideration is H. R. 191. That act cuts the higher-than-war-time tax rate in half and establishes rates on a parity with the rates established by States wherein wine is a subject of considerable commerce and not embargo or excessive tax rates.

Senator KING. That bill passed the House?

Mr. DE VRIES. Yes; unanimously.

It was unanimously reported by the Ways and Means Committee of the House and unanimously passed by the House. It is supported by all the considerations mentioned. I leave its detailed statement and further supporting arguments to Congressman Buck, its author, who is here.

Senator KING. Did the provisions of the bill as passed in the House meet the approval of you and Mr. Buck?

Mr. DE VRIES. Yes; the full approval.

Senator KING. You have no amendments to suggest?

Mr. DE VRIES. None.

In passing, I wish to say while this bill seeks to harmonize State and Federal rates at 10 cents tax on sweet and 5 cents on dry wines, I vision the day of more ample State and Federal revenues, when as prior to 1916 the Government will recognize wine as a food, dietetic and life-giving substance which should not be taxed. So the District of Columbia views today as to sweet wines. So many Southern States have already enacted. I pass to other matters before the committee in which the Wine Institute is deeply interested. The officials of the Institute have gone over the several bills and proposed amendments and made recommendations in writing which, with the permission of the committee, I will make a part of my statement. There are some of these upon which I wish to briefly comment at the present time.

Senator KING. Just one question. There is an amendment here offered by Senator Johnson. Does that relate to H. R. 191?

Mr. DE VRIES. H. R. 9185, and the wine provisions.

Senator KING. Do you intend to speak upon that?

Mr. DE VRIES. Very briefly, and I will take up first H. R. 9185, if it may please the committee, and the few sections therein to which I wished to call special attention.

As I have heretofore stated, Mr. Chairman, the several recommendations made by the Wine Institute will be set out in detail in proposed amendments. They have already, in the main, been submitted to the Treasury authorities, and we will, with the permission of the committee, go over them with those representatives and add notes and make it a part of this statement.

Section 318, page 31, is a provision which permits the Secretary of the Treasury to authorize the amelioration of wine by the wine maker and the fortification of wine, without supervision by any officer of the United States, whenever he determines that such authorization may be made without danger to the revenue.

It is the law at the present time that amelioration of wine shall be under the supervision of a Treasury official. The Wine Institute, I may say briefly, suggests that that provision be stricken out for the reason that the Wine Institute is in favor of the production of wines up to standard, not above standard, and of the very highest quality, and they welcome supervision of Government officials in their production.

Senator KING. I do not quite understand your objection.

Mr. DE VRIES. The objection is, Mr. Chairman, that this withdrawal of the supervision of Treasury officials over the amelioration of wine, which means the addition of certain things to it and the development of it, the fermentation of it, and so forth, the Wine Institute welcomes such supervision in all of its operations.

Senator KING. Do you contend that the Treasury would not suffer if section 318 were repealed?

Mr. DE VRIES. No; it would not suffer a loss in all probability, but we are looking to the quality of wine produced, and that it comes up to standard and does not go beyond the standard.

Senator BARKLEY. At the present time they are not permitted to ameliorate wine except under the supervision of the Treasury?

Mr. DE VRIES. That is right.

Senator BARKLEY. And this provision will permit that to be done without the supervision of the Treasury?

Mr. DE VRIES. It will. The Wine Institute is not against the relaxation of some of these things but oppose those that go to the quality of wine.

Senator BARKLEY. Do you know whether that provision was put in there at the reqeust of anybody?

Mr. DE VRIES. I could not say, Senator.

My next suggestion is with reference to section 610, as this provision of the bill, as stated by Mr. Hester, has been incorporated in the F. A. A. Act.

The next suggestion is on page 41 and running over through page 42.

Senator KING. That is section 330 of the bill, but that deals with section 610 of the Revenue Act.

Mr. DE VRIES. That is true, that refers to section 610 of the Revenue Act.

The statement of Mr. Hester was that this provision is now a law as a part of the F. A. A. Act. While that is true the provision in the F. A. A. Act does not reduce the tax upon fortifying wines. The provision of this section of this bill reduces the tax upon fruit spirits used in fortifying wine from 20 to 10 cents per gallon. The provision that was carried into the F. A. A. Act does not carry that reduction, and that reduction is one of the important parts of the program of the Wine Institute, to reduce taxes upon wine, and this bill has passed the House unanimously.

Senator KING. What is your proposition with respect to section 610–A as found on page 41, the matter to which you are just addressing yourself?

Mr. DE VRIES. I have nothing to state about that particular section. I am addressing myself now to section 331, page 43, and that part thereof found upon page 44. That provision is one of those carried into the F. A. A. Act, the purpose of which probably was, if we are to judge from the face of the act, to include in these provisions citrus wine. At the same time, the provision found in this bill is not the same as the provision found in the F. A. A. Act in the important part to the wine industry, that this provision reduces the tax on fortified wine from 20 to 10 cents a gallon, whereas that in the F. A. A. Act carries it as 20 cents a gallon.

Senator KING. Then, there is an incongruity in the two.

Mr. DE VRIES. There is.

Senator KING. What suggestion of an amendment do you have on that?

Mr. DE VRIES. I will have to submit an amendment on that, and I will submit it to the committee, reducing this tax from 20 cents to 10 cents.

The next suggestion relates to section 333, pages 46 and 47. That also is carried over into the F. A. A. Act.

Senator KING. You mean section 3255 is now found in the F. A. A. Act.

Mr. DE VRIES. The F. A. A. Act. That is what Mr. Hester stated and, of course, that is true.

The Wine Institute takes exception to (b) and (c) thereof. The Wine Institute particularly excepts to subdivision (c) on the top of page 47.

Within the wine industry there are some 60 or 70 distillers who are making grape brandy. In competition therewith would come the brandy made under this section (c), which can be made solely from grape pumice by adding a little water and sugar. That would come in competition with our grape brandy and we would like to have that provision stricken out or, if there are others who want to make this kind and class of spirits, permit them to do it; but add an amendment that such spirits shall not be used in fortifying grape wine or be sold as grape brandy. I will submit an amendment as to that.

Now, I will pass, Mr. Chairman, if I may, to the amendment proposed to 9185 by Senator Johnson as introduced in the Senate. These amendments were proposed by the Wine Institute, not in a definite shape, as the Wine Institute would have them enacted into a law. After having consulted the industry thereupon I will submit, if permitted by the committee, such substitutes therefor as the industry has determined it would like to have considered.

Senator KING. That is to say, the industry does not fully approve of these amendments offered by Senator Johnson?

Mr. DE VRIES. Yes; as written. The first one (e), the industry approves. That provides that if the fortifying tax on brandy used in wines is reduced, that reduction should extend to those wines in bonded warehouses and wineries which have paid that tax to the extent of such reduction, for if we reduce the fortifying tax on new wines and they go into the market, old wines will be at a disadvantage to the extent they have paid the higher fortifying tax.

Senator KING. Have you any idea as to the amount of revenue that would have to be rebated?

Mr. DE VRIES. I have not. I have no doubt the Treasury will have it and will submit it. It is something that will vary from time to time, and the figures that have been gathered some time ago would not now be valuable.

Senator KING. Section (e) you approve?

Mr. DE VRIES. Yes; we approve that.

The next, on page 2, section (f), is perhaps the most controverted subject matter in the wine industry today. There is a provision in the act of 1918, carried into the United States Code as 1300 (a) (1) which allows the householder to make for family use 200 gallons of wine not to be sold or delivered out of the home.

It is assumed that this provision is taken advantage of to the extent of more than 23,000,000 gallons of wine which finds its ways into consumption without the payment of any tax.

The result is that there is almost as much nontax-paid wine going into consumption in the United States today as tax-paid wine. Not only does the Government suffer this loss of revenue, but obviously that quality of wine which is made in the home and sold about to the neighbors is a very inferior quality and develops a wine taste which destroys the taste for tax-paid wines, which are more carefully made.

Senator KING. Do you contend that under this provision permitting a family to manufacture 200 gallons, that it is disposed of to neighbors?

Mr. DE VRIES. Oh, indeed yes.

Senator KING. Sold or given away.

Mr. DE VRIES. It is sold.

Senator KING. Is that permitted under the law?

Mr. DE VRIES. It is not.

Senator KING. They just violate the law?

Mr. DE VRIES. Just violate the law; yes.

Senator KING. Is there ample evidence to support that contention that there is no considerable quantity of wine you have just referred to that is sold under this provision, in the market and to neighbors?

Mr. DE VRIES. Undoubtedly. We can get some idea by the amount of grapes that are shipped through commerce to be made into wine in the home.

Of course, Mr. Chairman, to give the full picture to the committee, which it is our duty, there are many of our own people who are grape growers that do not sell the grapes to the wineries but ship them, and have been doing so for years, and they enter into this market. Therefore, the solution of this problem has not been an easy one, nor has the Wine Institute in its membership agreed upon it—except that they are of the belief, insofar as it could be done, this restriction of this clause should be tightened up.

The only suggestion I have to make with reference thereto that I believe would be acceptable and pass both houses would be that there be a very severe penalty attached, a special penalty for the violation of that section, and I will submit such for the consideration of the committee.

Senator KING. Do you suggest that the maximum permit of 200 gallons for families should be reduced?

Mr. DE VRIES. Personally I would, but the Institute has not so instructed me. I think if it was left to the Treasury we would have a very severe reduction.

Senator KING. I believe the maximum consumption in the United States is 3 gallons per person; is that it?

Mr. DE VRIES. That is correct; yes; of tax-paid wines in California only; elsewhere less than one-half gallon.

Senator KING. It would seem then that to permit the manufacture by a family of 200 gallons obviously would contemplate that it would be wasted, sold, or given to neighbors?

Mr. DE VRIES. Yes, sir.

Senator KING. So that if we had a maximum of 40 or 50 gallons per person, such as the consumption in Italy or France, somewhere from 30 to 50, there ought to be a reduction from 200 gallons per family to a reasonable amount, unless you tax the amount in excess of that which is permitted to be used by the family.

Mr. DE VRIES. The difficulty of that is it would cost more to collect it than the tax would amount to.

Senator BARKLEY. This average consumption, whatever it is, is not the wine consumed in each person's home. If some family has manufactured 200 gallons under the present law it may be consumed by any number of people who come in as visitors into the home where it is made.

Mr. DE VRIES. I assume it is a very frequent occurrence, as in our larger cities, that the family lives in the upper story, the wine press is in the lower story, and the restaurant is in between, and they supply that and their neighbors.

Senator BARKLEY. What about where there is no restaurant involved?

Mr. DE VRIES. Then the eager neighbors consume it.

Senator BARKLEY. The neighbors are continually dropping in, and they consume some of it?

Mr. DE VRIES. In that connection I have a very interesting letter, while I do not want to take up the time of the committee, it is a letter written to Congressman Buck, and it is an index of what is going on in the consumption of the 200 gallons. This letter is written by an official in the field investigating this matter, a State official of California. He says:

> Here, our work in the Blank Division has been very interesting, the wine industry in particular. Believing that would be of interest to you, I write my observations:
>
> During the fall of the year, at harvest time, the farmer stores away certain staples for his consumption and sustenance. The American farmer will generally have a stock of onions, potatoes, beans, and apples, while thousands of Italian and other foreigners will have all these basic foods plus from 200 to 2,000 gallons of home-made wine.
>
> The Federal regulations regarding this type of vintage are very stringent and of a nature that discourages its manufacture. Concurring with Federal laws, the State permits the possession of 200 gallons per residence. In almost 8 out of 10 cases, an Italian, Austrian, or Greek will have in excess of that amount.
>
> Working in San Joaquin and Tuolumne Counties, a very incomplete canvass has netted the State taxes on a gallonage of nearly 500,000 gallons of wine. The State taxes are but 2 cents, while the Federal taxes are 10 cents.
>
> In our department at Blank we have two teams of two field men each, and we are averaging $1,600 per week in fees and taxes to the State on home-made wine alone. Here again I recommend that a force be created and be made to operate in a given locality and not fly from pillar to post, but be a recognized source of authority in a given area for the supervision and control of all alcoholic merchandise. I feel sure that it would be amazing the total amount of revenues that such a force would collect.
>
> Regarding the phase of a man's constitutional rights concerning entry upon his home and property, we follow this procedure with excellent results. Going from house to house, we state who we are, that we are checking the wine gallonage, and that we want permission from the male head of the family to inspect his premises. We have had to secure only two search warrants in 5 months because of refusal.

That is some index, Mr. Chairman; $1,600 a week is being collected for wine in excess of 200 gallons per year for the family. There would be more revenue if this hole could be closed up.

Senator KING. And that is collected on a 2-cent-a-gallon tax?

Mr. DE VRIES. It is on a 2-cent tax, and not the Federal tax.

Senator KING. Yes; they were collecting not for the Federal, but only for the State.

Mr. DE VRIES. Quite right, your Honor.

The next provision of the amendments introduced by Senator Johnson, shown on page 2, lines 18 to 25, is another controverted subject which seems to be pretty well developed to a finality. It is the right to make vermouth in a bonded winery. Vermouth is classed by the tax statutes of the United States as a class of wine. It is made by simply adding some herbs to wine, and under the law as it presently exists, vermouth is made from tax-paid wines, and it

pays four taxes before it is finally delivered. Two of these are production taxes.

Senator BARKLEY. What is the herb you speak of that is added to wine?

Mr. DE VRIES. Vermouth particularly, and various herbs.

Senator BARKLEY. What are they, Congressman Fiesinger?

Mr. FIESINGER. I cannot give you that. I know there is a combination of herbs but I cannot give you specifically, although I will put it in the record.

Senator KING. Vermouth is simply wine fortified for its proper treatment by herbs.

Mr. DE VRIES. It is first fortified with spirits, then flavored with various herbs.

Senator KING. Do the herbs add to the alcohol content?

Mr. DE VRIES. No, sir. Under the law at the present time the mixture of herbs with wine is deemed to be rectification, therefore in order to make vermouth we must withdraw the tax-paid wine, and that rectification cannot be carried on within 600 feet of the winery under the law, so that in order to make vermouth we must first withdraw the tax-paid wine from the winery, take it over to the rectifying plant.

When we withdraw it we must pay a tax on it of 20 cents, and taking it to the rectifying plant there is a 30-percent proof gallon tax on it, and after it is taken out of the rectifying plant there is again a 20-cent tax on it.

This amendment contemplates that we shall have the right to make vermouth in separate and distinct departments of a bonded winery, and in addition, it would eliminate the tax on vermouth.

Before the prohibition arose we probably made a million gallons in this country, and today we make practically none.

Senator KING. It is imported from France and Italy?

Mr. DE VRIES. Yes. I may say if this avenue of consumption is opened up it will consume a million gallons of wine per annum.

Senator BARKLEY. How does the price of vermouth consumed in the United States compare with the average price of wine?

Mr. DE VRIES. In former years there was a very great demand for the domestic vermouth, but the tax has been so high in recent years that very little if any has been made, although I am advised that anticipating these taxes being reduced, that there are one or two plants ready to start in the United States.

I have but one more suggestion, Mr. Chairman.

Senator KING. The Wine Institute approves of subdivision (g) of Senator Johnson's amendment?

Mr. DE VRIES. Yes; with some slight changes in it which I will submit.

Senator KING. Can you indicate what they are?

Mr. DE VRIES. The chief thing is that it shall not be made in the bonded winery itself, so that they will be taking different sorts of materials in the bonded winery, but that it may be made in a separate and distinct part of the bonded winery, just like we distill our brandy in one room and fortify in another room, and this would be added as the third one.

Senator KING. Was this matter brought to the attention of the House Committee when it was considering the bill?

Mr. DE VRIES. It was.

Senator KING. Did they approve of it or disapprove of it?

Mr. DE VRIES. Not in this form. The Congressman can speak about that.

Senator KING. What is the attitude of the Treasury, if you know, toward the Johnson amendment?

Mr. DE VRIES. I do not know, but I do know that what we are asking simply parallels the operations already in existence, and that it will afford an avenue for the sale of a million gallons of wine a year, and for that reason the institute is very anxious for its enactment into the law.

Senator CAPPER. You mean an increase of a million gallons a year consumption?

Mr. DE VRIES. It would consume a million gallons a year, which would go through the channel of vermouth and be sold as vermouth.

Senator BARKLEY. How much vermouth is imported into this country?

Mr. DE VRIES. I have the figures here somewhere, and I will put it in my statement.

Senator KING. Is it any considerable quantity?

Mr. DE VRIES. Quite a considerable quantity.

Senator BARKLEY. Is it a million gallons?

Mr. DE VRIES. It is more than that I am quite sure, Senator Barkley.

The next amendment I have is the amendment to the provisions of the F. A. A. Act, which was introduced into the Senate and became a part of law, whereby domestic producers of wine shall use names of foreign origin, such as port and sherry, muscatel, and other names without being held liable therefor, or prevented from so doing, and the amendment introduced by Senator Johnson has some defects.

Senator KING. You are asking us now to amend the measure passed at the last session of Congress?

Mr. DE VRIES. Yes; just because of one or two obvious defects.

Senator KING. Then you would use H. R. 9185 as a vehicle to amend that act?

Mr. DE VRIES. Yes; because it concerns wine and it is a part of an act in which many provisions of this bill have been transferred, and vice versa. We had hoped in this legislation to complete all of those things necessary for the protection of the wine industry of the United States through cognate provisions.

Senator CAPPER. It is also intended to increase production and sale of wines?

Mr. DE VRIES. Yes, sir.

Senator KING. Not necessarily production, because the production now is greatly in excess of consumption, but to increase its consumption any way.

Mr. DE VRIES. Yes, sir. I think that will conclude my remarks, Mr. Chairman, unless some questions are desired to be asked, because as I said I will incorporate these several amendments and attach them to my remarks with notes, if I am so permitted.

Senator KING. It seems to me it would be an excellent thing if you and the representatives of the wine industry and Congressman Buck go over with the Treasury officials and see if there are any

points of agreement. That might help the committee when it comes to considering this bill.

Mr. DE VRIES. I will state, Mr. Chairman, the Congressman has been doing that, and I have been cooperating with him, and the Treasury officials have been very kind, and have suggested that when we get through, we confer with them.

I thank you, Mr. Chairman.

(The information referred to is as follows:)

AMENDMENTS SUGGESTED BY THE WINE INSTITUTE TO H. R. 9185

(By permission of the committee)

1. *Page 16, section 67 (d), line 12.*—Reads: "The disapproval of the Commissioner in any manner under this section shall be final."

NOTE.—It is the suggestion of the Wine Institute that this final disapproval should be reviewable by the Secretary of the Treasury, and that this should be provided by law rather than left as a question of judicial construction of the act.

2. *Page 18, section 602 (a), line 11.*—Following the word "tanks" add a comma and the words "tank cars." In line 12, following the word "therein", add a comma and the words "or from receiving room to fortifying room." In line 17, following the word "houses", strike out the comma and add the words "or fortifying room."

3. *Page 19, (c), line 6.*—Insert after the word "general" the words "or special." After the word "warehouse", in the same line, insert the words "or distillery warehouse."

NOTE.—The reason for the suggesting of the addition of "or special" and "or distillery warehouse" is because these two types of warehouses are new adjuncts to fruit distilleries While it is not new for whisky distilleries, it is an innovation with our producers; therefore it is felt that if it is stipulated in the act there could be no further controversy.

4. *Page 21, section 3302, line 7.*—After the partial word "stances" insert in parentheses the words "except fresh grapes."

NOTE.—The reason for exempting the keeping of a record on delivery of fresh grapes, as will be recalled, is that the Wine Institute has made a plea to the Alcohol Tax Unit for correction of forms 701, 702, and distillery form 15, asking that daily totals on deliveries of grapes suffice rather than having to show by individual entry the name and amount of grapes delivered daily by the individual.

5. *Page 22, line 10.*—Following the word "materials" insert in parentheses the words "except fresh grapes".

6. *Page 31, section 318.*—Strike out section 318.

NOTE.—Without qualification this section is wholly undesirable in its present form for the reason that the entire onus of responsibility would be on the winemaker who might inadvertently have made an error in computing the amount of fortifying material to be added to the juice, thereby obtaining a resultant product that is in excess of 24 percent alcohol by volume, making the wine subject to seizure and the $2 per gallon alcohol tax. If this section can be amended, whereby the wine producer would be relieved of such responsibility of error, to the effect that in the event of such error, wherein the resultant product would be in excess of 24 percent alcohol by volume, the winemaker would be permitted to add fresh juice, reducing the content below 24 percent by volume, it would be satisfactory. However, it is believed that it would be more satisfactory if this provision could be deleted in its entirety, and the fortification issue retain its present status. The Wine Institute favors the merchandising of wines exactly according to standard and alcoholic content as prescribed by law and the regulations. Without inspection, excess alcoholic content could easily be added thereby tax being avoided and a product not according to standard sold.

7. *Page 43, section 612 (a), line 21.*—After the word "special" add the words "or general". In the same line, after the word "warehouse" add the words "or distillery warehouse".

8. *Page 44, line 10.*—Strike out the word "twelve" and insert the word "eighteen".

NOTE.—The reason for this is that the payment of the fortifying tax is payment of a production tax. It is recouped by the winemaker when the wine is sold and if not sold is never recouped. The fact that he must pay it within 12 months under bond often leads to a lack of due curing of the wines and places upon the market immature wines in order to secure money to pay this tax which, in many cases, runs into many thousands of dollars for a particular winery. Since this payment is secured under bond and interest accrues thereupon, there can be seen no reason why the period of time should not be extended in the interest of well-matured wines.

9(a). *Page 47, section 333 (c).*—In line 5 strike out the word "five" and insert in lieu thereof the words "one hundred and fifty". In the same line strike out the word "ten" and insert in lieu thereof the word "three".

NOTE.—The reasons for this change are set forth in the testimony of Congressman Fiesinger of Ohio. They are succinctly stated in a statement by Mr. William H. Reinhart, president of the Sweet Valley Wine Co. of Ohio as follows:

"We make distilling material by fermenting the residue of grapes which is known as grape pomace and which formerly made pomace wine and was sold very extensively previous to prohibition. In order to make a medium sweet product (not sour) the grape pomace which is put into open tanks with sugar solution must be plunged at least twice a day to create a perfect fermentation. This would be impossible by using 500 gallons or 10 barrels of grapes pomace or cheese to a solution of 500 gallons. The grape pomace would swell up and become so thick that it would make practically a solid mass and it could not be plunged. In our opinion you could not successfully use more than 3 barrels of 50 gallons of grape pomace or cheese to 500 gallons of sugar solution. Whoever wrote that paragraph intended to make it prohibitive in using grape pomace for d stilling material. This has been used since time immemorial."

9(b). *Pages 46–47, section 333 (b) and (c).*—After the word "materials" in line 11 on page 47, add the following words "*Provided*, That no spirits made from pomace as provided in subsection (b) and that no spirits made as provided in subsection (c) of this section shall be used to fortify wines or be labeled, transported or sold as grape or straight brandy of any kind or class."

NOTE.—While this is a reenactment of an old statute of 1916, repeatedly reenacted, it is one of those old statutes which the development of an industry finds a handicap upon the industry and a menace to the marketing of products of first quality. Many members of the Wine Institute since 1930, when they were so authorized by Congress under section 814 of the Tariff Act of 1930 to manufacture and sell grape brandies as well as to manufacture same for fortification of their own products, have engaged in that manufacture. These brandies are made of the pure juice of the grape and are of first quality. There are today 3,000,000 gallons on hand in California. This fine grape brandy is gradually finding its market in lieu of inferior whiskey, gin, and other spirits for similar uses to which the latter are used. The Wine Institute, whose primary purpose is to place before the public an absolutely pure product of the grape, does not want to be compelled to compete with the kind or class of brandy that these two provision of the law permit. Subsection (c) is particularly obnoxious. That the manufacturing of such spirits particularly as permitted in (c) should be sold to the public as spirits of any kind is inconceivable in the interest of honest dealings and merchandising. While the Wine Institute does not desire to prevent any persons utilizing these paragraphs for public gain, it definitely protests against any such being manufactured and label as grape or straight brandy. So long as such stuff is not sold as grape or straight brandy, the Wine Institute does not wish to interfere in the business of others. It does, however, object to being compelled to compete with such stuff if it

is labeled straight or grape brandy. It therefore respectfully requests the committee to adopt the foregoing amendments.

While as stated by Mr. Hester at the hearings, sections 331, 332, and 333 of H. R. 9185 have been carried into the Federal Alcohol Administration Act, the attention of the committee is called to the fact that these sections differ in two important particulars in the instant bill from the way they appear in the Federal Alcohol Administration Act. One of these is found in the figure "ten" on page 44, line 5, which as transposed in the Federal Alcohol Administration Act reads "twenty". This constitutes a reduction made by the House of Representatives in the tax upon fortifying spirits used in the fortification of wine. Of this another presentation will be made.

9 (c). Amend R. S. 3244, U. S. C. A., title 26, section 1398 (f) by striking therefrom the words "or wines" And further amend the same by adding at the end thereof a second proviso reading:

"That the mixing of sugar or caramel with wines for coloring or the application of any processes for removing therefrom deleterious substances shall not be regarded to be rectifying processes".

So that as amended it shall read as follows:

"(f) Rectifier. Every person who rectifies, purifies, or refines distilled spirits 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, and every wholesale or retail liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of rectifying in any manner distilled spirits, and every person who, without rectifying, purifying or refining distilled spirits, shall, by mixing such spirits, wine or other liquor with any material, manufacture, any spurious, imitation or compound liquors for sale, under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying: *Provided*, That nothing in this subsection or section 1394 (f) shall be held to prohibit the purifying or refining of spirits in the course of original and continuous distillation through any material which will not remain incorporated with such spirits when the manufacture thereof is complete: *Provided further, That the mixing of sugar or caramel with wines for coloring or the application of any processes for removing therefrom deleterious substances shall not be regarded to be rectifying processes*" (R. S. 3244, third).

NOTE.—The reasons for the foregoing suggested amendment are that in the application of its provisions to the law providing for rectification of distilled spirits and wines, there would seem to be no sound reason why the introduction of coloring substances or the elimination and removing of deleterious substances from wines should be held to be "rectifying" and thereby adding thereto the tremendous rectifying taxes and the expense of a separate and distinct rectifying plant.

10. Page 48, between lines 3 and 4, add a new subsection to section 618, Revenue Act of 1918 (U. S. C. Supp. VII, sec. 1304) as amended, as follows:

"(c) That under regulations to be prescribed by the Commissioner, all aldehyde heads or singlings produced in any distillery operating under and as provided in this section, shall be destroyed under the supervision of the Storekeeper Gager and when so destroyed shall pay no tax."

Note. The reasons therefor are as follows: At the present time, all modern stills are equipped for removal of the undesirable aldehydes, esters, etc., which are run off into a tank designated as a singling tank. This objectionable material that is removed for the purpose of perfecting and improving the quality of both commercial and fortifying brandy leaves the door closed for the running down the sewer of these singlings without payment of the tax of $2 per proof gallon on such material; or the drawing off from the singling tank, under the supervision of the gager, into drums which may be accumulated in the distillery room and disposed of to a denaturing plant; or the distiller may, under the supervision of a gager, empty the singlings back into the still for further distillation, which is wholly undesirable. Therefore the Wine Institute believes that some provision should be made in this bill for the destruction of said singlings without the payment of tax, but under the supervision of the storekeeper gager. A winemaker is permitted to destroy his lees or pomace under the supervision of the gager, and is thereby released of the respon-

sibility of the tax on that particular material. The proposed amendment extends that privilege to distillery singlings.

Amend H. R. 9185 by inserting a new section numbered section 338 between line 22 and line 23 on page 48, as follows:

"Section 239 of the Criminal Code (18 U. S. C., sec. 389), is amended to read as follows:

"Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, from one State, Territory, or District of the United States or place noncontiguous to but subject to the jurisdiction therefor, into any other State, Territory, or District of the United States or place noncontiguous to but subject to the jurisdiction thereof, which prohibits the delivery or sale therein of such liquor, or from any foreign country into any such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than $5,000 or imprisoned not more than 1 year, or both."

NOTE.—The foregoing is section 8 of H. R. 8368, Seventy-fourth Congress, first session, which has been favorably reported by the Judiciary Committee of the House to the House of Representatives and is upon the consent calendar thereof.

The Wine Institute is interested in that bills of lading for wine transported from State to State cannot be handled by banks as consignees without incurring criminal liability. The same therefore forms a part of necessary legislation to expedite and increase commerce in wines between the States. It is respectfully submitted that its logical place is within 9185 and its incorporation therein by the Wine Institute is respectfully requested.

SUBSTITUTE PROVISIONS PROPOSED BY THE WINE INSTITUTE FOR THE AMENDMENTS OF MR. JOHNSON TO H. R. 9185

The amendments of Senator Johnson were sponsored by the Wine Institute. Since having been introduced they have been the subject of full discussions by the wine industry of the United States. Subsection (f) presented a controversial question which has been discussed before the committee.

The Wine Institute in this situation, suggests in lieu thereof, the following:

That in lieu of the amendment intended to be proposed by Mr. Johnson to the bill (H. R. 9185) on page 45, between lines 3 and 4, insert the following substitute subdivisions:

"(e) That under rules and regulations to be prescribed by the Secretary, there shall be abated or refunded to the extent such exceeded the fortifying tax herein provided all such taxes paid upon grape brandy or wine spirits used in the fortification of wine held by the producer thereof or for use in the manufacture or production of any article intended for sale."

This makes no change from the text of Mr. Johnson's proposed amendment:

"(f) That so much of section 616 of the Revenue Act of 1918, approved February 24, 1929 (26 U. S. C. Annotated, sec. 1300 (a) (1)), as reads 'nor, subject to regulations prescribed by the Commissioner, with the approval of the Secretary, shall the tax imposed by section 611 apply to wines produced for the family use of the duly registered producer thereof and not sold or otherwise removed from the place of manufacture and not exceeding in any case two hundred gallons per year.'"

Is amended by adding thereto the words in italic so as to read as follows:

"(f) That so much of section 616 of the Revenue Act of 1918, approved February 24, 1929 (26 U. S. C. Annotated, sec. 1300 (a) (1)), as reads, 'nor, subject to the regulations prescribed by the Commissioner, with the approval of the Secretary, shall the tax imposed by section 611 apply to wines produced for the family use of the duly registered producer thereof and not sold or otherwise removed from the place of manufacture and

not exceeding in any case two hundred gallons per year. *That any person violating any of the provisions of the foregoing quoted part of said section 616 shall be deemed guilty of a misdemeanor and be punished by a fine of not less than $1,000.00 nor more than $5,000.00, or undergo imprisonment of nor more than three years at the discretion of the Court.*"

While the subject is of highest importance and upon which the Institute is divided, there is no dissension from the view that the menace of severe punishment will lessen violations of this law.

"(g) That section 605 of the Revenue Act of 1918, approved January 24, 1919 (26 U. S. C. Annotated, sec. 1151 (b) (1)), be amended by adding thereto as follows:

"That, as well as otherwise by law provided, under such regulations as the Secretary of the Treasury may prescribe, vermouth may also be produced in a separate department of any bonded winery without any connecting entry way between the same without being subject to any rectification or other tax upon its production. Such separate department shall for all tax purposes be deemed a part of such bonded winery".

NOTE.—For the reasons therefor, see Hearings.

Amend the second proviso of section 5 of subdivision (e) of the Federal Alcohol Administration Act, which reads:

"*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 (trade) name or brand of foreign origin not presently effectively registered in the United States Patent Office *whether or not susceptible of such registration*, (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."

so as to read when so amended as follows:

"*Provided, further*, That nothing herein nor any decision, ruling, or regualtion 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."

NOTE.—This amendment seeks to meet attempts to evade the plain congressional purpose as expressed in the law as a member provision of the Federal Alcohol Administration Act. It is contended that the term "trade name" has that narrow legal interpretation not extending to or including therewith such names as are or can be duly registered in the United States Patent Office. Such was not the intention of Congress and would limit the amplitude of the paragraph to an inconsequential latitude.

It is further contended that because the provision excepts those names that may be registered in the United States Patent Office, this exception in the law confines the amplitude of the purview thereof to the subject matter of the exception and that therefore it applies only to those names susceptible of registration in the United States Patent Office which does not include proper names. It is deemed best to avoid litigation and confustion in administration that the provision be so amended that there can be no question as to the intent of Congress. The proposed amendments so affect.

Senator KING. Congressman Fiesinger, we will have your statement now, if you care to make it.

STATEMENT OF HON. WILLIAM L. FIESINGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. FIESINGER. Mr. Chairman, first, may I be included in the conference with the Treasury officials, because our interests in Ohio are somewhat different from the California interests, and I would like to have them preserved as far as can be done?

Senator KING. Yes.

Mr. FIESINGER. Mr. Chairman and gentlemen of the committee, I represent a large grape-growing and wine-producing section in the State of Ohio; in fact, the largest grape-growing and wine-producing section of the State of Ohio, and one that compares favorably with other such sections in the United States.

When I had notice this hearing was to be held, I communicated with some of my people in Ohio, and I got this general observation, that they would like to have me make this recommendation, and I think it is pertinent now.

It has been stated heretofore that up to 1916 there were no taxes on wines in the United States, and I think that was a sound national policy in the interest of temperance and in the interest of fairness to those who produced grapes.

Grape lands generally are used for that purpose only, and not for other agricultural purposes. The reason for eliminating the tax on light wine is that light wine may be treated as food, and in the event that prohibitory laws are passed, it would have food status and thus preserve the grape-growing industry.

The recommendation I wish to submit is this: That in the interest of temperance, wines of less than 14 percent be tax free, and a tax on wines of more than 14 percent and not less than 21 percent remain the same—namely, 20 cents per gallon—so that wines of lighter alcoholic content be made more readily available.

Senator KING. That recommendation would embrace not only dry but sweet wines?

Mr. FIESINGER. There is no distinction between the two, I understand, so far as the recommendation goes.

I did not get the full significance of Judge De Vries' recommended amendment to section 3255 of H. R. 9185, subsection (c), and I would like to make a suggestion of an amendment.

Senator KING. Will you state that again? What section did you say?

Mr. FIESINGER. The section is 3255, subsection (c), on page 47.

Senator KING. I understand.

Mr. FIESINGER. I have a letter from Mr. William H. Reinhart, who is president of the Sweet Valley Wine Co., of Sandusky, Ohio, former conservation commissioner in the State of Ohio, and he makes this suggestion to me:

> Have just finished reading H. R. 9185, also H. R. 191. Both bills seem to be satisfactory except paragraph (c).
>
> We make distilled material by fermenting the residue of grapes, which is known as grape pumice, and which formerly made pumice wine and was sold very extensively previous to prohibition.
>
> In order to make a medium sweet product, not sour, the grape pumice which is put into open tanks with sugar solution must be plunged at least twice a day to create a perfect fermentation. This would be impossible by using 500 gallons or 10 barrels of grape pumice or cheese to a solution of 500 gallons

which this present section provides. The grape pumice would slow up and become so thick it would become practically a solid mass and it could not be plunged.

In our opinion you could not successfully use more than 3 barrels of 50 gallons of grape pumice or cheese to 500 gallons of sugar solution.

I submit that, and I consider that is very important, because here is a practical wine maker going back over nearly 50 years, and it seems to me that statement of his has a great deal of significance and it should be thoroughly considered by the committee.

I will confer with Judge De Vries, and maybe we can get together on the amendment.

Senator KING. I confess not understanding the significance of the amendment and I confess to not understanding just what subdivision (c) is intended to accomplish.

Mr. FIESINGER. I must also make the same confession, as I am not a practical wine man, and it is rather technical to me.

Mr. Buck might be able to give us some light on the subject.

Mr. BUCK. May I make a statement before I am called?

Senator KING. Yes.

Mr. BUCK. Section (c) makes no change in the law which has been the law for 16 years, and it was merely a restating of the code as it now exists.

Senator KING. And the wine maker that the Congressman refers to apparently did not know of the existing law?

Mr. BUCK. If you want to change the law that is a matter of policy, but as the bill came over to you from the House it makes no change in the present law.

Senator KING. Since we have it before us, what suggestion do you want to make?

Mr. BUCK. I make no suggestion at all.

Mr. FIESINGER. Are you acquainted with this proposition, Mr. Buck?

Mr. BUCK. I will go into it when I get on the stand; you just go ahead and finish up.

Mr. FIESINGER. On the question of vermouth this law takes off the additional tax of 20 cents, and of course we agree with that.

One of our wine makers in Sandusky would like to make considerable vermouth, but he has been hampered by the competition of foreign vermouth because of that extra 20-cent tax.

As has been said before, this is not properly a fortification; it is merely the adding of certain herbs to the wine, and does not add anything to the alcoholic content of the wine, so therefore there should not be any additional tax, because there is not anything added to it except just these herbs.

I think I agree with the amendment offered by Senator Johnson.

Senator KING. Which amendment do you refer to now?

Mr. FIESINGER. The last one, I believe, that Judge DeVries referred to, about having the vermouth made in a department of the winery rather than in a separate place. That is very important.

I may say, as I understand it, the vermouth industry has been under a great handicap because of the taxes and conditions imposed, and the foreign vermouth has been able to come in and take most of the market.

Senator KING. May I ask for information—is there any reason why H. R. 191 cannot be consolidated with H. R. 9185?

Mr. FIESINGER. I would like for Mr. Buck to answer that question.

Senator KING. When the Congressman is on the stand I will ask him that.

Mr. FIESINGER. I should like to conclude my statement by inserting a letter from Mr. William Hommel of the M. Hommel Wine Co., of Sandusky, Ohio, with some observations he offers and he talks about the subject of vermouth and two or three other things. I would like to have his letter inserted in the record for the committee's consideration, together with a copy of a letter attached to it from the Treasury Department.

Senator KING. There is no objection, and it may be included.

(The letters referred to are as follows:)

THE M. HOMMEL WINE CO.,
Sandusky, Ohio, January 10, 1936.

Mr. WM. L. FIESINGER, M. C.,
House of Representatives, Washington, D. C.

DEAR FRIEND JUDGE: We just received your wire and are answering same by special-delivery mail.

The point we are attempting to make is first: We want to save the wine industry, save it so that it can be developed the way it should be and this is to give the vintner the right to sell his products in any wet State of the Union. We should be able to sell any individual, that is private individual, without going through the liquor-control board of the State in which that individual lives, or without handing out sugar money to the politicians of any State in order to be able to sell in it. If we sold to permit holders, then we would expect to have the sale come through the liquor-control board of that State, but the stand that all liquor-control boards have taken against wines has practically paralyzed the sale of champagnes and wines through liquor-control boards.

Therefore, the only salvation we have would be for this right to ship into any wet State regardless of the liquor-control board in control in that State. We believe that the individual should have the right to buy any brand he wants to drink, or any wine he wants, regardless of whether or not that State saw fit to patronize the winery from which the individual wished to purchase. Why should the individual have to accept and drink only what his State control saw fit to buy?

Naturally we would expect to pay the State stamps of any State on the products we sold in that State and we would buy these proper stamps from the State and affix them to the cases shipped before we made shipment. In this manner our wine business can be saved as it will give us back our avenues of outlet all over the United States, to which we are justly entitled. The said avenues of sale are now all closed to this class of business unless the winery has the finances to pay the large licenses, taxes, premiums on bonds and sugar money. The infernal State rights should be done away with in the beverage business and we know that the sales would increase and thus the revenue therefrom would be more for the States and the Federal Treasuries.

All the State rights is absolutely unjust and unnecessary because every winery is a Federal institution under Federal bond and the Federal Government is superior to State government, therefore, if a winery is deemed worthy of a Federal bond, it should be allowed to sell in any State of the United States. Taking all this into consideration, we believe that we should be entitled to sell anywhere in the United States where the territory is wet.

Under the existing conditions, the Federal Government is losing immensely in revenue money. If we were permitted to take and make sales anywhere, the revenue from this would follow and the wineries would also be benefited. You don't know how it feels to receive orders from people in other States and and then have to advise them that you can't fill their order or accept their patronage because their State hasn't seen fit to buy your product or to grant you the sale of your products in that State.

The wine business has been hampered and harrassed with all of these new State laws coming into effect and the status even of vermouth has not yet been settled. It seems our own Government does things to our detriment and lets the foreign manufacturer sail over us, beat us to the sale, and the pitiful

part of it all is, that on top of the help in our country, their country gives them collective help.

We want to impress on you again that if the production of vermouth is stopped, every sweet wine in the United States must be stopped, because they are all made alike, only some ingredients, different ingredients, are used to produce the result of the different products in the sweet line or vermouth set-up.

Yours very truly,

THE M. HOMMEL WINE CO.,
WILLIAM H. HOMMEL.

TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Cleveland, Ohio, December 14, 1935.

The M. HOMMEL WINE CO.,
1422 Clinton Street, Sandusky, Ohio.
(Attention: Mr. William H. Hommel.)

DEAR SIR: This will acknowledge your letter of December 11, 1935, enclosing an advertisement under the caption "Dubonnet" and asking to be advised under what heading this is sold and if it is classed as a wine or a rectification or fortification with this Department.

It is our understanding that true Dubonnet is a French wine to which certain products have been added, and while not knowing the condition under which it is produced in France, such a wine produced in this country would be classed as a rectified wine.

The printed matter in the advertisement is not sufficiently clear to read all label statements, but the larger printing on the advertisement indicates the adding of this wine to make a special type of Manhattan cocktail. If Dubonnet is, as we believe, a wine produced in France as a standard wine of that country, it can be imported into this country and sold as such without regard to our laws or regulations concerning the rectification of wines.

If any change, however, is made in the wine after its receipt in this country in any way changing the character of the wine as received, such a step would be classed as rectification and must conform to this country's laws and regulations governing the rectification of wine.

I trust I have answered your inquiry.

Very truly yours,

FRED W. BELTZ
District Supervisor.
By F. L. WEST,
Assistant Supervisor (Permissive).

DECEMBER 17, 1935.

TREASURY DEPARTMENT,
Cleveland, Ohio.
(Attention: Mr. Fred Beltz, supervisor, by F. L. West.)

GENTLEMEN: We are just in receipt of your letter and have carefully noted contents. Your second paragraph of your letter regarding the describing of Dubonnet is certainly very serious to the wine industry of the United States. If the contents of that paragraph are true, every sweet wine made in the United States is a rectified wine.

There must be some mistake in the regulations you quote, because the Treasury Department of our country would not try to put through a ruling that, theoretically speaking, would put out the wine—sweet wine—business of the United States.

California does not produce sweet wines. The definition of wine in the regulations of the Treasury Department say that "Wine is the fermented juice of the grape." It does not say partially fermented—it says exactly what it says—the fermented juice of the grape. Consequently our California producers are making a fortified grape juice sweet and when new labeling laws are perfected, they should label their product "fortified grape juice."

All the sweet wines made in the United States come under your second paragraph of your letter and this is exactly what we wanted to know. Our industry is jeopardized by our own laws. We have been discussing the situation seriously for the last 3 or 4 years and more frequently for the past 6 months with our Congressmen, Representatives, and Senators to see if this condition can be altered.

Those regulations certainly must have been made during the prohibition times because they could not have been made under a wet regime. It is too unfair to the present set-up.

We thank you for your letter and its information because it is really valuable to us.

Wishing you all the compliments of the season and good health for the coming year, we are.

Yours very truly,

THE M. HOMMEL WINE CO.

Senator KING. Congressman Buck, are you ready to proceed?

Mr. BUCK. Yes.

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

Mr. BUCK. Mr. Chairman and Senators, the Ways and Means Committee assigned to me the duty of presenting the report on H. R. 8195 and H. R. 191 after they had been unanimously favorably reported by the committee.

In answer to the question you asked Judge Fiesinger I may say that H. R. 9185 is a bill based on several bills suggested by the Treasury Department, three bills introduced by myself, and one introduced by Judge Fiesinger, and other suggestions that were made during the course of the hearings before the Ways and Means Committee.

The hearings occurred on May 13 and 14, 1935, and the subcommittee on alcohol of the Ways and Means Committee, of which I am a member, took a number of executive sessions to consider the various points raised in connection with these bills.

H. R 191 is a pure and simple tax bill. You can either make up your mind for it or against it. It reduces taxes on all types of wines by 50 percent, and it corrects a duplicate tax on vermouth which has been spoken of, and of which I will speak later, and it corrects a duplicate tax on liqueurs and cordials, or rather, a tax we do not think was intended by the act of 1934.

Senator CAPPER. May I ask if the Treasury Department approves of the proposition of reducing the taxes?

Mr. BUCK. The Department has not approved of the reduction, but it has approved of the removal of the extra tax on vermouth, and the extra tax on liqueurs and cordials.

Senator KING. But not on wines?

Mr. BUCK. No. However, our committee has given full consideration to that fact. It is our belief there will be no loss of revenue occasioned, because of the increased consumption that will inevitably follow the reduction of the tax.

The tax on wines amounts to about between seven and a half and nine dollars a ton on grapes, which is a terrific tax to be borne by the agricultural producer, and a great many of our wineries are directly operated by agricultural producers themselves.

We have felt this was a tax that could be reduced without any loss to the Treasury. The Treasury's estimate of the loss on revenue from this tax, on paper, would amount to $2,500,000, and that fully appears in the report I filed before the House. But increased consumption of wine would offset this.

In answer to your question as to what the same loss would be on the reduction of tax on fortifying brandy I am advised that for the year 1935 the total income from that source was $562,308.15. The reduction from 20 cents to 10 cents would leave a loss of $281,154.57.

I may say that our committee, and I do not mean to prejudice you gentlemen in that respect, considered this very thoroughly, and we felt there will be no ultimate loss to the Government in revenue, and at the same time we would increase consumption of what after all is strictly an agricultural product.

Senator BARKLEY. Based on the present consumption how much would the reduction involve in revenue?

Mr. BUCK. I have not at hand what the increase of 1935 was over 1934. On 1934 figures (assuming no increase in consumption) it would be about $2,500,000.

Senator BARKLEY. Of course, your theory that there would be no loss is based on the speculative idea that the increase in consumption will protect any such revenue at half of the present rate, as is now produced.

Mr. BUCK. Our theory on that has been somewhat demonstrated by the figures Judge De Vries gave in his testimony, in which he called attention to the difference in consumption between the States that had low tax rates and the States that had high tax rates. Perhaps the most noticeable example is between Pennsylvania and New York, with comparable population and comparable number of foreign-born, where New York, with low tax rates, consumed 6,500,000 gallons while Pennsylvania with approximately nearly the same population, and with a tax rate of 75 cents, or a mark-up in their stores, consumed only 484,000 gallons.

I think you gentlemen are all perfectly familiar with the process of taxation and you know when you get to the point where they mark it up in the stores, as a tax or not, to a rate of 50 cents or 75 cents a gallon for wine, which is really a light alcoholic beverage, purchasers would rather go out and buy corn liquor or something like that for their drink.

Senator BARKLEY. In the report of the internal revenue for 1935, fiscal year ending June 30, 1935, the total amount of tax on domestic wine was $6,133,000, so that would involve a paper loss of a little over $3,000,000.

Mr. BUCK. Three million, and I said two and a half million.

Senator BARKLEY. What is the average per-gallon tax—I know there are different rates, but is there any way of averaging it?

Mr. BUCK. No. In the first place, if I may go back and speak from primer, taxation on wines is based on the alcoholic content. Wines are divided into two general classes, what are known as dry wines, those having less than 14 percent alcohol, and those known as sweet wines, above 14 percent alcohol. Sweet wines are divided again at the point of 21 percent, and those from 21 percent up to 24 percent, or above. The tax now is 10 cents a gallon on those under 14 percent, 20 cents on those of 14 percent to 21 percent, and 40 cents on those of 21 percent to 24 percent, and above that the tax is $2 a gallon.

Senator BARKLEY. What is the relative consumption of dry and sweet wines?

Mr. BUCK. They are approximately equal at the present time.

Senator BARKLEY. So that approximately half of the wine consumed pays a 10-cent tax?

Mr. BUCK. Yes.

Senator BARKLEY. Do you think that is very much of a tax on wines?

Mr. BUCK. If you will recall, when the Liquor Tax Act of 1934 was passed by the Senate, the chairman of your committee, Senator Harrison, did me the honor in the Senate to say, and it is in the Congressional Record, that the tax provisions were those I had submitted to the House Ways and Means Committee and had been adopted by them, and he recommended they be adopted by the Senate without debate, which was done.

The interdepartmental committee on taxation had suggested a schedule so much higher than that that we had to offer somewhat of a compromise, instead of getting back to what we thought was a reasonable rate.

In other words, the Treasury suggested we start the taxation at 16 cents on dry wine and move it up accordingly, and the industry could not have stood that under any circumstances. So that, while I fully agreed with Judge De Vries that dry wine is a food and should not be taxed at all, I came before the Ways and Means Committee and suggested if that could not be done, we might start with 10 cents on dry wines and increase the amount on the others.

Senator BAILEY. What is the division point on dry wines and sweet wines?

Mr. BUCK. At 14 percent alcoholic content.

Senator BAILEY. Down to what?

Mr. BUCK. The law permits them to sell anything above 7 percent.

Senator BAILEY. Do you have any great part of your wine under 7 percent?

Mr. BUCK. No; it will not keep under that.

Senator BAILEY. What is the average?

Mr. BUCK. It must be 10 or 11 percent, because there is no way to keep it sound below that. It would have to be 10 percent, but you could get wine in some unusual cases at 9 percent.

Senator BARKLEY. What is the rate of taxation from 14 to 21 percent?

Mr. BUCK. 20 cents per gallon. If I may resume, we had no idea at that time what the States were going to do in the way of taxation, and as I said, and as has been pointed out to you by Judge De Vries, the States seemed to feel this was a good field for taxation.

The wine industry, I think, can stand a tax of 10 cents a gallon on dry wines and the others in proportion, but it can not stand 10 cents a gallon by the Federal Government and additional taxes by the States.

It is thought that a tax of 5 cents might well be fixed by the Federal Government on dry wines and 10 cents on sweet wines, and so on, and get the States to go along on the same basis. That is the theory of the bill I have submitted.

Senator BARKLEY. What is the average retail price of a bottle of wine—a bottle contains how much, about a quart?

Mr. BUCK. A bottle contains one-fifth of a gallon, usually.

Senator BARKLEY. What is the average price at retail?

Mr. BUCK. That is a question that I cannot answer, because I would not know what kind of wine you are speaking of. There are all kinds of wine.

Senator BARKLEY. I mean of the dry wine.

Mr. BUCK. There are all kinds of dry wine. I can show you a price list in my office that will run anywhere from $7.50 for a case of 12 fifths up to $15 or $16. Age, quality, bouquet, and all of that enter into it. Dry wine is now being sold as low as $4 per case.

Senator BARKLEY. The average cost of 12 bottles would be about 75 cents or 80 cents a bottle?

Mr. BUCK. I doubt if you could retail it at that on the average.

Senator BARKLEY. What I am trying to get at, if you divide this tax up into bottles, at 10 cents a gallon, it amounts to less than 2 cents a bottle, one-fifth of wine, and if it is sweet wine it is 4 cents. What I am trying to arrive at is would that tax on a 75-cent or 80-cent bottle of wine be prohibitive or burdensome?

Mr. BUCK. No; a tax of 2 cents would not be burdensome or prohibitive on the consumer, but it really goes back to the source, the grape grower.

Senator BARKLEY. It is all passed into the price at which the wholesaler prices the wine to the public?

Mr. BUCK. If any tax tends to prohibit the flow of commerce, it will be prohibitive. In this one industry we have had 13 years of prohibition, during the course of which time the taste of the American public, I regret to say, has turned over entirely to hard liquor, and the wine industry is faced with a situation of absolutely having to rehabilitate itself. People don't come out and buy wine unless they think of giving a festive dinner, and the use of wine has temporarily almost disappeared. Something has to be done to make it cheaper than 75 cents a bottle and not ruin the grape grower.

Senator BAILEY. You have a hope that will bring about the drinking of more wine and the promotion of prohibition?

Mr. BUCK. I sincerely hope it will.

Senator CAPPER. This report of yours does not indicate what the recommendation of the Treasury Department was. Did they find that the revenues received by the Government would be less under this plan than under the present plan?

Mr. BUCK. I don't know that they have made any written recommendation on the bill at all. The statement was made to me by Mr. Graves that the revenue loss would be about 2½ million dollars, and million dollars less, assuming no increase in consumption.

Senator CAPPER. You are not contending by this reduction in the tax that the Government will receive more revenue than received under the present tax?

Mr. BUCK. The judgment of the committee was that there would be no lessening of revenue, because any reduction of the tax would increase the consumption, that would more than offset that loss. I know that is the judgment of some of the officials of the Bureau of Internal Revenue, but they would not go on record to that effect.

Senator CAPPER. You are not contending that the Government will gain on this kind of tax?

Mr. BUCK. The more consumption you can build up, the more the Government will collect.

Senator CAPPER. The amount you would collect would not be more than it is now?

Mr. BUCK. If we can market all of the wine we are capable of producing at this lower tax rate, the Government would be ahead millions of dollars. There is no question about that, because we do not market at $3,000,000 revenue a very great tonnage of wine.

Senator CLARK. The tax on liquor is $2 a gallon.

Mr. BUCK. Yes.

Senator CLARK. In view of the retail price of spiritous liquors compared with the retail price of fairly good wine, is the tax at the proportion of 10 cents to $2, or I should say 20 cents to $2, looking at it as a matter of revenue, likely to cultivate a taste for wine, or take away from the other?

Mr. BUCK. As far as we were concerned, we felt it was out of proportion.

Senator CLARK. Of course the tax on wine does not go back on the grape grower, any more than the tax on cigarettes or chewing tobacco goes back to the tobacco grower or the tax on liquor goes back to the corn grower.

Mr. BUCK. I disagree with you that it does not go back to the grape grower, because in the first place, about half of the wineries in California are purely cooperative.

Senator CLARK. The consumer finally pays the tax just like the man who smokes the cigarette pays the tax on cigarettes.

Mr. BUCK. Before you came in, Senator, I pointed this out, that the tax, if it is a burden in trade and commerce, must eventually be absorbed by the vintners who make the wine. Consequently, if he is the owner of the vineyard he must absorb that tax.

Senator CLARK. They continue to exist, and that is evidence sufficient in itself to show that the tax is not passed back to the grape grower or the farmer; that is, come out of the capital. The tax does not come out of the capital, otherwise they destroy the capital.

Mr. BUCK. That seems to be the situation that is developing. I want you to understand I want to be frank in this. When the prohibition law was repealed a great many people rushed into the wine industry with the idea here was the golden egg that had been laid. The States and the Federal Government rushed in because they thought here is something that could be taxed. Then also rushed into business men who were speculators only, neither grape growers or vinters, who knew nothing of the wine business. But the man who was not familiar with the wine business could not produce at a profit, and he is going out of the picture, and at the same time the States that have taxed too high are finding it necessary to reduce their taxes to produce real revenue.

Senator BARKLEY. How many bushels of grapes go into a gallon of wine?

Mr. BUCK. I do not know that, but I know a ton of grapes will make about 150 gallons of dry wine, and about 80 gallons of sweet wine.

Senator BARKLEY. The thing that bothers me is that if a gallon of wine cannot stand a tax of 10 cents a gallon, then it ought not to pay any tax.

Mr. BUCK. I am willing to have you take that position.

Senator BARKLEY. I am not saying I take that position, but it seems to me it is so low, that if it cannot bear that tax, it cannot bear anything.

Mr. BUCK. This present tax was just a guess in the dark, and I assume responsibility for it, and it was my best guess at the time, but it was a guess.

At that time others thought we were going to have, as I say, a golden egg laid so we could get a little bit of money out of it, and now we have seen we cannot, and all you get out of it is between 2½ and 3 million dollars a year at the most, gross, and much less net revenue.

During the prohibition era we only taxed sweet wine 10 cents and 4 cents, which is a cent less than I am asking in this bill, on dry wines.

All I am asking you gentlemen to do, and all the Ways and Means Committee in the House decided to do, is to set the tax back the way it was in 1919 to 1933.

Senator CAPPER. I understand the Treasury opposes that.

Mr. BUCK. The Treasury Department has not approved it, Senator.

Senator KING. May I say it is not infrequent that the departments are not in agreement with Congress.

Mr. BUCK. May I say, Senator, that I never expected to get a recommendation from the Treasury to reduce any tax, and I was very much surprised that in the provisions incorporated in H. R. 9185 that they recommended a reduction.

Mr. FIESINGER. Could I ask a question on that very subject?

Senator KING. Yes.

Mr. FIESINGER. Do you take the position it ought to be treated as a food, as we do?

Mr. BUCK. I do not oppose that at all.

Mr. FIESINGER. I thought Judge De Vries took that position and it should not have any tax at all on it.

Mr. BUCK. Whenever Congress gets around to the place where they will treat wine as a food, it should be so treated, and I do not want any misunderstanding about that.

Mr. FIESINGER. Your personal view is that it should be so treated?

Mr. BUCK. Yes; that is my personal view, but let me complete my statement.

H. R. 191 also has a very important feature in line 7, page 1, of the Senate copy, which Judge Fiesinger touched on lightly, and that is vermouth.

Vermouth is a rectified article, made by taking sweet wine; that is, wine between 14 and 21 percent and adding to it certain herbs, letting it steep, and then bottling it again and selling it.

To make sweet wine you take your dry wine in the winery and add brandy to bring it up to the required percentage of alcohol. That is the only difference between dry and sweet wines.

Senator BARKLEY. Is that brandy made from grapes?

Mr. BUCK. Yes; it is distilled wine, and on that brandy you pay a fortifying tax.

Senator CLARK. What is that?

Mr. BUCK. The tax is 20 cents, and I am asking that it be reduced to 10 cents as the tax on the fortifying brandy. The brandy tax is

the first tax. You take the sweet wine which must be withdrawn from the winery because you cannot make vermouth in the same premises, and because you have to withdraw it you pay the 20-cent tax on the wine, which is two taxes. Because you add the herbs to it, you pay 30 cents a gallon rectifying tax, and that is three taxes. Because vermouth, under the laws of the United States, is still classed as wine, when it goes out again you pay another 20-cent tax per gallon, which is four taxes, and in all it amounts to about 76 cents a gallon.

I submit that is so great that the people in America who want to make vermouth cannot stand this tax against the foreign tax, which is only 20 cents.

Senator BARKLEY. What is the duty?

Mr. BUCK. It is about $1.25 a gallon.

Senator CLARK. That is added to the 20 cents?

Mr. BUCK. Yes; that is added to it, but, of course, they have a different cost of production of grapes and the production of the wine.

Senator CLARK. From a competitive standpoint it is not fair to say the only difference between the American and the foreign producer is the foreign has to pay 20 cents tax, because he has to pay a duty and the tax on top of that. Actually the difference is not 20 cents a gallon; it is $1.45.

Mr. BUCK. It is $1.45 against 76 cents, yes; that is a fair statement.

Senator BARKLEY. What is the relative price of vermouth to the public after you have gone through this process and made the vermouth out of wine?

Mr. BUCK. From the report of the Tariff Commission September 1 to 15, 1934, page 62, French vermouth was $14.50 to $16 per case and Italian vermouth around $17 a case.

Senator BARKLEY. Do you get the domestic now?

Mr. BUCK. Not very much. There was very little made during prohibition, and very little since repeal.

Our people did before make millions of gallons of vermouth and they want to get back in that business again.

All this bill of mine asks for is the repeal of the second wine tax. It was the purpose of the original bill I introduced to do away with the rectifying tax, to repeal this same tax; but this bill only takes the 20 cents off, and I submit that is a fair and reasonable proposition.

Senator KING. You want it adopted as it came from the House?

Mr. BUCK. Yes, we would like to have it adopted as it came from the House.

The other point that bill involves is found in the change of the tax on liquors and cordials on line 18, page 3. I do not know whether you gentlemen have the report I submitted in the House or not, but I shall read from it on page 4, as follows:

> In the liquor taxing act of 1934 if these liquors and cordials contained over 24 percent of alcohol they are taxed twice. In the first place they pay the full $2 tax on the brandy or spirits that go into them and make them 24 percent, and then they are still taxed again $2 a gallon.

Senator KING. That makes it $4?

Mr. BUCK. Yes, and our committee is of the unanimous opinion that was not intended, and asks that this duplicate tax be removed.

Senator KING. Is that rate fixed by the provision in line 22, "One and one-quarter cents on each one-half pint or fraction thereof"?

Mr. BUCK. Yes, it is reached in the language from lines 18 to 22, which changed the phraseology in the liquor taxing act of 1934.

Now, gentlemen, I think Judge De Vries covered H. R. 9185 very thoroughly, and I have no doubt when his testimony appears in the record it will give you a very full idea of the situation.

I want to speak just on one or two matters in connection directly with the section Mr. Hester stated he felt had already been adopted into law by the Federal Alcohol Administration Act (secs. 330, 331, 332, 333, and 334).

When the Federal Alcohol Administration Act came into conference last year the conferees did me the honor to consult me because I was piloting this bill through the House and these same provisions had been adopted as an amendment to the Federal Alcohol Administration, and were put in here, and the Senator from Florida was very anxious to have the law enacted into a law at once. There was no objection or pride of authorship or anything on my part, but I suggested at that time that the language of the House section be adopted. It uses a different set-up than the ones actually adopted.

In other words, there is a slight difference in the phraseology, and I suggested that the committee and its legislative counsel consider those provisions carefully and see if it could be reenacted in H. R. 9185.

There is no disposition on my part to object otherwise to those sections. Section 331 is essential to the program I have outlined in connection with the tax reduction. It provides a reduction in line 5 of page 44 of 10 cents per proof gallon of grape brandy or other spirits used for fortifying sweet wine. The present tax is 20 cents, and we propose to make it 10 cents.

Senator KING. You want this to stand as it is here?

Mr. BUCK. Yes; certainly we do. As I pointed out to you before, the only difference between dry wine up to 14 percent and sweet wine up to 21 percent is the amount of alcohol contained, and that content is acquired by the addition of brandy to it, so when you tax fortifying brandy you not only tax it but you also make the wine which is added pay a tax of 100 percent more, so it seems to be a case of double taxation.

Senator CLARK. The only difference between dry and sweet wine is that the sweet wine has more kick to it?

Mr. BUCK. No; there are other differences. For instance, sherry has to be baked after that addition, but you take other wine, brandy is added to fermentation. All of these wines stand on their own bottom.

Senator BARKLEY. The only main difference is the dry wine has less alcoholic content?

Mr. BUCK. That is correct.

Senator BARKLEY. After you get up above 24 percent, what is it?

Mr. BUCK. It is sweet wine up to 24.

Senator BARKLEY. In other words, the more bitters you put in, the sweeter it gets?

Mr. BUCK. I would hardly call brandy bitters.

This tax was originally a 3-cent tax used for fortifying, and was only put on to cover the cost of the Government to see that the

brandy was used for that purpose only, and not used for sale as a beverage.

If it is used for fortification it does not pay the $2 tax, and it never paid any tax except the tax for fortification purposes, which, as I say, originally was 3 cents, simply to cover the Government cost to see it was put in the wine to raise the alcoholic content of the wine and not diverted to commercial purposes.

This was subsequently raised to 10 cents per gallon during the World War, then raised to 20 cents, and cut down again, and then put back up to 20 cents in the Liquor Taxing Act of 1934.

Senator KING. What is the tax on brandy?

Mr. BUCK. For sale as a beverage?

Senator KING. Yes.

Mr. BUCK. $2.

Senator KING. Then, as I understand you, there would be a tax of $2; and if you used a part of that brandy upon which the $2 tax had been paid, for fortification of wine, there would be a 3-cent tax?

Mr. BUCK. No; brandy used for the fortification of wine does not pay the $2 tax.

Senator KING. How do you know, when you manufacture it, that it will be used for fortification?

Mr. BUCK. You don't, and you don't pay the tax until you withdraw from the bonded warehouse. It has to be withdrawn under the supervision of the Bureau of Internal Revenue if it is used for fortification, and you pay the present tax of 20 cents a gallon.

Senator BARKLEY. What proportion of brandy is added to ordinary dry wine to make it sweet?

Mr. BUCK. You would add about one-third of a gallon of brandy to a gallon of dry wine.

Senator BARKLEY. As I understand, all wine made naturally by fermentation is dry and it contains less than 14 percent of alcohol, generally?

Mr. BUCK. Yes.

Senator BARKLEY. Then you add to it brandy to strengthen its alcoholic content?

Mr. BUCK. That is correct.

Senator BARKLEY. But there are other processes by which you could produce wine of more than 14 percent, naturally; is that not true—what is the alcohol content of brandy?

Mr. BUCK. It is about 48 percent.

Senator BARKLEY. If it is a grape brandy it has been produced by a different process?

Mr. BUCK. Brandy is distilled; you take wine and distill it.

Senator BARKLEY. You get a different alcohol content after the thing is over, whether fermentation or distilling.

Mr. BUCK. Fermentation is the natural process by which you get about 14 percent, not over, and you get the other, called sweet wines, by adding brandy, which is wine that has been distilled.

Senator BARKLEY. Could you take a grape in a state of nature and produce a content of more than 14 percent alcohol by any other process than by distilling?

Mr. BUCK. You do not produce the sweet wine by distilling, you produce it by the fermentation of dry wine and adding distilled brandy.

Senator BARKLEY. I understand that.

Mr. BUCK. There is no other process I know of.

Senator BARKLEY. If you want more than 14 percent without this mixing process you have to put the grape through a different process then fermentation?

Mr. BUCK. There is no other process I know of.

Senator BARKLEY. How do you get brandy?

Mr. BUCK. You first take your dry wine, and then distill it like you distill corn mash or anything else.

Senator BAILEY. Your point is, when you go to fortify dry wine to make it sweet, you want to make that 10 cents a gallon on the brandy you use for fortification?

Mr. BUCK. We want the tax restored to where it was.

Senator BAILEY. How will that correspond with your theory of making light wines with a light alcoholic content with a view of encouraging the American people to drink more mild drinks, therefore getting rid of brandy and whisky? I think there is a great deal in that thought. That is a situation you think might possibly be developed that way, like the European situation.

Mr. BUCK. But there is in Europe, too, of course, what are known as sweet wines, and they are made in a similar manner. There is always a difference in taste between you, some other Senator, and myself, that must be met.

Senator BAILEY. I thought you had in mind making a wine drink that is not as strong as whisky, but you would want it as strong as brandy or sweet wine, or would you want them to get down to drinking 14-percent wine?

Mr. BUCK. When you add your brandy you only get a resultant product of 18 or 20 percent.

Senator BAILEY. Brandy is usually under 50 percent, is it not?

Mr. BUCK. You mean the resulting compound is under 50?

Senator BAILEY. It is not about 50 percent alcohol, I understood it was 45 to 50.

Mr. BUCK. Yes.

Senator BAILEY. The French brandy is higher; it is very strong.

Mr. BUCK. Yes; cognac is higher.

Senator BAILEY. Let me ask you this, this is sort of kindergarten, but what is the process by which champagne is made; it is a wine?

Mr. BUCK. True champagne is a dry wine placed in the bottle before fermentation is completed, a small amount of brandy is added to it, and the fermentation completed in the bottle, so that keeps the gas in there. After a sufficient time the neck of the bottle is frozen, and the sediment is removed and the bottle recorked and rewired.

Senator BAILEY. That is just a matter of curiosity.

Mr. BUCK. Fermentation is completed in the bottle and the gas is still there.

Senator BAILEY. You do not make champagne by fermentation?

Mr. BUCK. Yes; it is made by fermentation.

Senator BAILEY. Does that not run stronger than 14 percent?

Mr. BUCK. I have never seen any over 12 percent. Senator, if I may return to my statement, since I do not want to take too much time, I have only one other point I want to call your attention to.

In section 331, I think it is important to have it enacted in the form in which it is here rather than as adopted in the F. A. A. Act. I am referring to line 10, page 44, the time in which the assessment on this fortified brandy may be paid has been extended by 2 months, and we desire that change inserted. This has the approval of the Treasury.

Senator BAILEY. That is section 331.

Mr. BUCK. The points involved in sections 331, 332, 333, and 334, in different language, were enacted into law at the last session of Congress in the F. A. A. bill. I suggest they be reenacted in the language set out in this bill, to take care particularly of the changes in lines 5 and 10, page 44, above referred to, and not included in the F. A. A. Act.

Senator BAILEY. The Treasury has agreed with you on that?

Mr. BUCK. The Treasury has agreed to sections 332, 333, 334, and the remainder of title III and to the amendment on line 10, page 44. But I want to remind you that the Treasury did not agree to even the present rate when it was offered in 1934, and experience has shown it was too high.

As to the Johnson amendment, I am certain the Committee would have no objection to the present section (e) on page 1 of his amendment. As to provision (g) we have this suggestion, that that special room must have absolutely only one entrance from the outside and there must not be any possibility of getting sugar or the other ingredients they could bring in there, into the winery itself.

I take it the other amendments that have been suggested by the Wine Institute or anyone else will all be presented by Judge De Vries, so I am not going to take any further time on this.

Senator BAILEY. Would you object to a lower tax on lower alcohol content in wine? You have 10 cents minimum now, and would you suggest that the content be cut down to 10 or 11 and kept there, and that there should be a lower tax in the interests of encouraging the sale of a very mild wine in order to induce consumption.

Mr. BUCK. I think if you will investigate the history of wine making, not merely in this country but everywhere, you will find that is a natural dividing point to which wine can gets, and by fermentation get rid of the acid and sugar. Ordinarily it only runs to 10 or 11, but to try to break it at 10 or 11 percent alcohol, it would give more trouble both to the wine maker and the Treasury to collect the tax than it is worth. The natural division is 14 percent.

Senator BAILEY. I was very much interested in your view that we might bring our American people, by some voluntary method rather than the means we tried heretofore, to a point where we could break them from drinking hard liquor.

Mr. BUCK. I think we are trying to make every possible effort to revive what wine taste we had and extend it in the country, and I know that those in high authority everywhere are trying to help us to do that.

In fact Congress, as you know, has gone on record itself by abolishing the tax on dry wine in the District of Columbia and reducing the tax on sweet wine to 10 cents.

Senator BAILEY. That is just for the District.

Mr. BUCK. Yes; just for the District. Of course we have no power to legislate anywhere else. That is not the Federal tax, but

just for the District. I think, gentlemen, that concludes everything I have to say, unless you want to ask further questions, which I would be glad to answer.

Senator BAILEY. Thank you, Mr. Buck. I submit for the consideration of the subcommittee a statement by Congressman Lea, of California.

STATEMENT OF HON. CLARENCE F. LEA, REPRESENTATIVE FROM FIRST DISTRICT OF CALIFORNIA

Mr. Chairman, I appear in support of H. R. 191, introduced by Representative Buck, of our State, which would fix the tax on still wines at 5, 10, and 20 cents per gallon on wines containing not more than 14, 21, and 24 percent alcohol, respectively. My district is the greatest dry-wine producing district in the country. These wines contain less than 14 percent of alcohol.

This bill is an important and practicable measure for our State. Grape growing is a farmer's occupation. Grape growing and the wine industry are inseparably connected. The grapes used for making light wines are of little commercial value other than for wine-making purposes.

We have several hundred thousand acres of grapes in our State. We produce 4 or 5 hundred thousand tons of distinctly wine varieties each year. There are some large acreages, but on the whole the industry represents acreages of the small farmer.

Grape growing is intensive agriculture. It involves proportionately much labor, particularly at certain seasons when a large number of men and women are employed in gathering the crop, and at other periods of cultivation, pruning and spraying.

Ordinarily a ton of grapes would make about 160 gallons of wine. The tonnage per acre varies from 1 ton on poor lands, or under unfavorable conditions, to 3 or more tons. Table and raisin grapes produce a higher tonnage per acre, particularly on favorable soils.

There seems to be no probability that producers of these dry wines, being the light wines containing less than 14 percent alcohol, will receive more than 25 cents per gallon. It is improbable that the average wholesale price will exceed 20 cents a gallon.

A ton of average grapes would produce about 160 gallons of claret wine. So at 5 cents a gallon the tax translated into the grape unit would mean about $8 per ton. The present tax of 10 cents would equal $16 a ton tax on the grapes. The price of grapes, of course, varies, but over a long period of years prior to prohibition the average price on high-quality grapes in my home county was slightly less than $20 per ton delivered at the winery. So on that basis a 5-cent tax represents 40 percent of the average sale price of the grower, and the present 10-cent tax is equivalent to an 80-percent tax.

The 5-cent tax would be a very much smaller percentage of the average price at which claret wines are distributed at retail. However, the wine from the manufacturer to the consumer is subjected to State, county, and dealer's taxes that greatly increase the tax burden.

The tendency of the prohibition period was to induce the drinking of high-powered liquors where alcohol could be procured in concentrated form in smaller packages. The full effect of this tendency was not disclosed until the post-prohibition period. Since then there has been a decreased demand for light wines from the class of drinkers who formerly used them more extensively. We can naturally expect as time goes on there will be an increasing return to the light wines for table use.

These light wines are the poor man's wine drink. They produce little intoxication, both because they have a light percentage of alcohol and because they are meal beverages and not a bar drink. No more than a very small proportion of American-produced wines, particularly the lighter varieties, have ever been sold over the bar. The consumers for those wines follow the practice of using them as meal beverages. That is their normal and preferable use.

The high prices of liquors during the prohibition era developed the idea in the public mind that there could be a rich source of revenue by the legalization of intoxicating liquors. Every political subdivision in the country unduly relied upon the return of legalized liquors as a source of revenue to ease its tax burdens. The result has been a mass of liquor tax laws enacted much in disregard of what a prudent management of governmental affairs would war-

rant. Excessive taxes have been an inducement to the manufacture of poor quality liquors and afford a partial shelter for the continuation of the bootlegging industry.

The fundamental need of the legitimate wine industry is the improvement and standardization of quality and reasonable tax burdens. The United States can produce wines equal to any in the world. They can be produced at reasonable cost and should reach the consumer at a reasonable cost.

Our State has passed legislation with a view of improving and standardizing our wine products. I believe it would be to the interest of our tax system as well as contribute to the social betterment of the liquor problem if by the reasonable exercise of the taxing power we can encourage the production of good quality wines and make possible their distribution to the consuming public at reasonable prices.

The prohibition period reduced the legalized, commercial consumption of wine to a minimum. It greatly increased the home production of wines tax free and unlicensed. The provision of the law permitting a wholesaler to manufacture 200 gallons of wine, tax free, was abused and converted into a source of bootleg supply. The 200 gallons was stretched indefinitely, and the home manufacturer made a distribution point for bootlegging and for the supply of neighbors and friends.

The result was that a vast volume of wine, also large quantities of grapes not suited to good wine production, were used in making home wines. Production was diverted from the commercial, licensed, and skilled production to the unlicensed, unregulated, and unskilled manufacture of wines. Many thousands at home learned, at least in a crude way, the art of wine manufacture, and the practice of evading taxes.

After prohibition this large class of home producers were inclined to continue their wine practices, and were induced to follow that course by the excessive taxes and the excessive prices that followed the high-tax system after the prohibition era. A very large volume of wine grapes continued to flow into this home-production market and escape taxation. This system prevailed in competition with the commercial and skilled manufacturer to his disadvantage, to the discouragement of legitimate wine production.

The average consumer of wines, particularly of the light variety, cannot pay fancy prices. If he is denied the use of wines commercially and scientifically made, at prices he can afford, the tendency is to encourage him to support the bootlegger or home production. This is an important and practical situation.

I am confident that both the moral and the tax situations can be improved by the tax reduction proposed in this bill.

If we can bring wine production almost wholly within commercial channels, where it will be skillfully made and properly handled, and free from excessive taxation, it should produce a larger revenue than that now produced, and with very much more beneficial results to the farmer and vintners, as well as produce a much more wholesome situation from the standpoint of morals and law enforcement.

Much of the home production was unsatisfactory, unskillfully made, and ordinarily the product was drunk in a raw stage before it was properly aged. Home production by those who understand wine making can be carried on with fair success but as a means of a supply for bootlegging trade it is wholly objectionable. I believe a system of check-up on home production is essential as long as the tax-free privilege is to be granted. It is probably impracticable to abolish entirely the home-manufacturing privilege. To do so would violate the well-established custom of so many people that it would be followed by a widespread violation of the law.

A limited tax-free privilege with effective check-ups based on permits identifying the home manufacturer is probably the most practical method of handling that problem. The specific amount given the tax-free privilege is not so important as long as it is definitely limited to affording a reasonable supply for household use and is subject to effective check-ups.

A favorable report of this bill to the committee would do a splendid service to our farmers who grow grapes. It would improve the status of the wine industry, and I believe, materially improve the situation from the governmental standpoint both as to taxes and regulation of the production and distribution of wines.

Senator King directs me to call Dr. Doran next.

STATEMENT OF J. M. DORAN, REPRESENTING THE DISTILLED SPIRITS INSTITUTE

All right, Doctor, you may proceed.

Mr. DORAN. Mr. Chairman and Senators, I represent the Distilled Spirits Institute, a trade association of producing distillers.

Bill 9185, insofar as it deals with the mechanical operation of distilleries and the supervision by the Treasury Department, seems to us to be a step in advance. It does away with a number of rather expensive and obsolete administrative practices now required, and we believe that there is no relaxation in that strict control which we wish above all things to have maintained in the distilling business.

I am in this rather unfortunate position; we have conferred informally with the Treasury Department with respect to two or three helpful amendments, but they have not yet been presented to the committee, and therefore I would like your indulgence to discuss for just a very few minutes one or two of the problems we have, so that when the committee later receives these amendments they will have some information.

One of the most difficult problems we now have to deal with and that especially affects the small distillery, is the matter of classification of bonded warehouses.

There are three classes of the internal warehouse—the distillery bonded warehouse, the general bonded warehouse, and the special bonded warehouse.

Senator CLARK. Just define the different warehouses. The distillery warehouse is the warehouse on the property of the distillery itself?

Mr. DORAN. That is correct.

Senator CLARK. Confined to the product of that distillery?

Mr. DORAN. That is correct.

Senator CLARK. The general warehouse is the warehouse where anybody can go to put their liquor, from any source whatever?

Mr. DORAN. That is right.

Senator CLARK. What is a special bonded warehouse?

Mr. DORAN. A special bonded warehouse is a fruit distillery warehouse. The general bonded warehouse, in the cities where there are several distilleries, were designated as concentration warehouses. Certain privileges were conferred on those warehouses relating to the storage of the products of different distilleries. They were sort of catch-alls or general depositories; some were on the premises of the producing distilleries.

As repeal brought about a rebirth of the legal distilling business for beverage purposes, the concentration warehouses do not fulfill the function originally intended by the act. It was at that time a means of collecting various odd lots of whiskies, and saving the Government expense and protecting against robbery and so on.

However, it is that class of warehouse that is the only warehouse that can be established and made operative at a distillery where it is desired to distill under different names, in order to secure the affixing of the different brands that the distiller, rectifier, or wholesaler desires to have, in order that he can preserve his own brands and get local advantage of his name and standing.

Formerly it was customary for 5 or 6 wholesalers or small dealers to operate a distillery, each one making his own brand and leaving the product of his own brand in the distillery warehouse until he could get ready to take it out; in other words, each wholesaler producing his own brand and having the benefit of the trade, he could build up for his own brand.

In other cases the wholesaler might lease a distillery for 4 or 5 or 6 weeks for a sufficient time to turn out his product.

Senator CLARK. I understand the Department of Internal Revenue has made a ruling they cannot do that unless they go to work and build a partition in the warehouse from cellar to garret at prohibitive cost, and I would like to ask under what provision of the law the Department of Revenue made such a ruling as that?

Mr. DORAN. My understanding is that it is becoming an increasingly difficult problem for the small group of people who must pool their interests to stay in business.

Senator CLARK. If they are not permitted to do that, it means a tremendous advantage for the large distilleries who own their distilleries as against the small fellow.

Mr. DORAN. That is quite correct. As I understand, the Department felt that concentration warehouses were a sort of obsolete affair and as a matter of policy concluded to withhold further designations. I am sure that the situation was not fully manifested at the time as to the great utility of these warehouses that would enable the product of different brands to be stored in the same place.

You mentioned partitions for these distillery warehouses that are established solely as distillery bonded warehouses. It would be necessary to build a solid partition from the cellar to the garret, as you said, at a considerable expense, which would have to be allocated to every small lot of whisky.

Senator CLARK. As a matter of actual fact, the cost would be prohibitive in most cases, or many cases.

Mr. DORAN. It would, and not only that, it occurs to me that while it might not entail any additional Government expense by reason of having one or two men there, at the same time a man would have to come down and go out of a door, and then come in and get on the other side of the partition, and it confines his observation to one gap at a time.

Senator CLARK. As a matter of fact, it is not as beneficial as the other provision.

Mr. DORAN. Not from a supervision standpoint, not at all.

Senator BARKLEY. Regardless of that administrative value, you do not contend that the building of a partition is prohibitive?

Senator CLARK. From cellar to garret, yes; for a small odd lot.

Mr. DORAN. For the use of one distillery producing in more than one name, they are required at the present.

Senator CLARK. In other words, if a dozen wholesalers use the same distillery, leaving the accumulated product until such a time as needed, it would be necessary to build a dozen partitions from cellar to roof?

Mr. DORAN. You would have to have it almost like a series of cells.

Senator BARKLEY. How far ordinarily is it from cellar to garret?

Mr. DORAN. The ordinary warehouse would run from 60 to 80 feet.

Senator BARKLEY. What sort of partitions would they have to build?

Mr. DORAN. They would have to build solid partitions from bottom to top. The ordinary regular warehouse adjoining a distillery is as a rule a large open affair with a series of racks, and the construction of a warehouse such as we have mentioned, which has been constructed by some few people, is a very expensive job.

Practically all of the Kentucky warehouses I am familiar with, and I think I have been in most of them, are open-rack warehouses, and if this amendment we are about to submit to the committee is adopted, it would create one kind of a warehouse and would do away with this distinction of general, special, and distillery warehouses, and the product of all of the distilleries in that warehouse could be stored in the one place without the necessity of a partition.

Furthermore, it could be moved in bond from one point to another, which would greatly facilitate operations in handling, and cut down expenses.

Senator CLARK. Did you have that amendment drafted?

Mr. DORAN. We have been discussing it with the Treasury, and at their suggestion we are going to confer further with them, with a view of getting the proper language.

Mr. CLARK. I hope you will let me have a copy of it when you get it.

Mr. DORAN. I will be glad to.

I wanted to discuss a matter that came up this morning in connection with one of the brewery witnesses, and that is the penal sum of distillery bonds.

Senator KING. Distilleries or breweries?

Mr. DORAN. Distilleries: On page 20, line 17, we have certain suggested wording to follow after the word "prescribed".

Historically, before prohibition, the distiller had to give a very large warehousing bond, the risks were considered fine and the premium rates were very low, but during prohibition there was considerable involvement of the law throughout the States respecting spirits the surety rates were going up and they are still quite high, and the total of his bond, or the principal sum of the surety bond have mounted up to a figure that is really giving alarm, and I think the surety companies are going to be in a fine shape if this thing is not attended to.

Senator KING. Do you mean to say that they are charging excessive rates?

Mr. DORAN. The premiums are excessive by reason of the mounting principal sum of the bond. I would not say the rates are excessive as far as the surety company is concerned. Take in Kentucky alone, there are 60,000,000 gallons of whisky in the bonded storage, and if the provision here is carried out——

Senator KING. What provision do you refer to?

Mr. DORAN. The provision starting on line 14 providing for a monthly or annual warehousing bond in a penal sum of not less than 50 percent of the tax on the distiller's spirits on deposit in the warehouse at any one time, and that 60 million gallons in storage in Kentucky alone, there being more there than in any other State and the tax being $2 the principal sum of the bonds under this provision would be $60,000,000. When we consider the Government

has a lien on the real estate and the man has to have fee simple title free from the covering of a mortgage, lien, or judgment, you can see that that will require a bond that is wholly unnecessary to protect the Government in the collection of every nickel of the revenue because they have the warehouse under lock and key to start with, then they have the real estate, and the commodity itself, as well as the protection of a distiller's bond. We will confer with the Treasury on wording we hope will meet the approval of the committee.

Senator KING. What do you suggest as a fair bond?

Mr. DORAN. We would suggest that the sum of a surety bond required be not in excess of $100,000 in any one supervisory district, or collection district, whichever the Treasury prefers, running to the responsible tax collector in the territory of his jurisdiction.

Senator KING. You would strike out the words "50 per centum" and insert the appropriate words along the line you just indicated?

Mr. DORAN. Yes. And, as I say, on account of these matters not being presented to the committee, I am at a little disadvantage.

Now, one further thing, and I will not take the committee's time any longer.

We would like to see the committee adopt a section relating to draw-back on the exportation of distilled spirits.

We note there is one proposed amendment to the tariff act later on here dealing with the $100 liquor exemption of returning passengers. We believe this is germane to the bill inasmuch as the draw-back claims are always disbursed out of the internal revenue appropriation.

At present the law permits the exportation of original packages, original stamped packages, of whisky from the bonded warehouses, or bottled in bond, which is 4 years and up, bottled specially for export. They are the only two characters of potable liquor that can be exported without the tax being paid.

Now, it is our belief that some of the younger whiskies and some of the blends which are bottled and cased up, and which obviously are not bottled in bond then, as bottled in bond are only straight whiskies, have some market in the Southern Hemisphere and the West Indies. It is entirely monopolized by Scotch and European whiskies, and we would like to see a provision inserted that will make it possible for spirits in cases and bottles to be exported, and the draw-back of the internal revenue tax paid under the general provisions of the law that now applies to flavoring extracts, perfumeries, and medicines.

Senator KING. What objection could there be to that?

Mr. DORAN. I found a very sympathetic feeling in the Treasury about that. They are a little bit concerned about the mechanics of it in order to assure themselves of a proper administration, and not have to pay back something they had not previously collected, but I think they all regard it as a very equitable and fair thing to our business people, and ought to be worked out.

Senator KING. Have you prepared a proposed amendment?

Mr. DORAN. Yes; we have.

Senator KING. Dealing with the mechanics, to use your expression, which you think would fully protect the Government?

Mr. DORAN. Yes; I have it right here.

Senator KING. Insert it in the record and give a copy to the Treasury officials and Mr. Parker.

(The amendment submitted is as follows:)

Add after section 312 (or after sec. 326) an amendment to section 313 (d) of the Tariff Act of 1930 by adding the following:

"Upon the exportation of distilled spirits manufactured or produced in the United States on which an internal-revenue tax has been paid, there shall be allowed a draw-back equal in amount to the tax found to have been paid on such distilled spirits."

Amend section 313 (i) (3) by striking out the words "domestic alcohol" and adding the words "distilled spirits."

Mr. DORAN. I believe, Senator, that is all I have to discuss.

Senator KING. Mr. Doran, I was called out for a few moments and did not hear the first part of your testimony. Did you comment generally on H. R. 9185?

Mr. DORAN. Yes. We think it is a good bill and does not relax any of the strict supervision the Treasury has over distillation. We do not wish it relaxed in any manner.

We would like to see these modernizing things brought about, because it tends to reduce costs, and naturally that is important to a certain portion of the public any way.

Senator KING. Did you hear the suggested amendments which have been offered by the various witnesses?

Mr. DORAN. They all sounded very good to me.

I was not able to make any decision with respect to the few little differences on the wine matters, but it seemed to me the amendments suggested here all have to do with perfecting the administrative sections of this bill, and none of them weaken the Government control.

I think that is all, sir.

Senator KING. Do you care to make any suggestions with respect to the testimony of Congressman Buck and Congressman Fiesinger?

Mr. DORAN. I thought Mr. Buck gave the committee a very excellent statement of various technical wine matters. Of course, I am a chemist and have dealt with these technical problems all through my lifetime. I think he presented everything in a very able and simple and sensible manner. I have nothing but commendation for him.

And as to his lowering the rate of tax to bring about more temperance, that is a policy matter. He may be right. I want to state there is no view in our group to stimulate the sale of whisky to anybody. We are merely here under the supervision of the Government to fulfill a demand in a lawful way. So there may be considerable merit in what Mr. Buck has said.

Senator KING. Thank you very much. Are there any other witnesses that care to be heard?

STATEMENT OF LOUIS B. MONTFORT, WASHINGTON, D. C., REPRESENTING THE FINGER LAKES WINE GROWERS ASSOCIATION AND THE EASTERN WINE GROWERS ASSOCIATION

Mr. MONTFORT. Mr. Chairman and the committee, my name is Louis B. Montfort. I represent the Eastern Wine Growers Association and the Finger Lakes Wine Growers Association. They are the wineries who produce wine in the East, from eastern-grown grapes.

There is considerable difference, of course, between the Eastern type of grape and the California grape.

Senator Barkley was asking about champagne. I will be glad to answer any questions which I can answer.

Senator BARKLEY. So far as the record is concerned.

Mr. MONTFORT. If agreeable I would like to file a brief if deemed advisable, expressing the viewpoints of the eastern wine growers and the eastern wine makers.

Senator KING. Are your views dissimilar to those expressed by Mr. Buck and Judge DeVries?

Mr. MONTFORT. No; they are practically the same, except that it just so happens that 90 percent of the sparkling wine of the United States is made in Missouri, New York, Ohio, and Michigan; 90 percent of all wines made are made in California, and there is considerable controversy between the two groups as to the relative merits of their grapes, and we are here primarily to protect ourselves?

Senator BARKLEY. As well as the product of the grape?

Mr. MONTFORT. Sir?

Senator BARKLEY. As well as the product of the grape?

Mr. MONTFORT. Yes, sir. The California grape has a very substantial sugar content and has a low acid content.

The eastern grape has a high acid content and a low sugar content. Our grape is similar to the grape in southern Germany and northern France. Their grape is the Mediterranean grape, which came in through southern Mexico.

Senator BARKLEY. Does the soil have anything to do with it?

Mr. MONTFORT. Yes, all those things—the soil, the climatic conditions, the sides of the hill, the number of rows up the hill—all are factors in the grape produced.

Senator KING. Where it has the same alcoholic content, whether sparkling wine, as you call it, or California wine, do you really think there should be a difference in the tax involved?

Mr. MONTFORT. No; that is, the same alcoholic content should pay the same tax. The eastern grape does produce a lower alcoholic content wine.

Senator KING. You accept the distinction between the dry and the sweet, do you?

Mr. MONTFORT. Well, yes; that is, I think it is a misnomer, a dry wine and a sweet wine. It might have a high alcoholic content and not be a sweet wine at all.

Senator KING. Where the alcoholic content is 14 or less, then that bears a certain tax.

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

Senator KING. And between 14——

Mr. MONTFORT (interposing). And 21.

Senator KING. Then it has a high rate?

Mr. MONTFORT. That is right.

Senator KING. And 21 and 24 a still higher rate?

Mr. MONTFORT. That is right.

Senator KING. Above that it goes into another classification?

Mr. MONTFORT. And above that it goes into another classification.

Senator KING. You do not object to those classifications?

Mr. MONTFORT. None whatever.

Senator KING. And you do not object to the relation of one tax to the other?

Mr. MONTFORT. Not at all.

Someone made a statement about champagne. That champagne which sells for such high prices should be taxed high. As a matter of fact the high prices result from actual labor costs put into the making of a bottle of champagne.

Senator KING. In making this bottle or the champagne?

Mr. MONTFORT. It is all made in the bottle. That is, what is known as champagne made by the champagne process is all made in the bottle.

There are two other types of sparkling wine. There is the sparkling wine made in the tank, but that cannot be called champagne under the regulations. Then there is the sparkling wine made by adding carbon dioxide, which is carbonic gas, which is shot into the wine in order to make a sparking wine of it. In some cases they make beer that way now.

Senator KING. Is the champagne a high alcoholic content also?

Mr. MONTFORT. It might vary anywhere from 10 to 13 percent.

Senator KING. Then it is less than sweet wine?

Mr. MONTFORT. Yes.

Senator BARKLEY. How long is it supposed to take to produce the completed article?

Mr. MONTFORT. With reference to the champagne made by the champagne process—you cannot make a bottle of champagne by the champagne process, which is the so-called "nature process", in less than a 6 months' period; the contact of the wine with the yeast and other organic matter over a period is very essential. This is known as the cellar treatment.

Senator BARKLEY. How long does it have to lie or set, whatever you call it, in the cellar? I happened to be in France during the war.

Mr. MONTFORT. Yes.

Senator BARKLEY. And we went over to Rhiems and they took us on a sight-seeing trip through what they called cellars which had been vacated. By the way, everything which had been in them prior to that time on account of the war was gone. We were told those cellars had contained large quantities of champagne which had remained there for years. How long are they supposed to be in that process before they are marketed?

Mr. MONTFORT. The idea with champagne is to permit what they call the yeast cells to filter down through the wine and finally adjust themselves onto the cork, and the bottle is set up in this manner and manipulated [indicating], so the sediment finally settles on the cork. That is in the tierage. After that sediment settles there, which takes some time, according to the temperature, according to the season, and according to the grape used, and the sediment finally accumulates on the cork they take that and freeze the neck of that bottle, freeze the sediment there. Then the bottle is disgorged which blows the storage cork out, which also includes the sediment; then they recork the bottle.

It is a theory that champagne ferments during the vintage season 3 years after it has been placed in its final container. That is dis-

puted, however. But a good champagne can be made from 6 months to 3 years, I would say. Then after that it is only as good as its cork. It does not make any difference if it is a thousand years old; it is not any better.

Senator KING. What do you mean by "good as its cork"?

Mr. MONTFORT. If the cork holds the gas in there, Senator, the wine remains good.

If you have ever had champagne which was flat, which did not have any life or any sparkle—its cork has gone bad, which permitted the gas to escape.

Senator KING. So that champagne, then, is just a low-alcoholic-content wine with a good deal of gas in it?

Mr. MONTFORT. That is it.

Senator KING. I have learned something.

Senator BARKLEY. You are going a long way to debunk champagne as a high-class drink.

Mr. MONTFORT. As a matter of fact, it is the labor in the making of champagne that makes the cost. I think any champagne maker in the house, if there is any, will bear me out on that, that it is the labor element in the champagne that makes the cost.

Senator KING. Are there any other witnesses to be heard at this time?

(No response.)

We will take a recess until tomorrow morning at 10 o'clock.

(Whereupon, at 4:20 p. m., a recess was taken until Thursday, Jan. 16, 1936, at 10 a. m.)

LIQUOR TAX ADMINISTRATION ACT

TAXES ON WINES

THURSDAY, JANUARY 16, 1936

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

The subcommittee met, pursuant to adjournment, at 10 a. m., in room 310 Senate Office Building, Senator William H. King presiding.

Present: Senators King (chairman), Barkley, Bailey, and Capper.

Also present: C. M. Hester, Norman C. Forrest, and Stewart Berkshire, of the Treasury Department; and L. H. Parker, chief of staff, Joint Committee on Internal Revenue Taxation.

Senator KING. Let the record show the committee is in order.

James P. McGovern, general counsel of the Industrial Alcohol Institute, has the right to submit a statement.

(Mr. James P. McGovern subsequently submitted the following letter and enclosures:)

WASHINGTON, D. C., *January 17, 1936.*

Hon. WILLIAM H. KING,
Chairman, Subcommittee, Committee on Finance,
United States Senate.

(Re sec. 308, H. R. 9185.)

DEAR SENATOR KING: Pursuant to the permission granted at yesterday's session of the public hearing on H. R. 9185, this letter and its enclosures are respectfully submitted for incorporation in the record.

While the correspondence attached hereto indicates (see copy of letter addressed to me under date of Jan. 4, 1936, by Hon. Stewart Berkshire, Deputy Commissioner of Internal Revenue) that the Treasury Department is considering the redrafting of section 308 as it now appears in H. R. 9185, it is my understanding that an appropriate amendment to such section has not yet been recommended by the Treasury Department to the Congress.

I have been informed that, in a spirit of cooperation with commercial interests concerned with the subject matter, the Alcohol Tax Unit, Bureau of Internal Revenue, Treasury Department, has prepared an amendment to be proposed to section 308 of H. R. 9185 which will preserve the purposes and objects of title III of the National Prohibition Act and be otherwise acceptable to industries affected. In the circumstances and pending the actual presentation by the Treasury Department to the Congress of such an amendment, it is deemed proper that this communication and its enclosures be furnished for the information of your committee.

With assurances of esteem, I remain,

Very respectfully yours,

JAMES P. MCGOVERN,
General Counsel, The Industrial Alcohol Institute, Inc.

WASHINGTON, D. C., *November 25, 1935.*

HON. STEWART BERKSHIRE,
Deputy Commissioner, Alcohol Tax Unit,
Treasury Department, Washington, D. C.
(Attention Harry F. Morton, Chief Attorney, re H. R. 9185.)

SIR: Your prompt consideration is respectfully invited to a serious situation which may develop upon the construction of a provision included in H. R. 9185. That measure, as you know, passed the House August 22, 1935, and was pending in the Senate on adjournment of the last session of the Congress. It is entitled "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." That bill contained many excellent features and, as understood, was a substitute for H. R. 8001, which latter bill was a consolidation of bills H. R. 7497, H. R. 7498, and H. R. 7500, referred to the Committee on Ways and Means from the Treasury Department. (See hearings on H. R. 8001, May 13–14, 1935.)

We are concerned with, and your special attention is directed to, the language now appearing in section 308 of said H. R. 9185, relating to the withdrawal, transfer, and storage of spirits produced at registered distilleries. Our apprehension is seemingly justified because the present provisions of said section do not reflect the views and recommendations of the Treasury Department in the preparation and submission of H. R. 7500 and H. R. 8001 (sec. 308 is identically worded in both bills) and as stated by officials of the Department at the hearings above mentioned on H. R. 8001.

A casual reading of said section 308 of H. R. 9185 will demonstrate that its provisions go far beyond the mere regulation of the withdrawal, transfer and storage of spirits and even an unbiased construction thereof can detect an attempt to break down the distinction between ethyl alcohol and other classes of spirits, which distinction becomes imperative under title III of the National Prohibition Act, and must be maintained if the purposes and objects of such title are to prevail. It is very clear that the Treasury Department recognized this vital distinction in its attitude during the development of H. R. 8001 and has endeavored to stress the importance thereof in its discussion before the congressional committee.

It is unfortunate that the true intent and meaning of terms long adopted and recognized in the Department should be subject to misconstruction or distortion because of proposals ostensibly aimed in other directions. Although ethyl alcohol is essentially a spirit its chemical identity cannot be questioned. It is this substance (ethyl alcohol) the production and distribution of which have been carefully and emphatically placed under the supervision provided in title III of the National Prohibition Act, not only to safeguard and promote its use, but to preserve its identity in the general classification of spirits. The distinctions between an industrial alcohol plant (for the production only of alcohol—ethyl and denatured) and another type of registered distillery, and an industrial alcohol warehouse (for the storage and distribution of such alcohol) and a distillery, general bonded or concentration warehouse, have been amply vindicated and it is of extreme importance that they be upheld. Any measure which even permits the possibility of a construction that alcohol, as defined in said title III, can be produced, warehoused, withdrawn and distributed otherwise than as provided in that title and regulations promulgated thereunder should be vigorously opposed. As will now be shown, it is respectfully submitted that section 308 of H. R. 9185, if it does not expressly so provide, is susceptible of such construction, and that every effort should be exerted to remedy and correct the threatened condition.

It is proposed by section 308 of H. R. 9185 to amend section 602 of the Revenue Act of 1918 which, in part, provides as follows:

"That at registered distilleries producing alcohol, or other high-proof spirits, packages may be filled with such spirits reduced to not less than one hundred proof from the receiving cisterns and tax paid without being entered into bonded warehouse."

Under the amendment proposed in section 308 of H. R. 9185 the above provision will read as follows:

"At registered distilleries packages may be filled with spirits reduced to not less than one hundred proof from receiving cisterns and tax paid without being entered into bonded warehouse."

It is clear that the present section 602 of the Revenue Act of 1918 relates exclusively to "registered distilleries producing alcohol, or other high-proof spirits", whereas, under the proposed amendment, any registered distillery, not established as an industrial alcohol plant, could produce any type of "spirits" including "spirits" which, because of the high degree of proof, might become "alcohol" and by merely reducing the proof "to not less than one hundred" (the degree of reduction not being specified) such "spirits" could be withdrawn and tax paid at the cisterns, transferred by pipe line to storage tanks in the distillery warehouse, transferred by tank cars to general bonded warehouses and "to barrels, drums, tanks, tank cars, or other approved containers", for transportation "to rectifying houses, for exportation, or for other lawful purposes." It would also be possible under that amendment for such "registered distilleries", not established as industrial alcohol plants, to produce "spirits" at over 160° and possibly as high as 190°, and then, by merely reducing same 1° or 2°, entitle such "spirits" to the privileges now conferred only upon industrial alcohol plants. This was never the attitude, intention or policy of the Treasury Department and is directly contrary to the views and recommendations presented during the consideration of the bills in question.

As above stated, the pending bill (H. R. 9185) is a substitute for H. R. 8001, which latter measure was a consolidation of previous bills, H. R. 7497, H. R. 7498, and H. R. 7500. When H. R. 8001 was under discussion at the hearings before the Committee on Ways and Means, C. M. Hester, of the office of the General Counsel, Treasury Department, had this to say regarding the then proposed section 308 (see printed hearings May 13, 1935, p. 45):

"Section 602 of the Revenue Act of 1918, approved February 24, 1919, provided in part for the removal of alcohol or other high proof spirits by pipe line to storage tanks in distillery warehouses, and by tanks or tank cars for removal to general bonded warehouses and to rectifying houses. Alcohol is now produced only in industrial alcohol plants, established under title III of the National Prohibition Act. Therefore, the words 'alcohol or other high proof spirits' in said section 602 no longer apply to alcohol and the phrase 'registered distilleries' does not apply to industrial alcohol plants. Therefore it was proposed by section 308 to provide for removal of spirits less than 160 degrees of proof-high wines in tanks or tank cars to rectifying houses only. It has later been discovered that at registered distilleries such high wines of less than 160 degrees of proof are transferred by pipe line to storage tanks in distillery warehouses, that is, whiskey distilleries."

Mr. Hester then stated the following:

"To correct this situation it is recommended that section 602 of the Revenue Act of 1918 be embodied in section 308 to read as follows: 'At the registered distilleries, producing spirits less than one hundred and sixty degrees of proof, packages may be filled with such spirits reduced to not less than one hundred proof from the receiving cistern and tax paid without being entered into bonded warehouses.'"

It will thus be obvious that the spirits in which the Treasury Department was interested and which it intended to be covered by such section 308 were those spirits produced at "registered distilleries producing spirits less than 160 degrees of proof." As Mr. Hester stated, it was discovered that "high wines of less than 160 degrees of proof" were being transferred by pipe line to storage tanks in distillery warehouses, a privilege not previously exercised, and the amendment was suggested "to correct this situation", and to permit spirits produced at less than 160° to be so transferred, stored, etc.

Dr. J. M. Doran, representing the Distilled Spirits Institute and the Distillers' Code Authority, appeared before the Committee on Ways and Means (see hearings, May 14, 1935, p. 105) and stated that "there are one or two very minor wordings that we would like the privilege of filing a memorandum with the committee on, thinking that it might be helpful, but there is nothing of any particular importance." Such memorandum was submitted by him and is incorporated in full in the record of such hearings (pp. 107–108). In discussing section 308, Dr. Doran said (p. 108):

"We suggest elimination of the words 'producing spirits less than 160° of proof, such.' We fell that these words are unnecessary since the words 'registered distilleries' sufficiently define the plants covered by this section and that the reference to the proof of the spirits may be productive of confusion in connection with later handling and sale of the product, particularly having in mind the Federal Alcohol Control Administration regulations relating to labels. The word 'producing' is particularly objectionable and incapable of

exact definition as between the meaning ascribed to it by the Federal Alcohol Control Administration and the meaning given it in the Bureau of Internal Revenue, so that in any event this language should be changed so as to relate to the withdrawal of the spirits rather than their production. We suggest, therefore, that if it is felt necessary to make any reference to the degree of proof that lines 6 and 7 be changed to read 'that at registered distilleries from which are withdrawn spirits at less than 160° of proof, such spirits.' "

As the above suggestions of Dr. Doran were directly contrary to the recommendations of the Treasury Department, as discussed by Mr. Hester, same should be regarded as more than "minor wordings" and of considerable importance instead of "nothing of any particular importance", as stated by the doctor.

In the report of the Committee on Ways and Means (Rept. No. 1870, Aug. 21, 1935) on H. R. 9185 (same being the substitute for H. R. 8001) the committee reported as follows regarding the above section 308 (p. 5):

" Section 602 of the Revenue Act of 1918 provided for the removal of alcohol and other high-proof spirits from registered distilleries for the purpose therein stated. At that time alcohol and other high-proof spirits at 160° or more were produced at whisky distilleries. At the present time alcohol and other high-proof spirits of 160° and more may legally be produced and warehoused only in industrial alcohol plants established under title III of the National Prohibition Act and regulations thereunder. By section 308 it is intended so to amend the law as to extend the privileges of producing and warehousing spirits of less than 160° of proof at whisky distilleries, and granting the privileges thereunder."

It is evident that the Committee on Ways and Means, in reporting such section 308 to the House of Representatives, was accepting, endorsing, and adopting the recommendation and views of the Treasury Department, to wit, that alcohol or other high-proof spirits of 160° or more of proof could only be produced and warehoused in industrial alcohol plants established under title III of the National Prohibition Act and that such section 308 was intended to extend similar privileges to registered distilleries producing and warehousing spirits under 160° of proof, privileges not now allowed under the law. This distinction and point of demarcation in the classification of spirits should and must be continued, and it is unfortunate that the provisions of said section 308 of H. R. 9185 at least present considerable doubt as to what is intended.

It is not facetious to state that distilled spirits are produced by distillation and that the degree of proof at which the spirits are distilled and withdrawn determine their character, grade, and quality, and not the proof at which they are withdrawn. Proof may be reduced by various means but cannot be increased except by redistillation or the addition of spirits of higher proof. This matter of proof is controlled during the production process of distillation. Spirits produced or distilled at over 160° proof are and have always been regarded as ethyl alcohol or neutral spirits, and such identity can only be preserved by adhering to the degree of proof required on production or distillation.

Believing that the Treasury Department was exercising foresight and proper precaution in recommending that the operations contemplated to be allowed under the aforesaid section 308 be limited to registered distilleries producing and withdrawing spirits under 160° of proof, thereby safeguarding the production and distribution of ethyl alcohol, it is hoped that you may use your good auspices and experience in bringing about such changes in section 308 of the pending bill (H. R. 9185) as will remove the doubtful constructions which may be based thereon. In any event, may I be favored with your views in the premises, to the end that full cooperation may be extended in arriving at a proper determination of what appears to be a very unsatisfactory situation?

Respectfully,

JAMES P. MCGOVERN,
General Counsel, The Industrial Alcohol Institute, Inc.

TREASURY DEPARTMENT,
Washington, December 4, 1935.

JAMES P. MCGOVERN, Esq.,
Washington, D. C.

SIR: Receipt is acknowledged of your letter of November 25, 1935, setting forth your views concerning the amendment of section 602 of the Revenue Act of 1918 by section 308 of H. R. 9185.

Your suggestions and the reasons therefor are quite clear and the subject will be given careful consideration.

Very truly yours,

STEWART BERKSHIRE,
Deputy Commissioner.

WASHINGTON, D. C., *December 18, 1935.*

Hon. STEWART BERKSHIRE,
Deputy Commissioner, Alcohol Tax Unit,
Treasury Department, Washington, D. C.

(Attention Mr. Harry F. Morton, chief attorney, re H. R. 9185.)

SIR: Referring to and supplementing my letter of November 25, 1935, in which your attention was invited to what is regarded as a serious situation which might develop in construing section 308 of H. R. 9185, I would now direct notice to the effect of certain provisions of the regulations relating to distilled spirits misbranding and advertising proposed by the Administrator under the Federal Alcohol Administration Act which have a direct bearing on the conditions discussed in my previous letter. Such regulations, as you know, are subject to the approval of the Secretary of the Treasury (sec. 2, subsec. d). Public hearings thereon were held October 30 and 31, 1935.

In my letter of November 25, I endeavored to point out the confusion which would arise in construing the provisions of section 308 of H. R. 9185, and would now respectfully submit that this confusion will be greatly aggravated under the above proposed regulations, because any regulations issued by the Administrator, under the Federal Alcohol Administration Act and all regulations issued under internal-revenue laws and title III of the National Prohibition Act, are and/or must be approved by the Secretary. If a provision of law is susceptible of an uncertainty and if regulations in regard thereto are inconsistent, the situation becomes chaotic.

Distilled spirits are defined in the proposed Federal Alcohol Administration regulations (art. I (e)) the same as in the Administration Act (sec. 17 (a), subsec. 6), as follows:

"The term 'distilled spirits' means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use."

Under article II of the proposed Federal Alcohol Administration regulations, it is intended to break up the definition of "distilled spirits" into several classes or "standards of identity", among which we find the following:

"CLASS 1. *Neutral spirits.*—(a) 'Neutral spirits' or 'alcohol' are distilled spirits distilled from any material at or above 190° proof, whether or not such proof is subsequently reduced.

"(b) 'Grain neutral spirits' or 'grain alcohol' are alcoholic distillates from a fermented mash of grain distilled at or above 190° proof, whether or not such proof is subsequently reduced.

"CLASS 2. *Whisky.*—(a) 'Whisky' is an alcoholic distillate from a fermented mash of grain distilled, at less than 190° proof, in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whisky, and withdrawn from the cistern room of the distillery at not more than 110° and not less than 80° proof * * *.

"(b) 'Straight whisky' is an alcoholic distillate from a fermented mash of grain distilled at not exceeding 160° proof and withdrawn from the cistern room of the distillery at not more than 110° and not less than 80° proof, * * * and is aged * * *," etc.

Under the above definitions, "whisky", distilled "at less than 190° proof", the degree of proof under 190° not being specified, could be the same spirits as "grain neutral spirits" or "grain alcohol" distilled "at or above 190° proof" and reduced, were it not for the degree of proof at which the spirits are required to be distilled. It is, therefore, clear that the classes or "standards of identity" of "distilled spirits" established under the proposed regulations must depend on the conditions under which the spirits are produced and withdrawn as well as the materials from which the same are manufactured.

The above provisions of the proposed regulations are inconsistent with and in several respects directly contrary to regulations heretofore adopted by the Treasury Department under internal-revenue laws and title III, as I shall now

undertake to show. The additional confusion which may arise should be readily apparent.

In the Gaugers' Manual, issued and approved March 12, 1913, it was provided (p. 48) that, on withdrawing spirits from the cisterns into casks, etc., the gauger should mark or brand on the head of the cask "in letters not less than 1 inch in length, the particular name of the spirits as classified by the regulations then current."

In regulations no. 7, revised, issued and approved July 10, 1914, it was provided (p. 161) that the gauger should mark or brand on the head of the cask "the name of the spirits * * * according to the following classification:

"1. *High wines.*—That which is the first product of distillation produced below 160° of proof and withdrawn from the cistern room above 110° * * *.

"2. *Alcohol or spirits.*—All distilled spirits produced at or about 160° of proof shall be marked and branded 'Cologne spirits', or 'Neutral spirits', or 'Alcohol', as the case may be.

"3. *Whisky.*—All distillate from grain withdrawn from the cistern room at or below 110° of proof * * *."

Under original regulations 61, issued under title III of the National Prohibition Act, January 31, 1920, "alcohol" was defined as follows:

"ART. 3. The term 'alcohol' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or whatever processes produced, having a proof of 160° or more, and does not include the substances commonly known as whisky, brandy, rum, or gin."

The above definition of the term "alcohol" was carried forward in regulations no. 3 (art. 4, subsec. (b)), as revised and issued under title III, March 24. 1931, such regulations being still in effect. This revision of regulations no. 3 was signed and approved by the following: J. M. Doran, Commissioner of Industrial Alcohol; A. W. Mellon, Secretary of the Treasury; Amos W. W. Woodcock, Director of Prohibition; David Burnet, Commissioner of Internal Revenue; and William D. Mitchell, Attorney General.

In regulations no. 8 (which continue in force) concerning "the manufacture of whisky, for nonbeverage purposes", issued and approved December 12, 1929, by J. M. Doran, Commissioner of Prohibition; Robert H. Lucas, Commissioner of Internal Revenue, and A. W. Mellon, Secretary of the Treasury, it is provided that "packages of distilled spirits produced and entered into the warehouse will be marked and branded in the manner provided in the Gauging Manual of 1929."

In the Gauging Manual, revised and issued September 15, 1933, effective January 1, 1934, by J. M. Doran, Commissioner of Industrial Alcohol, approved by Thomas Howes, Acting Secretary of the Treasury (such Gaging Manual being the one now in effect), it is provided (par. 5) that "all packages of alcohol will be * * * marked, and stamped * * * as provided in regulations 3" and (par. 68) "When distilled spirits, other than alcohol, are drawn into packages for entry into warehouse, * * * (par. 71) the name or kind of the spirits will be branded on the packages as follows:

"(a) Whisky: all spirits (other than alcohol) produced from grain below 160° proof shall be branded 'Whisky.'"

By Treasury Decision 26, approved and issued January 20, 1934, by D. S. Bliss, Commissioner of Industrial Alcohol, Guy T. Helvering, Commissioner of Internal Revenue, and H. Morgenthau, Jr., Secretary of the Treasury. Paragraph 71 (a) above the Gaging Manual was amended to include "high wines" which aparently had been overlooked, as follows:

"Par. 71 (a) of the Gaging Manual, January 1934, is hereby amended to read as follows:

(a) *High wines.*—All spirits (other than alcohol) produced from grain below 160° proof and withdrawn from the cistern room above 110° proof shall be branded 'high wines.'

(aa) *Whiskey.*—All spirits (other than alcohol) produced from grain and withdrawn from the cistern room at or below 110° proof shall be branded 'Whiskey'."

The above references to the provisions of present regulations and the Gaugers' Manual are most convincing when considering the necessity, if not importance, of the degree of proof at which spirits are distilled and withdrawn in determining their true character. Without attempting to discuss the application of chemistry and regardless of the purposes contemplated by

regulations issued under the Federal Alcohol Administration Act, the distinction between alcohol and other spirits must be based on the degree of proof at which the spirits are distilled. The use to which any spirit is subsequently put cannot determine its inherent, physical, and chemical properties. Adopting and approving the interpretation and construction of the Treasury Department for many years, the Congress has emphatically provided that alcohol, as such, can only be produced at an industrial alcohol plant established under title III. Regulations authorized under such title can fully protect its production and distribution in accordance with any policy that may be determined by the Government.

Respectfully,

JAMES P. MCGOVERN,
General counsel, the Industrial Alcohol Institute, Inc.

TREASURY DEPARTMENT,
Washington, January 4, 1936.

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JAMES P. MCGOVERN, Esq.,
Washington, D. C.

SIR: Receipt is acknowledged of your letter of December 18, 1935, relative to the provisions of section 308 of H. R. 9185, pertaining to the manufacture of alcohol, high wines, and whisky at whisky distilleries, in which reference is made to your letter of November 25, 1935.

This matter is being given careful consideration with the view of redrafting section 308 as it now appears in H. R. 9185.

Very truly yours,

STEWART BERKSHIRE,
Deputy Commissioner.

WASHINGTON, D. C., *December 21, 1935.*

Hon. C. M. HESTER,
General Counsel's Office,
Treasury Department, Washington, D. C.

(Re H. R. 9185.)

DEAR MR. HESTER: Although you may have heretofore received same from Mr. Morton, I am enclosing herewith copies of self-explanatory letters addressed to Deputy Commissioner Berkshire on the above subject.

With the compliments of the season, I remain,

Very truly yours,

JAMES P. MCGOVERN.

TREASURY DEPARTMENT,
Washington, December 27, 1935.

JAMES P. MCGOVERN, Esq.,
Washington, D. C.

DEAR MR. MCGOVERN: I acknowledge receipt of your letter of the 21st, with enclosures, relative to the effect of section 308 of H. R. 9185, and assure you that the matter will receive appropriate consideration.

Very truly yours,

C. M. HESTER,
Assistant General Counsel.

Mr. Garrett, come forth, please.

STATEMENT OF PAUL GARRETT, PRESIDENT GARRETT & CO., INC., BROOKLYN, N. Y.

Senator KING. Whom do you represent, Mr. Garrett?

Mr. GARRETT. Garrett & Co. In 1934, I think it was, I had the honor of appearing before the Joint Committee on Ways and Means. The tax on light domestic wines at that time was 4 cents a gallon. The production was about 30,000,000 to 35,000,000 gallons a year,

and I advanced the idea at that time that the tax, at 4 cents a gallon, did not collect enough revenue to pay for the extended and intricate supervision that was required. That has been amplified to such an extent that, at the present time, in the little business which I am doing, which is relatively small, although it is extensive, it takes three expert accountants, draftsmen, and so forth, in my place, to keep up with the reports.

My interest is primarily in the light-wine business, the table-wine business.

Senator KING. As a manufacturer?

Mr. GARRETT. As a manufacturer; yes, sir. We own our vineyards, largely. We buy some grapes, but chiefly we own our vineyards in North Carolina, California, and New York State; and, before prohibition closed a great many of our places, we had 17 press houses scattered at various strategetic points in the country, and were confining ourselves to table wines, as nearly as possible.

Referring to the gentleman who appeared immediately after me at this conference—I have not had the opportunity to confer with my associates in California, where I have some large interests, and I confess I was a little surprised at hearing a request for an advance in the taxes on light wines, by the representative of the California vineyards. The tax was then 4 cents a gallon, on about 30,000,000 to 35,000,000 gallons of light wine. My discussion will be confined almost entirely to table wines, light wines. We hold that they are not properly classified.

Senator KING. That would be dry wines?

Mr. GARRETT. Chiefly; yes. Those are the wines that are universally used for food purposes. Of over 5 billion world-wide production, 4½ billion consists of light wine. Even in Spain and Portugal, that produce a bulk of the sweet wines that the world is familiar with, the natives drink light wines. They do not drink port and sherry in those countries.

Senator BAILEY. Tell us the difference in the alcoholic percentage in the various kind of wines.

Mr. GARRETT. Light wines are supposed to be those wines which are naturally fermented, and to which no alcohol is added other than by normal fermentation. Light wines run in the various countries of the world from 7 to 13 and 14 percent.

Senator BAILEY. It was stated here yesterday that there is no wine that will keep unless it has about 10 or 11 percent alcohol.

Mr. GARRETT. I cannot speak with absolute authority, but I understand a great many of the wines that are made abroad do run a very low percentage.

Senator BAILEY. What percentage does yours run?

Mr. GARRETT. Twelve to fourteen percent. France, I understand, has a law that they cannot use any sugar in supplementing the natural deficiency of sugar, and hence they are dependent only on the percentage of alcohol that would develop from the natural sugars. Germany, on the other hand, has recognized the necessity of supplementing the deficiency of sugars, especially in bad years when the sugar does not develop fully, and they add sugars legally, under limitations, just as we in this country have been permitted to do.

Senator BAILEY. Are you asking for a lower rate?

Mr. GARRETT. I am asking, Senator, for elimination of the rate on light wines, as an agricultural proposition, as a possible solution to unemployment and temperance. A great many conservative people are beginning to think that if we could get light wines introduced to the family, as they are abroad, that we would not have this constant agitation about the excessive use of alcoholic liquors. It is a tremendous proposition.

Senator BAILEY. Mr. Garrett, the point is that wines are defined here, on page 2, in terms of percentage of absolute alcohol and the lowest here is 14 per centum of absolute alcohol.

Mr. GARRETT. The lowest?

Senator BAILEY. Yes; on wines containing not more than 14 per centum.

Mr. GARRETT. Light wines are under 14 percent. That is the dividing line?

Senator BAILEY. Yes.

Mr. GARRETT. That is assumed to be the point to which you can develop alcohol by fermentation.

Senator BAILEY. Are you suggesting nothing on wines?

Mr. GARRETT. Nothing on those wines, as a farming and agricultural proposition, and also as a temperate proposition.

Senator BAILEY. In lieu of the 5 cents?

Mr. GARRETT. In lieu of the 5 cents; yes, sir.

Senator BAILEY. You are not suggesting a lower basis?

Mr. GARRETT. No; I am suggesting the elimination of all tax on light table wine, and I want to address my remarks to that, as an agricultural proposition, and as meeting the needs of the very critical situation confronting us. I am afraid I am not following logically, but I would be very glad to be questioned.

Senator BAILEY. Nobody follows logically, up here.

Mr. GARRETT. There is very little hope of developing a table-wine business among consumers in America, if we have to sell it through the agency of the liquor store. Now, I am not knocking the liquor store, because it is the only avenue of distribution that I have; but the necessary prices that they have to charge put it out of the reach of the mass of the people. In a little slip that I will leave with you, or will send it down, I have pointed out that if in this country, as abroad, the grower of grapes was also a winemaker and could distribute to his own clientele, without too many wholesalers and retailers and spreads, a good sound bottle of wine, of less than 14 percent of alcohol, could be put on any man's table at from 20 to 25 cents per bottle, and the individual grower or winemaker, if he has a few acres, could have a gross income of anywhere from $12,000 to $15,000 a year, from 25 acres of land, which one farmer can cultivate. Now, that is the theme of my talk. I just came from Georgia yesterday. I got information down there that possibly—I will not guarantee the figure, but it was stated to me a million vines are being planted in some of the southern States, of the muscadine variety. I have a request from Raleigh, N. C., from the Rehabilitation Corporation, asking me to help in the rehabilitation of 750,000 vines, all predicated on these recent laws passed in North Carolina and Georgia.

Senator BAILEY. The Government is undertaking to plant a million vines throughout the South, is it not?

Mr. GARRETT. They are.

Senator BAILEY. Beginning in Virginia, and going all the way to Texas?

Mr. GARRETT. I am in agreement, substantially under contract with the Government, that wherever they will have a tonnage sufficient to warrant it, I will see that a press house is put there. Now, much of this is predicated on the recognition of the laws recently passed in North Carolina and Georgia, declaring wines to be food products, allowing them to be sold without the restriction of the licenses and of the heavy taxes. Mind you, during the period in which Mr. Underwood was the chairman of the Ways and Means Committee, and then under Mr. Kitchin's period, there were repeated efforts to put taxes on wines, but not until war time were taxes invoked. Was not Mr. Kitchin chairman of the Ways and Means Committee?

Senator KING. Yes.

Mr. GARRETT. Yes; he was chairman of the Ways and Means Committee. Was he leader of the House?

Senator BAILEY. He was in the House.

Senator KING. Claude Kitchin.

Mr. GARRETT. That is where the revenues are raised. I was successful in getting them to limit to a very nominal tax of 2 cents a gallon, which I fought bitterly, because that was the opening wedge to other taxes, and it has been keeping table wines in an uncertain state. The repeal tax was 4 cents a gallon. I felt that it raised so little taxes, on 30,000,000 gallons of wine, that it would not pay the cost of the supervision and collection. I am talking about table wines.

Senator BAILEY. I suppose that 5 cents a gallon is less than 1 cent a bottle.

Mr. GARRETT. Yes. Five cents a gallon would be 1 cent a bottle. The bottles are usually fifths. Now, Senator, it is not the cost, the expense, it is the attendant surroundings through its sale in the liquor store. Your wife and my wife do not like to send to a liquor store for a dinner wine. You understand, I am not knocking the liquor store. I am talking about the wine industry as an agricultural proposition. They have to carry a spread. Even in North Carolina and in Georgia, which have passed these State laws exempting domestic wines from all taxes, the dealers carry the "spread" profit to such an extent that wines that ought to be selling for 30 cents a bottle are selling for $1.30 or more a bottle, keeping it out of the reach of the masses of the people.

There is another matter. Prior to prohibition, the production of wine in this country was, in round numbers, 20,000,000 gallons fortified wine and 30,000,000 gallons of table wine. In 1930—I can give it from memory—in 1933 the production of light wines was 35,000,000 gallons, stepped up 5,000,000 gallons, according to Government reports, and fortified wines were about 15,000,000 gallons, I think, possibly not more than 10,000,000. The fortified wine went up, and the light wines went down. What effect this raising of the taxes had on the light wines I do not know, but in 1935, according to the Federal reports, the most authentic reports I can get, the production was 35,000,000 of fortified wines and only 15,000,000 gallons or less of

light wines. Now, I think that is an unwholesome situation for the wine business of the country. There is not a State in the Union, even Utah, but can grow grapes successfully, as testified to by the fact that there is a certain tonnage of grapes now growing. Montana and North Dakota are the only two States which disclaim the ability to raise grapes, but they are growing grapes just north of them, in Canada. It is an agricultural proposition. It affects the value of land in every State, if we can put it into a classification that encourages people to grow grapes for making table wine.

Senator KING. Mr. Garrett, I understood you to say that in North Carolina and in Georgia that there had been legislative enactments to the effect that wine was food, and therefore no State taxes were imposed; and I understood Senator Bailey—and I was interested in that statement—to say that the Government had planted over 1,000,000 acres.

Mr. GARRETT. No; a million vines, not acres, under the F. E. R. A.

Senator BAILEY. The committee, through the F. E. R. A., appointed Mr. Newman, of North Carolina, about 18 months ago, and he wrote me, stating that he was undertaking to plant about 5,000,000 vines of the scuppermong type throughout the South, from Virginia all the way to Texas. He was growing at that time the little vines.

Mr. GARRETT. They went through there and bought vines, all through North Carolina and South Carolina, and they are coming along fine. You cannot grow them as rapidly as you can the other crops.

Senator KING. I am interested in this statement of Senator Bailey's. In what respect, or why did the Government become interested in the growing of vines?

Mr. GARRETT. In its rehabilitation scheme for families. I do not think it would be uninteresting if I were to tell about that.

Senator BAILEY. The Government became interested in that, as one feature of it, on the development of agriculture. Another thing was to provide employment. After all, they thought it was a substantial thing to do in the southern country. Of course, the scuppermong grape is the base of a desirable type of wine.

Mr. GARRETT. Yes; a very desirable grape.

Senator BAILEY. The whole idea was to develop it along the lines of southern France.

Senator KING. Are there other Southern States than those mentioned, that have repealed entirely the taxes on wine, for the purpose of encouraging the development of wine, upon the theory that it is a food and an agricultural product?

Senator BAILEY. I do not know that.

Mr. GARRETT. These are the only two States where we have been successful in having light wines declared food. I want to clear up this Government situation. I was sent for by Colonel Westbrook, who was an assistant of Mr. Hopkins, because he knew of my interest in grape growing. The colonel spread out before me a great many albums of what they were doing here, the Ozark Mountains, 17,000 acres, and somewhere else, 10,000 or 15,000 acres, and the houses they were building. I said, "Colonel, what are they going to do for money? Each house has to have 2 acres. They can raise some vegetables." "Well, we have got to start factories for them. We have

got to find something for them to do." I said, "Well, what kind of factories?" He said, "Factories to weave baskets." I said, "The wounded soldiers are weaving all the baskets the country can use." He said, "Well, possibly furniture factories, and so forth." I said, "Mrs. Roosevelt's Val-Kill Furniture Co. fills the need of furniture"—just joking. I said, "The proposition that it seems to me ought to appeal to you is the growing of grapes. It is within the province of the white-collared man. It is not laborious work, like growing cotton, and if we can get legislation authorizing the selling of wine, except through the liquor channels, with the high licenses, which necessitate high prices, I am confident that a great development of the wine business can take place." Then I pointed to the fact that during the early years of prohibition, with a previous maximum production of dry wines, table wine of 30 million gallons increased through home wine making to 200 million gallons.

Within the years 1919 to 1925, California planted 500,000 acres additionally in grapes, and in the early years of prohibition, their shipments reached 76,000 cars, by 1925 or 1926. I am satisfied I am correct. We have no record of actual number of gallons made, but that was a million and a quarter tons of grapes, and on the normal assumption of what it would produce, by these people who knew how to make wines in the homes, that is about correct. The production of wine jumped, referring to dry wines or table wines, because these were all natural wines, from a production of 30,000,000 gallons to enough to get 200,000,000 gallons, judging from the tonnage of the grapes. A million and a quarter tons of grapes at 175 gallons to the ton would have given 200,000,000. Now, Americans will drink wines, I say, if they can get them cheaply, at reasonable prices.

Senator BAILEY. Do you think, if we get to the point where you can get light wine at a low price, it will tend to reduce the drinking of spirits?

Mr. GARRETT. Absolutely. That has been the history of every country in the world. If they can get cheap, good and sound wine, if they can make a good wine—and any white-collared man can be easily educated to produce a good wine, if you can make it profitable for him.

Senator BAILEY. Do you take the view that national prohibition brought on a great increase in the drinking of hard liquor?

Mr. GARRETT. That is a moot question. I do not think it reduced it at all, and certainly, if anything, it was worse than in the old days. I think that is the general consensus of opinion.

Senator BAILEY. They could get hard liquor and could not get wine.

Mr. GARRETT. They could not get wine, except by making it in their homes, and even then it brought on a tremendous increase in the consumption of natural wines, from 30,000,000 gallons, which for years had been the average, to certainly 200,000,000 gallons, from the shipment of grapes out of California alone, which is the grape-producing State.

Now, I am not only interested that we should get encouragement in the growth and production of light wines but I am interested in the education of the average grape grower to producing wines himself as a source of income, just as is done abroad. The wine making

in the countries abroad is not done by great corporations. They buy their stock from various places, but the average production over there is done by the small grape grower, who makes his wine and sells it locally, and in France it runs from a billion and a half to two billion gallons a year. They have a population of only about 40,000,000 there, and they consume from 40 to 50 gallons per capita. Since repeal California has stepped up its consumption of wine from less than a half a gallon per capita to about three gallons now. That shows a wonderful increase, when you get the wines cheap and available. California is a "wide-open" State, sells distilled liquor, and the wine business has increased in the face of that, because they are giving them cheap sound wine. This tax is raised to 10 cents a gallon from 4 cents a gallon. I do not know what part it has had in it, but from the production of light wines, of 35,000,000 gallons in 1933, last year the figures that I have from the Department are 15,000,000 gallons only. Now, whether the tax cut it down more than half I do not know, but it is not an encouraging thing when the light-wine business is surrendering to the fortified-wine business. The fortified-wine business has increased very materially—has nearly doubled.

Senator BAILEY. What do you think of this amendment of Senator Johnson's? Are you familiar with that?

Mr. GARRETT. I have not had a chance to read it.

Senator BAILEY. He proposes in his amendment to exempt from the tax, the tax imposed by section 611 shall not apply to wines produced for family use of the duly registered producer thereof, if made from grapes, other fruits or vegetables grown upon the premises where manufactured, and not sold or otherwise removed from the place of manufacture, and not exceeding in any case 200 gallons per year.

Mr. GARRETT. That clause was put in when the first tax was put on. Mr. Kitchen and I had a number of discussions over that. He was chairman of the Ways and Means Committee then and the 200 gallons per family was reached after many conferences with Mr. Wayne B. Wheeler, of the Anti-Saloon League and the Department, here—the 200-gallon exemption.

Senator BAILEY. You look with favor upon that?

Mr. GARRETT. Absolutely, absolutely. I do not look with favor on the suggestion that has been made here to limit making for personal family use. Little such wine is sold. I just glanced at it the other day, in one of the bills. I have not had copies of these bills, and I have had no opportunity to reduce that to gallonage and to confine it to the man who grows his grapes. I am shipping considerable quantities of grapes from California. Thousands of others are shipping considerable of grapes from California to eastern centers, and they are making these wines in their homes in the cities. They are not paying any tax on it, but they are not selling it to any appreciable amount. It is not bootlegged. It is made for their personal use in their homes; and in the early years of prohibition, in 1925 and '26 it had reached proportions of somewhere around 200,000,000 gallons a year, or six times the production of light wine. They shipped from California last year 25,000 cars. They call them "juice grapes." Due to the effect of prohibition, that was

made into wine. There was no disturbance. It was made by private parties. I am not in favor of reducing that, giving a market for those grapes, transported by the railroads. It is only a third of what they shipped in 1925 and '26, but it helps the situation, and those people are drinking that wine that they make in their homes instead of beer and instead of liquors.

I advocate and urge:

Continuance of the present home wine-making regulations permitting the manufacture in the home and for personal and family use, but not for sale, up to 200 gallons annually, free of taxation. As a result of the present home wine-making regulations the growers have received a gross annual return of as much as $200,000,000. To "bite the hand that feeds you" seems ungrateful.

Freedom from taxes and burdensome restrictions on the small grower-vintner who grows grapes, makes light natural wine, and sells same. Encourage growing of grapes and wine making by the small farmer, as in France and Italy, where such farmers produce over a billion gallons annually in each country.

No tax on manufacture or sale of light natural wine; classify it as food, with only such restrictions as surround other food products; and encourage the planting in all 48 States of 10,000,000 acres to wine grapes and the production of 5,000,000,000 gallons of light table wines as food. thus reaching in 25 years the per-capita consumption of older wine countries.

We can never grow coffee and tea, which touch our pocket nerve for a billion or so dollars a year and, by admission of their own advocates, disarrange the digestive nerves of the Nation.

Help us substitute for the cocktail hour the dinner-wine hour.

Five billion gallons of wine (5 bottles to the gallon), at 10 cents per bottle to the grower, means $2,500,000,000 added annual agricultural income.

Senator KING. Do you not think that it would be better—and the form of the question does not imply that I have an opinion in the matter—to have the wines made by licensed wine producers and wine makers, rather than having it made in the home?

Mr. GARRETT. I do not exactly like the making of wine in the homes in the cities where the sanitary surroundings are not good. That is where most of it is made now. It ought to be made in more open communities, but I am in favor of encouraging every grape grower to become also a winemaker.

Senator KING. If you permit 200 gallons to be manufactured by the individual, may he not become a vendor of wine instead of a mere drinker of it?

Mr. GARRETT. I do not think so; and, Senator, suppose they did sell a little light wine; they would sell it maybe to neighbors. I cannot conceive of it being demoralizing in any sense of the word.

Senator KING. Will it not encourage a larger manufacture of wine in the homes and in the cellars of the homes where you permit the maker to sell the difference between that which he consumes and the 200 gallons?

Mr. GARRETT. I am heartily in favor of encouraging the grape grower to learn to be a wine maker, as is done in Europe, and selling it locally. It will increase his income. If he has 25 acres of grapes

and produces only 3 tons to an acre, if it is sold to the manufacturer at $40 per ton, which is a fair price for eastern grapes—in California I grow grapes for $5 a ton, for the actual cost of production, not counting any investment in the project, and so forth—but in the East, if you sold them at $40 a ton, a man would get $3,000 for his 75 tons from his 25 acres, which he can cultivate himself, together with his small family; but if he is encouraged to turn that into wine, 75 tons of grapes will produce 13,000 gallons of wine, and if he bottles it, 65,000 bottles. If he sells it at 25 cents a bottle, it is a gross income of $16,000, taking out the 5 cents for his bottle. It leaves him a net income out of his returns for the year of $13,000 from a 25-acre farm. If you deduct 50 percent of that for labor, it gives a "white-collar" man who is now out of a job employment. The F. E. R. A. is trying to encourage employment, and this will give him a net income of about $6,000 per annum for his labor and the labor of his family, and I think it is greatly to be encouraged, and it is right along the scheme that Mr. Hopkins and these people are working to develop.

Senator BARKLEY. If everybody with a 25-acre tract of land could produce 65,000 bottles of wine——

Senator BAILEY. We would have a lot of wine.

Senator BARKLEY. We would have a lot of wine.

Mr. GARRETT. Not a lot, but cheap, good, sound wine.

Senator BARKLEY. What would happen to the manufacturer?

Mr. GARRETT. He would go in for better quality. Of the wines produced abroad—and I have this from a Frenchman who came over here with whom I talked in the last 2 years—I asked the Frenchman what percentage of the wines produced in France were of the quality that warranted the large manufacturer bottling it. He said of the billion and a half gallons of wine, hardly over 1 percent was bottled or handled by the dealers. The rest of it was handled by the smaller growers and for local consumption, and it is what makes wine cheap for them. You do not have the spread; the liquor dealer is not primarily interested in light wines. The sale at the present time is to the small dealer. It takes educational work to take people and educate them to drink light wines, but that is not an unnatural taste. We certainly had a splendid evidence of development during the early days of prohibition, when, under an amendment put in by Mr. Wheeler—I sat in his office when he wrote the amendment—encouraging the making of wine by making it legal and authorized, and it developed production in this country of somewhere around 200,000,000 gallons in 1925, and we do not hear of a single instance of bootlegging or any serious disturbance of the country. Such a business as that put the bootlegger out of business.

Senator BAILEY. You recall the Bible picture of everybody having a vine and of every man living under his own vine and fig tree?

Mr. GARRETT. It looked very attractive with those beautiful bunches of grapes. It is one branch of agriculture.

Senator BARKLEY. You have seen the land recently? It is not so attractive now as it was back in the Bible times?

Mr. GARRETT. No; I have not seen it but once in my life, never went through there, but I want my own country to be a land of Canaan.

Senator BAILEY. Do you remember how large the Bible said those grapes were?

Mr. GARRETT. The pictures I saw, when they had the pictorial Bible, they were about as tall as a man was. They carried a bunch on their shoulders.

Senator BAILEY. They said it took two men to bring two bunches.

Mr. GARRETT. That is right. I used to read the Bible a little bit, you know. But from the prospect of agriculture, and from the employment standpoint, this may be interesting. I was called to Atlanta to confer with some people down there who are going to promote one of these same projects that the F. E. R. A. is promoting. They were a little fearful the F. E. R. A. would not carry that through, and they have about 15,000 acres of land. I was invited down there to know if I would put up a winery there if they would develop this wine industry, and we are negotiating; and especially if we can get this legislation, something may be accomplished about it, but there are two factors which have prevented the Americans from drinking wine.

The first, right after the Civil War, when they put a tax on the manufacture of whisky, they taxed the sale. The retail liquor dealer's license provided that there should be levied and collected a tax of $25 per annum for the sale of spiritous, vinous, malt, and fermented liquors. The result was that the only place they could sell wine legally would be a place that had a retail liquor dealer's license. Although I was in the wine business, my wife did not want me to go down to the saloon and get a bottle of wine, because the preacher came and saw it, and he knew it came from the saloon, and it gave a bad odor to it; and the price was prohibitive. If we can develop, as they have in France, the manufacture of wines, either by manufacturers—although I have been a manufacturer of wine all my life, and believe we ought to have big manufacturers—the best results will come if we can encourage the growth of grapes and the manufacture of wine by the individual grower. My conferees in the wine business could throw rocks at me, but I still think it is a good thing from an agricultural and from a temperance standpoint. I have in mind going in and buying either the best grapes the farmer has or buying the best products he has. In California, prior to a few years ago, there were 700 licensed wineries in the northern part of the State. The people who grow their own grapes had community wineries. They did not undertake to sell their wines except locally, but large merchants—there were seven concerns in California who afterward combined with the California Wine Association, referred to as the "Wine Trust." They went out and bought up wines from various people, selecting the best, and if a man had been making good enough wine for him to be thrown on his own resources, he could sell it locally, but it developed an enormous business in northern California. That is how California got its start. Incidentally, California is the only State that hasn't natural grape in it. They are all imported from other countries, due to the climate, and so forth, but it is the most wonderful grape-producing State we have, so far as quantities are concerned. But I turn to this quotation from Mr. Koster. Mr. Koster is in the cooperage business. I want to put this in the record:

WINE INDUSTRY OUTLOOK GOOD

CALIFORNIA GRAPE GROWERS ARE URGED TO IMPROVE CROP QUALITY

By following a five-point program, California grape growers and vintners can build the State's wine industry into a 2-billion-dollar business, in the opinion of Frederick J. Koster, past president of the California State Chamber of Commerce. Mr. Koster urged farmers, in an address before the farmers and fruit growers convention, to improve quality, stabilize marketing, open new distribution channels throughout the Nation, set a standard of temperance in California as well as standards of wine regulation and taxation, advertise wines and employ sound marketing methods.

We do not talk million dollars these days. At the present sale prices for wine that is about 10 or 12 billions of gallons, and the world produced about 5 billion gallons.

Senator BAILEY. Can you grow just as good grapes in North Carolina?

Mr. GARRETT. I have sold North Carolina scuppernong. I sold over a million cases of scuppernong under the name of "Virginia Dare", before prohibition.

Senator BAILEY. We can grow just as good a wine grape as any other State, can we not?

Mr. GARRETT. Certainly. There is not a State but what can grow good wine grapes. I do not blame California for boosting its name, but I just assert that all the other States can grow good wine grapes. There is no State in the Union that has not anywhere from 100,000 to 500,000 acres that can be planted to grow splendid and profitable grapes, and make it a thing of great agricultural value.

Senator BAILEY. Mr. Garrett, you are contending that light wine is a food rather than a liquor or an intoxicating beverage?

Mr. GARRETT. Yes.

Senator BAILEY. I would like to hear you on wine as a food, and as a means of diminishing the drinking of hard liquor.

Mr. GARRETT. You ask about wines as food?

Senator BAILEY. I am asking about wine as a food, rather than an intoxicating drink, and the drinking of the food type of wine as a means of diminishing the evil of drinking liquor.

Mr. GARRETT. Yes, sir. I cite the fact that in the wine-producing countries of the old country, as well as in South America, that over 90 percent of the production is light wines, hence I am addressing the subject only of light wines.

Senator BARKLEY. You mean dry wines?

Mr. GARRETT. Yes; wines with the alcohol developed by fermentation, not exceeding 14 percent of alcohol.

Senator BAILEY. Unfortified wines?

Mr. GARRETT. Yes; unfortified wines. I am not interested in fortified wines except that I have to supply it to the trade in order to sell the other line. France, with a population of a little over 40,000,000 inhabitants, produced in 1933, 2,000,000,000 gallons of wine. They imported more from Algeria than they sold abroad. Incidentally they dumped a lot of muck on this country that ought to be kicked out of the country. But that is neither here nor there. That wine is consumed as food and not as beverage—a loaf of bread. Italy is just about the same per capita.

Senator BAILEY. Why do you not finish your poetic statement?

Mr. GARRETT. How?

Senator BAILEY. You said "a loaf of bread." "A glass of wine"——

Mr. GARRETT. "A loaf of bread and a bottle of wine constitutes a feast."

Senator BAILEY. A loaf of bread?

Mr. GARRETT. Yes; black bread.

Senator BAILEY (reading):

> A loaf of bread, a jug of wine, and thou
> Beside me in the wilderness—
> Oh wilderness! thou wert Paradise enow.

Mr. GARRETT. I could not recall that, Senator. I have read Omar a little bit, but my memory is not quite as good as it was some time back.

Senator BARKLEY. I think you are both romancing.

Mr. GARRETT. I think it has a good deal of truth, as well as poetic sentiment. There we have the evidence of a nation subsisting partially on wine instead of meat, and getting a pretty good subsistence. The Italians, if anything, exceed the French in percentage of consumption. France produced from 1,500,000,000 to 2,000,000,000, and Italy produces from 1,000,000,000 to 1,500,000,000, and it is the staple crop of those countries. Twenty-seven percent of the population of France and 30 percent of the population of Italy, according to the consular report, are engaged in growing grapes and distributing wine; and the distribution of wine in that country is not, as I have seen it, in my limited travels, associated with the distribution of liquors. It is a food product. Every restaurant you go to serves wine with meals.

Senator BAILEY. What is the alcoholic content of the French or Italian wines which are drunk day by day in lieu of water?

Mr. GARRETT. They generally mix it with water, Senator, in my observation. They will run anywhere from 8 to 14 percent. Those light wines have to be handled very carefully. They are exceedingly subject to spoilage, due to the light alcoholic content. Their wines are drunk with water. The water in Europe, until a few years back, was not sanitary. That is, they had no sanitary precautions, and the water was all surface water, and wine is a primary necessity to those countries, to whom grape growing was familiar before modern science developed the sanitary handling of sewage, and so forth. England was constantly looking to this country, through her colonies, to make their own wine. In the early history of North Carolina the colonists were reporting on the magnificent natural advantages of this country as a grape country. America is probably the best equipped of any country for the production of wine grapes.

Senator BAILEY. You know why those colonists landed at Roanoke Island. While at sea they smelled the fragrance of the grape vine.

Mr. GARRETT. Sure. That is the first colonists. Other colonists went back to the same place, and they had to hurry there in order that Virginia Dare's mother might be confined in a house instead of in the surroundings of a boat. North Carolina certainly has a half million acres that could be splendidly adapted to the growing of grapes, if we can get permission to sell the wine as a food product.

We will never be able to put wine in this country when it is subjected to the high licenses, with its sale through the liquor business, but put it as a food product, as Georgia has started in, and as North Carolina has passed a law, and I do not think there is any question. I am told that down there there are many thousands of acres being planted, as many as they can get vines for, in Georgia, this next year, filling in where the peach orchards go out, and it is a wonderful opportunity for agriculture. As I said, 27 percent of the population of France are engaged in viniculture. If we had 20 percent of this country engaged in viniculture, we would take up all of the sag in unemployment, and give them a good occupation; and these figures are conservative as to what a man of ordinary intelligence and labor can produce in a vineyard.

Senator BAILEY. Suppose we should amend the act to read that there should be no tax on wines containing less than 10 percent?

Mr. GARRETT. You limit it there to rather hard conditions. Manufacture would be more difficult. A great many grapes you cannot ferment dry. A grape, for instance, runs 22 percent sugar, which is not infrequent, and that will develop about 12 percent alcohol. You have got to dilute it with water if you do it, and then you attenuate the flavors and the aromas, and so forth. It is suggested that until we are better acquainted with the general production of wines, that what you can generate by natural fermentation is the best basis, because then you get an equal balance on the quality of the grape you are using.

Senator BAILEY. You think we will have to extend it to the 14 percent?

Mr. GARRETT. To give proper encouragement, I think that is a safe maximum for table wine. Fortified wine over 14 percent is not used certainly by people who use wine regularly with their meals. When you take a glass of wine with your meals, you sip a glass or two with the meal. It has some alcohol, but it does not quickly pass to the brain. The acids in the wine help the digestion. The alcohol taken in that affords some food; it is a slight stimulus to the brain, but its effects are distributed through the period of 2 or 3 hours of digestion. It is not like taking a drink that goes to your head and gives you a kick, then you drop down, then you have got to have another highball or cocktail. This cocktail business is serious. I do not want to be quoted too much, but when I go to some of the hotels in New York and look in at the bars, there—and my friends tell me that not only in New York but in the other States it is true—it is hard for a man to get a seat at the bar during the cocktail hour, because the women have all the seats.

Senator BAILEY. I would like to hear you on just why that is serious. Why is it serious for women to drink cocktails?

Mr. GARRETT. Well, I do not approve of my daughter and my wife going to the bar and sitting on a stool and drinking cocktails.

Senator BAILEY. I do not approve, either, but is it serious?

Mr. GARRETT. I believe it is.

Senator BAILEY. Why?

Mr. GARRETT. I do not believe in drinking too much of alcoholic liquor. At my age, I like a little heavy stimulant once in a while, but I think if I stuck to native wines, I think it would be better.

I do not like the idea of womenfolk doing this, and there is beginning to be a big tide of resentment against the cocktail hour. If we could get the women to serve wine in their homes and entertain in their own, instead of going and crowding the men out of the barrooms, as they are doing, it would be better. We are going to have a wave of resentment, and I want to get wine out of the liquor class before that wave of resentment comes, so we will sell wine to the man who can drink it at home, and we will have light wines as a food and not as a liquor.

Senator BARKLEY. You think that the fact that everybody in the country, if they became educated to drink wines and to banish liquors, if there should be a loss of $250,000,000 a year revenue to the Government, that ought not to enter into the matter at all?

Mr. GARRETT. I do not, sir. The revenue ought not to cut any ice in this situation; and it will be a good many years before we educate the people away from liquor. Repeal has just come in, and the F. E. R. A. has just taken hold of grape-growing and various States are considering it. Alabama is considering some such law. Texas has just passed a law in which the tax is 2 cents a gallon on the light wines and 5 cents on fortified wine. They make distinctions in the tax, and that does not cover the bottle, as long as it is sold through the liquor store and cannot be sold through the family supply store. We have shut off not only the proper avenue of distribution but the spread of price will be lower when sold through the grocery store and when sold from the producer right to the grocer or user it can be sold anywhere from 30 to 40 cents. The grower-manufacturer can sell it to a consumer at from 20 to 25 cents, and make money on that. When you go into the liquor store, the retailer seeks 100 percent profit or 50 percent profit, or spread, and the wholesaler needs 25 to 33 percent on his purchase. You just cannot force them to put a price level down to a reasonable price, like the grocer. You take a bottle of wine that the retailer pays 50 cents for. He wants a dollar, or certainly not less than 78 or 79 cents. The wholesaler adds 25 percent. That brings it down to $6 a case, and that 50 cents, you see, the wholesaler has got to have 25 percent. That is $4.50 a case. The wholesaler could make money hand over fist, if he could sell enough, without the selling expense, at $4.50 a case, for the moderate, well-aged wine, but the volume is cut down by the sale until there is a heavy selling expense, and heavy carrying charges, which make it unprofitable.

Senator BAILEY. How would this tax interfere with the sales? It is a very light tax.

Mr. GARRETT. It is a liquor tax. It keeps it in the class of liquors, and that sets a precedent for the various States.

Senator BAILEY. Is that your objection to it?

Mr. GARRETT. To a large extent, yes; but it sets also a precedent for the States. Maryland—well, the States run all the way from 2 cents a gallon in California to 20 or 25 cents a gallon on light wines now.

Senator BARKLEY. Two cents tax on a gallon of wine does not constitute any burden on the public, does it?

Mr. GARRETT. It should not be, but the burden on the public is that that 2-cent tax is calling it a liquor. It is in a law which requires

a liquor dealer's license, and he is in where those spreads have to come. You do not collect revenue commensurate with your expense. If the production in California has fallen from 35,000,000 gallons in 1933 to 15,000,000 gallons—and this is only in rough—nobody knows what it will be pretty soon.

Senator BARKLEY. The fall is not attributable to the 10-cent tax on gallons?

Mr. GARRETT. It has its effect. It has its effect in this respect: 10 cents a gallon tax on the wine is a tax of $17.50 a ton on every ton of grapes to the farmer. You cannot pass the tax to a consumer. Most of it comes out of the producer.

Senator BARKLEY. The same argument applies to the tax on cigarettes and smoking tobacco and cigars.

Mr. GARRETT. That is an interesting proposition. I had that brought up the other day, and I referred to it in my brief here. The cigarette business—no magazine 15 years ago took an advertisement for cigarettes. I mean a woman's magazine. They certainly would not picture a woman smoking a cigarette. The war came on. They commenced sending cigarettes. You remember when the reformers, the Anti-Saloon League, or the people doing it began to pass laws against cigarettes in Ohio, Texas, and so forth; but the war came on, and the women began smoking, and the cigarette business has increased 5,000 percent in the last 15 years in spite of the tax. It has just got to be a popular habit. I think if the use of table wine becomes a popular habit, you will have a very favorable source of tax, and that it will be in the interest of temperance. Good wine grapes grow best on poor land. Grapes that are grown on good rich land do not produce satisfactory results. The wine is coarse and not good wine. Thin, sandy, attenuated soil produces the best quality of grapes. It fits in nicely with the scheme, and we need something to aid agriculture.

Senator BAILEY. I will say to you there is a very great interest in wine making in the locality in which I happen to live. I happen to know a farmer who last year produced 17,000 bushels of grapes and sold them all as rapidly as they could ripen.

Mr. GARRETT. Where is it, Senator? I want to get in touch with him.

Senator BAILEY. I am not going to give you a trade secret.

Mr. GARRETT. I scoured the country for grapes.

Senator BAILEY. But that showed a disposition on the part of the people in that neighborhood to buy graps and make wine. That happened under my own observation.

Mr. GARRETT. It is happening all over the country. We can hardly get enough scuppernong grapes to keep our business going. Now, it is a wonderfully fruitful opportunity to develop a new agricultural industry. I speak of 3 tons to the acre. I have numerous instances in which the scuppernong produced 10 tons to the acre, but I do not figure that as a normal condition at all.

Senator BAILEY. I think, Mr. Garrett, we are going to have in the South to alter our agriculture. I think that lies right ahead of us.

Mr. GARRETT. What are you going to put in? We are raising all the tobacco we can. We are raising all of the potatoes we can.

Senator BAILEY. We are raising more cotton than we can sell.

Mr. GARRETT. But we are not raising more grapes.

Senator BAILEY. Mr. Wallace has said we might have to move a million people out of the South. Is it your theory, if they got to selling wine, that might not be necessary?

Mr. GARRETT. You can put another 3,000,000 people in there, white-collared workers. Negroes can grow cotton, but they cannot make wine, for they would drink it all themselves.

Senator BARKLEY. I see the British tax on wine is 37½ cents a gallon.

Mr. GARRETT. I do not see how they can make wine in Great Britain. They do not grow any except in hothouses.

Senator BARKLEY. They get $20,000,000 revenue a year, instead of the $9,000,000 that we get.

Senator BAILEY. Is not that the British possessions?

Mr. GARRETT. Yes.

Senator BARKLEY. Great Britain. That is, England, Wales, and Scotland.

Mr. GARRETT. Not Australia?

Senator BARKLEY. No.

Mr. GARRETT. That shows the possibilities of grape growing in the British Isles. I did not think they could grow grapes there. Canada is making a wonderful spread in the growing of grapes.

Senator BAILEY. That tax would be bound to relate only to England, Scotland, and Wales.

Mr. GARRETT. It is new information to me. I think about the only grapes they grow there are hothouse grapes. I thoroughly commend Mr. Koster's idea here, in spite of a little hyberbole, as to $2,000,000,000 in 10 years; but why should the 47 other States—I am not speaking against California; she can look out for herself—I have a big winery in California.

Senator BAILEY. Do you have any operations in North Carolina now?

Mr. GARRETT. Yes; we have the old original Medoc vineyards. We operate at Wilmington, N. C., and we have got a plant at Aberdeen.

Senator BAILEY. You do not operate in Halifax County?

Mr. GARRETT. No. The vineyard has gone down there. We turned it over to the Government, to get some of these vines from. They are arranging to use it as a nursery to some extent for the old vines that are on the ground. I am more of a wine maker than a grape grower. The scuppernong grape is best without too much cultivation. All the other varieties in the Piedmont region and the lines around Charlottesville——

Senator BAILEY. The scuppernong grape is rather peculiar, in that it is not subject to these diseases?

Mr. GARRETT. You do not have to spray it. We do not know anything about vine pruning. It just takes care of itself.

Senator BAILEY. You do not spray them?

Mr. GARRETT. No.

Senator BAILEY. Does it make a very good type of table wine?

Mr. GARRETT. We sold over a million cases, which was more than the rest of the bottled wines of the United States, before prohibition, of scuppernong. Scuppernong wine resembles the Hungarian Royal Tokay. The other varieties of the scuppernong—for instance, for

the table wine, we have varieties of the black scuppernong. If I had started with that instead of with the scuppernong I think I would have been further along. It makes a magnificent table wine. We have a natural acid in the South. I have 1,500 acres of grapes up in New York State, and I have 1,200 acres in California, and I am speaking for the whole country. Get the dry wines and the light wines out of the class where they have to be sold through the licensed place and we will have the price within reach, by competition alone, of everybody; and it will be easy enough, if it lends itself to abuse, to correct it, either by high taxes, or some other way, and give us some chance of getting a start, give us a breathing spell, and let us go along with the Government. I am under contract to put up plants at all these places. I am counting on some legislation to help me.

Senator BARKLEY. I notice here that in Canada the tax on wines for home consumption is 7½ cents a gallon on all wines except sparkling wines containing not more than 40 percent; and on champagne and all other sparkling wines, 75 cents a gallon.

Mr. GARRETT. Yes; I have a letter from my Canadian friends talking about teaching the farmer to make wine. I am thinking in broader terms than the selfish interests. I and other wine-makers in the country will continue to make good wine, finer wine, suitable to an exclusive trade, and do a larger business than we are now, even if it is taxed; but I want more grapes. I want the country utilizing its acres of land. The wineries are being set up for Georgia and North Carolina, with a view to taking advantage of these laws, and there is not a crop there. In Georgia we depend on the peach crop, making a beautiful wine out of those Georgia peaches. This is fundamentally sound. It is economically sound. From the temperance standpoint it is sound. Certainly it is worth the experiment, and you are not getting enough revenue to cut any ice at all—15,000,000 gallons of wine, and $750,000, and you are spending more to supervise it. I just want to show you what we have to do here. My business is not as large a business as some of them. Here is 1 month's reports that we have to make out, to the Federal Government, and in every State we go to. It takes three expert accountants, and if there is a "t" that is not crossed or an "i" that is not dotted they fire them back to you, and you cannot make a correction; you have to make the whole report out again. It is terribly burdensome.

Every State requires these same reports to be made out every month. These reports have got to be made out for every case of wine that we sell. It has to be numbered, and it has to go out in consecutive number, and we have to report to every State what cases and what numbers, and in some States we have to send the duplicate bill of lading. It is taking all of the profits, to comply with the red-tape regulations. I just pulled these out of the files. This takes three expert accountants and a good engineer to make the report. You have to make blueprints. If you move a cask 6 inches, they threaten to shut you up. They threatened to shut up my place once because somebody moved a cask about 6 inches from its base. They said, "We will lock you up." I said "I will see you locking me up", and I called up Washington, and they called them off. Somebody was wanting to make some trouble out of it—publicity, maybe.

It we can get wine into the class of food products, and develop vineyards in this country, it certainly is worth the experiment, and it cannot do any harm, and it will be at no loss of net income whatever. If the business grows, it will furnish a wonderfully lucrative source of taxation, adding hundreds of millions to land values; but it cannot survive, and we have never made any material progress on this thing of making light wines, and now they are on the downhill. The fortified wines, there is bigger demands for that. They all got used to it for cocktails in the old days. They want a kick out of them. You do not get a kick out of light wines, as you do with the strong liquor. The kick is in the acids, that help digestion, and make you contented to sit under your vine and fig tree and enjoy life.

Senator BAILEY. You do not think the drinking of wine would make the moderate man more content to stay at home at night, do you?

Mr. GARRETT. It would help, not to have so many cocktails, I think. I am going to ask the privilege of submitting some of these facts, having them briefed for you, but I do beg and urge you to consider this matter carefully. I do not say there is any great difference. I do not think any grape grower in the United States will object. You are not getting enough revenue to pay expenses.

Senator BARKLEY. What is your concrete recommendation? That the tax be eliminated?

Mr. GARRETT. All the taxes on light wines be eliminated, and that they be put in the class of foods, as in Georgia. Now, more particularly, put wine in the class where you do not have to have a liquor dealer's license and a wholesale liquor dealer's license.

Senator BAILEY. I think the act we have excepts the wine maker from special taxes. The act we have excepts the wine maker from special taxes.

Mr. GARRETT. When he makes it for his own use, is it not? I do not think it exempts him if it is for sale.

Senator BAILEY. Let me see. This is in the other bill.

Mr. GARRETT. I only had a chance of glancing over that. There are a great many fine provisions in that bill, and in glancing over that—I have not my copy with me—I sent it out home.

It is such a wonderful opportunity of giving an experiment in sociology and agriculture. It would add to taxable values of your lands. A growing vineyard is worth $200 or $300 an acre. You can buy a million acres in the South today at $3 an acre ideally adapted to grapes.

Senator BAILEY. Here is the statement [reading]:

> Nothing in this chapter shall be construed to impose a special tax upon wine makers who sell wines of their own production, where the same are made or at the general business office of such wine maker: *Provided*, That no wine maker shall have more than one place of business for the sale of such wine as shall be exempt from the special tax.

Mr. GARRETT. May I ask what is meant by "special tax"—5 cents a gallon?

Senator BAILEY. No; that is the general tax. We have got some $100. Here is the wholesale dealers' tax, and $50.

Mr. GARRETT. Yes.

Senator BARKLEY. Retailers.

Mr. GARRETT. There is no tax on the manufacturer who sells at one place of business, on the wine he makes, that special tax of $25 or $100? He is a manufacturer. He does not have to pay the wholesale liquor dealer's license now, I do not think.

Senator BAILEY. Under that section there would be no special tax. That relates directly to the grower.

Mr. GARRETT. Senator, that does not get to the meat of the matter. We want to reach the family through a channel which invites them to patronize a good wine and a cheap price. It has got to be good for them to use it, and cheap, to be within their reach, and see if we cannot get them to stay at home and not have so many cocktail parties; but especially to encourage it as an agricultural proposition.

Senator BAILEY. Suppose then we should undertake to except, under your 14 percent, 5 cents, the producer on the farm, to the extent of 200-gallons, or 100 gallons a year. Would that be what you are asking?

Mr. GARRETT. No; not at all; because that is only the first personal use. It would take only about a ton of grapes, you know, to make his 200 gallons.

Senator BAILEY. Let him sell that or use that. He can sell you his extra grapes.

Mr. GARRETT. Yes; but still I have got a closed market.

Senator BAILEY. You are looking for a grape market.

Mr. GARRETT. What I am looking for is a wine market, a light wine market, as a food product, following the Georgia law. I did not write that.

Mr. GARRETT. I appreciate very much the courtesy you have given me, quite in contrast to the hurried hearing I had before, and I hope I have not tired you, but I certainly think it is a matter that is entitled to careful consideration as an agricultural proposition, and as a possible relief from the cocktail situation. I gave one of these pamphlets to Senator Bailey the other day, but I appreciate very much the courtesy.

(Mr. Garrett subsequently submitted the following brief:)

AUTHENTIC DATA RELATING TO THE DOMESTIC WINE INDUSTRY AND AN APPEAL FOR THE RECLASSIFICATION OF LIGHT WINES AS FOOD PRODUCTS IN THE INTEREST OF THE SMALL FARMER

WILL AMERICANS DRINK WINE?

Undoubtedly Americans will drink wine, if offered good table wines at reasonable prices.

During the prohibition years shipments of grapes from California to eastern centers rose to a million and a quarter tons, and under the limitation of making wine only in one's home, the production is fairly estimated at 200 million gallons of table wines against a previous maximum production of 30 million gallons, or an increase of over 600 percent.

Since repeal the per capita consumption in one State, in 2 years, due largely to nominal taxation and removal of burdensome regulations, has increased from less than half a gallon per capita to 3 gallons, and at this ratio the United States would consume 375 million gallons annually, and every State could produce its ratio if our people can be aroused to the passibilities of increased national health and wealth through the production and consumption of good, sound, light table wines.

The United States is a natural wine producing land. Grapes are successfully grown in practically every State, and encouragement by liberal legislation will inevitably add much to the Nation's industrial and agricultural wealth, as well as greatly advancing the cause of true temperance.

Wine grapes produce 2 to 5 tons per acre, or say 3 tons per acre fair average. Equipment necessary for a home vintner handling 100 to 200 tons of grapes on his home premises need cost only $1,000 to $2,000 and will last 10 to 25 years. Below are given conservative figures of reasonable returns from 25 acres.

The small farmer has 50 acres, 25 planted to grapes. At an average 3 tons per acre, 25 acres yields 75 tons which he can sell at $40 per ton, or $3,000. One family can care for 25 acres and grow other crops.

Provide this small farmer with a home market for wine. His crop takes 6 months care, he makes his grapes into sound wine during the other 6 months, and sells throughout the year.

75 tons grapes yielding 175 gallons per ton	13,125 gallons
Bottled 5 to a gallon	65,625 bottles
Sold at 25 cents per bottle	$16,406.00
Deduct new bottles (cost 4 cents) and stoppers, etc. (1 cent)	3,281.25
Total	13,124.75
Deduct 50 percent to cover hired labor (if no family to help), interest on investment, etc	6,562.37
Net income for 1 thrifty family	6,562.38

Under the Georgia wine food law of 1935, I am told that a million vines are being planted in that State, and several wineries are being opened to handle the fruits in that State. The Georgia law and that of North Carolina class light domestic wines as food, and authorize manufacture and sale without taxes or license.

Winemakers of bygone years have created much superstition and romantic illusions about their art. The making of good sound wine is easy for any adult of average intelligence. The fundamentals could be compressed into a primer of 50 pages.

Of the world production 98 percent is good sound healthful wine—only 2 percent is fine wine, bottled for aging. My reference herein is to sound wholesome table wines used as food and for health, eliminating soda, pills, and nostrums for indigestion.

The best quality wine grapes grow on thin soils; steep hillsides produce the finest quality. The ideal conditions would be to follow the example in France and Italy of small growers, each a wine maker.

The grower-vintner should have the benefit of State laboratory assistance. The technique of wine making in the United States and Canada is ahead of older countries.

Wine drinking countries have no temperance problem. These countries produce an average annual crop of 5 billion gallons, of which 90 percent, or 4½ billion gallons, are natural light table wines and consumed as a food element in the home, while only 10 percent are fortified wines. And in Spain and Portugal, which produce the ports and sherries making up the major percentage of these fortified wines, the native populations drink natural wines, the fortified wines being for export to countries not producing wines, such as England.

In France and Italy 27 to 30 percent of the population is engaged in viticulture. In the United States that percentage would mean over 30 million people engaged in a healthy and profitable profession, spread over every one of our 48 States.

THE TABLE-WINE BUSINESS CANNOT DEVELOP UNDER LICENSED LIQUOR STORE SALES

To insure large consumption, wines much be sound, good, and cheap. The licensed store, with its heavy taxes and fees, is forced to charge too large a profit. The licensed liquor dealer is not to blame. He has to live.

The family grocery sells staples at a narrow margin of profit. Make light wine a staple article in every grocery, and wine for which the licensed liquor store has to charge 50 cents to $1 per bottle can be sold through the food store at 25 cents to 50 cents per bottle.

The present tax on light table wine (raised in 1934 from 4 cents to 10 cents) does not pay cost of needless supervision and expense of collection.

Light wine should be put in the class of food, and the sale permitted without the retail liquor dealer's license of $25 per annum. Few grocers want to exhibit a liquor license indicating the sale of distilled liquors.

Allow light domestic wines to be sold freely and the price will be around 20 cents per bottle. The people will drink freely this healthful food-beverage, and we will have no temperance problem.

Wine should be looked upon not as an alcoholic beverage but as an article of diet which, if not an absolute necessity, yet adds greatly to the pleasure of living in promoting good digestion and hence good health. A great opportunity is presented to our legislators and honest temperance reformers to promote the use of that article of diet which, with bread, has the approval of the experience of the ages and Scriptural authority as aiding both physical and spiritual life.

I ask that all tax on light wines be eliminated. California, through Representative Buck, is now asking Congress for a reduction from 10 cents to 5 cents. Production of light wines in California has dropped from 35,000,000 gallons in 1933 to under 15,000,000 gallons in 1935. At 5 cents per gallon, the tax would yield to the Treasury Department only $750,000 on the 1935 crop. But this is a tax of $8 per ton on the farmer producing the grapes. Remove this tax on the farmer and encourage him to grow a new crop of wine grapes and to make them into wine, thus adding millions in agricultural and industrial wealth in every one of our 48 States.

Good wine appeals to sense, stimulates the imagination, stirs the poetry in our lives—and why? Because good, sound, natural wine supplies one of the deficiencies in the digestive apparatus of man. Its proper use adds to health and promotes happiness.

Senator BAILEY. Is Mr. Harry L. Lourie, of the National Association of Alcoholic Beverage Importers, here?

Mr. LOURIE. Yes, sir.

Senator BAILEY. I understand you will take 10 minutes.

Mr. LOURIE. Five minutes will be sufficient.

STATEMENT OF HARRY L. LOURIE, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION OF ALCOHOLIC BEVERAGE IMPORTERS, WASHINGTON, D. C.

Mr. LOURIE. I was not able to be present here yesterday, because I happened to be in New York, and I did not know the hearing was going to be resumed. In connection with H. R. 9185, I am particularly interested in the proviso made in section 337 on page 48. That section, in brief, Senator, is to amend section 1798 of the Tariff Act of 1930, to limit returning tourists in general to $100 exemption, and to 1 gallon of alcoholic beverages. I would like to say that situation arose through an action of the customs courts. The customs courts held, in a litigation that was decided last year, that a returning tourist could, under the $100 exemption, bring in $100 worth of alcoholic beverages of various types, pay no tariff, and pay no internal-revenue tax. As a result, the goods brought in by returning tourists have reached enormous proportions, which not only deprives the licensed industry but we figure has cost the Treasury some $5,000,000. To give you a concrete sample of that, I recently returned from a pleasure trip to Bermuda. On my boat there was, according to my information, some 2,000 cases of various alcoholic beverages, brought back by the passengers, which paid no tax at all to the Government. We figured that if the normal tax had been collected, that load alone would have returned to the United States some $30,000 worth of revenue.

The tax and the tariff today on Scotch whisky, for example, is $10.80 per case; on cognac and brandies and cordials it is $16.80. A member of my board of directors, after a meeting we held in New York this week, had returned from Jamaica, and he said that the boat stopped at Jamaica for a few hours, and one of the liquor stores,

dealing in so-called bonded goods for tourists, had sold in the space of a half an hour, $6,000 worth of goods to a few tourists. We think that this limitation is desirable, not only because of our own selfish interests in trying to protect the importers who pay their taxes to the Government and large license fees to the States that they operate in, but also because the revenue loss to the Government is running into millions of dollars, and there is no more reason why a returning tourist should bring in large quantities of alcoholic beverages, free of duty and tax, into the United States, than that he should bring in tobacco. As you know, there are definite limitations as to the amount of tobacco that can be brought into the United States by an American returning from abroad. We believe the limited suggestion here is reasonable and desirable.

I may add, Senator, this, too. I took the entire matter up with the Commissioner of Customs last year, reported to him that groups of people going to the West Indies ordinarily had engaged in what looked to be almost a new type of business. They go down there and under this limitation they can bring back anywhere from 5 to 20 cases of goods, free of tax. The average person going down and bringing in, say, 10 cases of whisky and rum, certainly is going to take a long time consuming it, but the stock has been sort of peddled around among friends. In Bermuda, just 2 weeks ago, at the hotel where I was, one of the Americans there had cabled to the United States and obtained a lot of money by cable and had used that money to spend on liquor to bring back to be distributed among members of the family and friends, and so forth, which, of course, is perfectly illegal.

Senator BARKLEY. The tourist usually takes up his $100 allowance in something.

Mr. LOURIE. Yes, sir.

Senator BARKLEY. If he does not take it up in liquor, he would take it up in something else, so that if now he takes it up in liquor, he pays the tariff on whatever else he brings in. If he takes up part of it in liquor and part in something else, of course, the whole thing is duty-free up to $100. I am just wondering whether this provision is not clamping down pretty tightly on people who have an opportunity once in a while to go abroad and return with something that they like, and you say they can only bring back a gallon.

Mr. LOURIE. Senator, I think every one of us who has traveled abroad under present conditions and past conditions realizes the fact that before prohibition and in the early days of repeal no tourists went to Europe or went to the West Indies with the thought of bringing back liquor, until the courts held that——

Senator BARKLEY. He got there and saw something that he liked, and he wanted to bring back a few bottles—you do not want him to do that?

Mr. LOURIE. I think if a person comes into the United States, a gallon would, for example, allow everybody to bring in about five bottles of Scotch or cognac or cordials.

Senator BAILEY. I notice your limitation relates to malt liquors—not more than 1 wine gallon.

Mr. LOURIE. I do not know of any tourists that have brought beer into the United States to avoid the tax.

Senator BAILEY. What you want is a limitation lower than $100. What do you suggest?

Mr. LOURIE. This provision is what we want. This provision limits the amount that may be brought in to not more than one wine gallon, free of tax and tariff. If they bring in more than that, we think they ought to pay the same taxes and tariffs that the import trade does.

Senator BAILEY. You mean that you would limit the distilled spirits, wines, and malt liquors to one wine gallon?

Mr. LOURIE. Yes, sir; so far as the importation is concerned, by tourists. Wines have been entirely champagnes. There have been no beers, as nearly as I can determine, but it largely, and I would say 99 percent of it is mostly in various forms of spirits, Canadian whiskies, Scotch whiskies, Irish whiskies, cognacs, and cordials.

Senator BARKLEY. Those liquors that are brought in by the tourists, who put a few bottles in their grip, or even a case, are largely composed of liquors that are not manufactured in the United States, are they not?

Mr. LOURIE. That is true. Of course, they could not be manufactured in the United States, because they can buy them here, but the system that has developed, practically, in the West Indies and to another extent in Canada, is this: They buy these liquors in bond. All these countries have their own taxes. For example, they will sell you a case of Canadian whiskey or Scotch whiskey, or cognac, for $19 in bond. That same case of whisky, when the tax has been paid to the various States, and the Federal taxes, would cost the consumer around $38. The result is that we have built up a tremendous trade in the West Indies, particularly, where the liquor dealers are selling, for some brands that I know of, more of those brands, to the tourists, then actually are being distributed by legitimate importers in the United States.

Senator BAILEY. Your whole point is, you are an importer?

Mr. LOURIE. Yes, sir.

Senator BAILEY. You represent the importers' association. You import and you pay the taxes, and you wish these others to buy your imported product, on which the tax has been paid?

Mr. LOURIE. That is right.

Senator BAILEY. And be put on a level with you and give you that trade, instead of them getting it from the islands or abroad?

Mr. LOURIE. Yes; and we say at the same time it will mean a definite increase in revenue to the United States Government.

Senator BAILEY. I think we might say $50. I do not see why a man should buy $100 worth.

Senator BARKLEY. I am not making any point on that, but I think one gallon is a very small amount.

Mr. LOURIE. The only other thing I wanted to say, Senator, was, I ask permission to file a brief this week.

Senator BARKLEY. Yes. Get this in in a hurry.

Mr. LOURIE. Will Saturday be sufficient?

Senator BARKLEY. Yes. That is all.

Senator CAPPER. Mr. Chairman, I would like to ask first if there is a representative of the Treasury Department here?

Senator BARKLEY. There have been representatives all during the hearings from the Treasury Department; yes; sitting here.

Senator CAPPER. They are not here this morning?

Senator BARKLEY. Yes; one of them is here now.

Mr. FORREST. Mr. Hester just stepped out.

Senator CAPPER. I would like to ask him a question.

Mr. FORREST. I am in the Alcohol Tax Unit.

Senator CAPPER. I want to ask in regard to H. R. 191. Are you familiar with the provisions of this bill?

Mr. FORREST. I am familiar with the provisions of it.

Senator CAPPER. It was testified here yesterday that it would reduce the revenue, the tax on wines, about one-half. I want to know if this bill has the approval of the Treasury Department?

Mr. FORREST. Mr. Hester will have to tell you that, sir. He cleared those things. I do not know. Will you excuse me just a moment and I will get him?

Senator BARKLEY. I think the statement was brought out in the testimony, the Treasury does not approve it.

Senator CAPPER. Testimony from any representative of the Treasury Department?

Senator BARKLEY. I am not certain about that.

Senator CAPPER. I think it is important to know.

Senator BARKLEY. The Treasury is going to testify later again, because they are going to have some conference with these people who have appeared, in an effort to get together on some of the provisions of these bills, and we will have them back here whenever they have had these conferences to see how far they can go toward reaching an agreement. Then we can ask them about all these controversial matters which have been brought out upon which they do not agree.

Senator CAPPER. I can understand why the wine producers would be for this bill, but I think it is important to know what the attitude of the Government is toward a reduction of 50 percent in the tax on the wine.

Senator BARKLEY. If you want to have that answer now, I suppose Mr. Hester will be here in a minute.

Senator CAPPER. Just so I get it before we report the bill.

Senator BARKLEY. Mr. Parker might be able to answer that question.

Mr. PARKER. No, I cannot answer that, Senator. It was touched on, and it was indicated that the Treasury had not approved the lowering of rates, but they did not say that they had reported at all on them. They have not formally approved the rate. That is all I can say.

Senator CAPPER. I can find nothing in the testimony, in the House or before this committee, that would indicate what the stand of the Treasury Department is as to this very important matter.

Senator BARKLEY. Here is Mr. Hester. You might ask him. Mr. Hester, Senator Capper desired to ask you what the attitude of the Treasury is in this H. R. 191.

Senator CAPPER. Which makes a reduction of about 50 percent in the tax on wines.

Mr. HESTER. The Secretary rendered a formal report on that last year in which he took the position that the tax was not excessive, and that the Government needed the revenues.

Senator CAPPER. And they, therefore, would oppose this legislation?

Mr. HESTER. That is the formal report of the Secretary, which I will be glad to incorporate in the record. That was the definite attitude of the Treasury Department last year.

Senator BARKLEY. That was before the House Ways and Means Committee?

Mr. HESTER. That was before the House Ways and Means Committee.

Senator BARKLEY. The committee will adjourn, subject to the call chairman.

Whereupon, at 11:20 a. m., Thursday, Jan. 16, 1936, the hearing in the above-entitled matter adjourned, subject to the call of the chairman.)