[EXECUTIVE SESSION COMMITTEE PRINT]

REVENUE ACT, 1936

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

SECOND SESSION

ON

H. R. 12395

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

PART 3

MAY 11, 1936

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
63334 WASHINGTON : 1936

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REVENUE ACT, 1936

MONDAY, MAY 11, 1936

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

EXECUTIVE SESSION

The committee met in executive session pursuant to call, at 10 a. m., in the Senate Finance Committee room, Senate Office Building, Senator Pat Harrison presiding.

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

Also present: L. H. Parker, chief of staff, Joint Committee on Internal Revenue Taxation, and members of his staff; Middleton Beaman, legislative counsel, House of Representatives; Arthur H. Kent, acting chief counsel, Bureau of Internal Revenue.

(The first part of the hearing was not reported.)

Mr. PARKER. The deficit rule deals really with past deficits. You will never get relief under section 14 unless you have an accumulated deficit.

Senator BARKLEY. Of course, if the corporation does not have any income, or has less than a net income, then it has a deficit and it would pay no taxes at all.

Mr. PARKER. It would pay no taxes that year. Now, if it has a net income and has no earnings and profits on its books in the past, but, on the other hand, has a deficit, that is where the relief comes in. They do not need any relief for the current year's deficit, they need relief to build up their past capital, since that capital has already been impaired to the extent that they have a deficit.

Senator BARKLEY. In other words, if it has a deficit over a period of years and should happen to make a profit this year, then that past deficit is taken into consideration to a larger extent than its past outstanding obligations?

Mr. PARKER. Yes; and if your earnings are not sufficient to repair your deficit, you can retain all of your earnings and pay 15 percent.

Senator BARKLEY. Suppose that recurring deficit in the past has been transformed into a standing obligation, either by borrowing money, issuing bonds, or some other form of indebtedness, what happens then? Does it come under the debt-ridden section?

Mr. PARKER. The issuance of bonds is ordinarily merely a capital transaction and would not affect the deficit on your books. For instance, you have a deficit on your books and you borrow $100,000,

you put $100,000 liabilities over on that side of the ledger, then you put the $100,000 cash you got from your borrowing on your assets side of the ledger, and it is a washout, you do not change your deficit by borrowing money.

Senator KING. You could treat that as capital?

Mr. PARKER. That is a capital transaction. It does not affect the deficit.

Senator KING. In the future you would treat that as a part of your capital stock.

Mr. PARKER. Yes, it has a similar effect.

Senator BARKLEY. So that debts created in order to take care of deficits in the past are not regarded as contributing to the debt-ridden condition which you take care of in the bill?

Mr. PARKER. That is correct. They are separate propositions. But it is true, as Senator Harrison pointed out, that they only have to pay a 15 percent tax when they have a deficit, whereas if they have a contract not to pay dividends, or if they have debts, then the rate is 22.5 percent.

Senator COUZENS. Why is that justified?

Senator LA FOLLETTE. Why did the House think it was harder for a corporation that was building back its capital because of accumulated deficits than it was for one that was in debt? What was the argument pro and con?

Mr. PARKER. I do not think that they made a comparative argument. As I say, in the beginning it was 22.5 percent in all cases.

Senator LA FOLLETTE. You treated them all alike and then the House made a change. What was the reasoning back of that, do you know?

Mr. PARKER. The reasoning was directed simply to the cases in respect to deficits. The arguments advanced were not against doing the same thing with relation to contracts not to pay dividends, but they were arguments in favor of doing this particular thing for deficits, without any extended discussion at all about the debt or the contract situation.

The CHAIRMAN. Mr. Parker, give the committee the benefit of your opinion on this proposition.

Mr. PARKER. I see no reason for any distinction.

Mr. BEAMAN. I do want to say this, Senator. You started this by making the statement that a corporation may retain 30 percent and pay 15 percent, whereas if it had a debt it would pay 22.5 percent. Well, that is not so. The only debt provision there is is to give relief where the tax would be greater than 22.5 percent.

Mr. PARKER. The same thing would be true with respect to your deficit.

Senator BYRD. Mr. Chairman, I do not understand the deficit provision.

The CHAIRMAN. Let us get this thing clearly in our minds.

Senator BYRD. I want to get clear in my mind exactly what the 15 percent applies to with respect to deficit. Suppose a company had a surplus of $1,000,000 and it exhausted that surplus through loss, will it be permitted to replenish and get another surplus of $1,000,000?

Mr. PARKER. No, Senator; that will not be permitted.

Senator GEORGE. The deficit is in the capital stock alone.

Mr. BEAMAN. Let us put it this way: Without regard to what the thing does not do or what it should do, but looking only at what the House bill does, suppose you make $100 net income during the year, you compare that $100 with your accumulated earnings and profits at the end of the year, and if that is less than $100 you get 15 percent on the difference. If your accumulated earnings or profits at the end of the year are $80, your net income $100, you pay 15 percent on the $20 and the rest of the income, after you subtract the 15 percent of the $20, is taxed, under the new plan, according to the amount distributed.

Senator BYRD. This deficit you referred to is a past deficit?

Mr. BEAMAN. I am telling you that is what the bill does. What it ought to do is a matter of policy. That is not up to us. It gives relief to the extent to which the net income exceeds the accumulated earnings and profits.

Senator BYRD. For how many years?

Mr. BEAMAN. Since the beginning of time.

Senator BYRD. One corporation is 5 years old and another one is 25 years old, and they can date it back to when they started?

Mr. BEAMAN. They have to find out how much earnings and profits exist at the end of the taxable year.

Mr. PARKER. You see, if your earnings and profits at the end of the taxable year, including that year's income, is less than the year's income you must have had a deficit at the beginning of the year.

Senator KING. Mr. Beaman, is not this the fact, that at the end of the year, if you discover you had a deficit of say $50,000 and next year $50,000, that in your bookkeeping and in your adjustment of your accounts with the Treasury, that is charged to your capital and it depreciates your capital to that extent?

Mr. BEAMAN. I understand they keep an earnings and profit account.

Senator KING. But there must be some time when those losses would be so great that they would be a charge against your capital and you are compelled to diminish your capital pro tanto, so your capital may be wiped out entirely by reason of your debts.

Senator BARKLEY. Suppose a corporation earns $100,000 in 1936, and suppose it had a deficit of $50,000 in 1935 and a deficit of $50,000 in 1934, so at the end of this year, when it comes to figure up what the tax is going to be, can you offset the two $50,000 deficits for 1934 and 1935 against the $100,000 profits this year?

Mr. BEAMAN. You mean the company had a profit this year and in 2 years they had a loss?

Senator WALSH. If they had $100,000 profit the year before.

Mr. BEAMAN. Senator Barkley gave 3 years, they lost $50,000 in one year and then lost $50,000 in another year, and then they make $100,000. If in that case you had nothing to start with, then your earnings and profits would be zero.

Senator BARKLEY. Suppose the corporation had been in existence for 40 years and it has had alternating profits and losses, deficits; suppose that you could go over that 40-year period and add up your losses and your profits at the end of the 40-year period, which would be January 1, 1936, we will say——

Mr. BEAMAN (interrupting). No; it would have to be December 31, 1937. It would be the close of the year.

Senator BARKLEY. You include the current year then in that?

Mr. BEAMAN. In the current year they would be earning the profit.

Senator BARKLEY. Suppose you figure on what your tax is going to be for 1937, that is what I am coming to, for 1937 there is a profit of $100,000, or any other amount; now, you take all your net losses for the whole 40 years, offset them against your profits, and if your losses are greater than your profits for the whole period then you can offset them against the net income for this year.

Mr. BEAMAN. You find your income for this year, and if you find that that is greater than the accumulated earnings and profits computed, as you say—it would simplify the matter, I believe, by calling them earnings and profits. You call them losses. In bookkeeping it is earnings and profits.

Mr. PARKER. Your deficit is minus earnings and profits.

Senator CLARK. All the profits you made balanced against all the losses you made in that 40-year period in the case that you put, and you might find out that in 40 years the company had actually made $100,000.

Mr. BEAMAN. That is right.

Senator CLARK. That is the balance on which you would start the tax payment.

Mr. BEAMAN. If you find it is less than the net income you get the 15-percent rate.

Mr. PARKER. It is a question of accumulated earnings and profit. Your dividends, that you declare within that period, first come out of the earnings and profits.

Senator BYRD. Suppose a corporation replenished its surplus and capital by issuing new stock, suppose it issued new stock and made up its deficit in operating expenses and therefore the capital structure was not impaired, what would happen then?

Mr. BEAMAN. That would not affect earnings and profits.

Senator BYRD. It would not affect those at all?

Mr. BEAMAN. No.

Senator KING. Mr. Beaman, would not this proposition that I indicated a moment ago affect the conclusion which you just announced: Say 10 years ago there was a deficit of $100,000, and next year $100,000, and the bank said, "You have got to diminish your capital or else add new capital", and they said, "We will just charge that $200.000 loss to capital and diminish our capital to that extent, we will take $200.000 off of our capital, so that our capital, instead of being $1,000,000 is now only $800,000. Our losses reduce our capital." You do not mean to say that in 4, 5, 6, or 7 years thereafter, in adjusting these accounts, that you could get credit for that $200,000 and balance it against some of your earnings that have occurred since then?

Mr. KENT. Senator, that is about the position the Bureau has been taking, but so far the courts have taken a different view of it. That is, they have taken the position that the writing down of the capital in order to wipe out that impairment does extinguish the deficit in the earnings and profits account.

Mr. PARKER. Yes; and the Bureau, on the other hand, would not allow them to write up their capital. That is, in computing this earnings and profits under the bill we do not take into account, for

instance, stock dividends, where the corporation has really distributed earnings by stock dividends, we do not take account of that.

Senator BYRD. Does the Treasury Department go back to these corporations to see what their net losses have been up to date over a period of 50 years in making up their estimates of revenue?

Mr. KENT. That is what they will have to do.

Senator BYRD. Have they done that? They have made an estimate for the purpose of this bill. Have they done that in regard to these corporations? This bill would materially change the law in regard to any corporation that lost money in the past year.

Mr. KENT. I am not informed as to the estimate on this point.

Senator BYRD. I would like the estimate furnished to the committee, that particular estimate, as to corporations only paying 15 percent.

Senator HASTINGS. I think I will put a simple case as I understand it. Suppose at the end of 1933 the corporation was just even, it had no surplus, but its capital was not impaired; in 1934 it lost $50,000; in 1935 it lost $50,000; and in 1936 it makes $100,000; then the tax on that $100,000 is $15,000, and they still have a $15,000 loss to make up in the next year, is that correct?

Mr. PARKER. That is right, except the final point is that if they want to declare that all out in dividends and pay no tax, they do not repair the deficit, they cannot do it. Perhaps the law would prevent such a declaration of dividends however.

The CHAIRMAN. You mean they can retain all that in their reserves?

Mr. PARKER. They can retain all that in their reserves and pay 15 percent on it.

The CHAIRMAN. Yes.

Mr. PARKER. But if they want to, that is, if the State law permits and they do not want to repair their deficit, if they declare all their earnings out in dividends they will pay no tax, because each one of these sections 14, 15, and 16 dealing with these cushions, so-called, has a provision that says that these sections shall not operate to increase the tax which would otherwise be payable under section 13.

Senator BARKLEY. They would pay it under whichever section they would pay the least?

Mr. PARKER. That is right.

Senator KING. Let me give you this illustration. It is the illustration that I gave you during the process of the hearing. A corporation with which I was familiar had, during the beginning of the depression, about a $500,000 surplus. It had a large personnel at the mill. They did not discharge a single person. They paid out that $500,000. They had not made a cent in 3 or 4 years. They borrowed $500,000 or $600,000 to keep the plant going. So they are out the $500,000 that they had in the surplus and the $600,000 they loaned since then. Now, perhaps this coming year they will make a profit of all the way from $100,000 to $200,000 or $300,000. They are out $600,000 or $700,000 that they borrowed merely to keep their plant going, to save the town, a town of four or five or six thousand inhabitants. What credit will they be, supposing they make $300,000 next year, and they are out $600,000 or $700,000 which they have borrowed, plus the $500,000 that they had on hand?

Mr. PARKER. Well, I believe they would be entitled to the 15 percent, making certain necessary assumptions in connection with your question. That is, I assume that this $500,000 of surplus that they had at the beginning was expended in operating expenses, that they cut down to zero, and that this money that was borrowed had to be borrowed to make up operating losses.

Senator KING. Sure. They had no profits at all.

Mr. PARKER. Therefore, the money borrowed represented how much they went behind in the operations and, therefore, that would be a deficit, and having gone $500,000 or $600,000 in the red in connection with their earnings and profits, they would be entitled, under the bill, to keep the $300,000 they made and pay 15 percent on it.

Senator KING. Then next year would there be a period when they would get full credit as against their income of the full $600,000?

Mr. PARKER. They would get credit up to the $600,000 plus the tax. After that it would cease.

Senator HASTINGS. They would get credit up until the time they repaired the capital?

Mr. PARKER. I say "get credit." It has the right to retain the money and pay 15 percent on it.

Senator KING. Is it not a fact that during this depression, even up until now, there have been hundreds of thousands of corporations that were and are in the same situation as the one to which I have referred, so that instead of anticipating a very large windfall, a very large revenue from the corporations, we are going to be tremendously disappointed?

Mr. PARKER. I have not made any estimates on that, Senator King. Mr. Haas, of the Treasury staff, I think ought to give you that information. I haven't had time to make the estimates on that.

Senator BYRD. Mr. Parker, is it not true that a number of corporation taxes are in dispute with the Department on the question of depreciation and depletion—things like that?

Mr. PARKER. That is true.

Senator BYRD. The interpretation and the administration of this section depends upon the returns that have been made by these corporations in the past years?

Mr. PARKER. That is true.

Senator BYRD. If these returns are in dispute on the question of depletion or depreciation, or something else, how can you ascertain which corporation would be entitled to this particular clause?

Mr. PARKER. Such cases will probably be subject to controversy for a change in a figure in one of those years, will affect your accumulated earnings and profits for subsequent years.

Senator BYRD. Do not you have to wait until you finally approve the returns before you determine whether this particular clause will be applied to a particular industry?

Mr. PARKER. No; you do not wait. The corporation will make out its return. It will make out the calculation. The burden of the computation of the original tax and the making of the return is on the corporation. They will have to proceed in the same manner, probably, assuming that their calculations for prior years are correct.

Senator BYRD. I know, but the corporation does not want to wait 3 or 4 years to find out what its taxes are going to be.

Mr. Parker. They will have to wait to know what the final adjustment will be.

Senator Byrd. They have to wait on the Department adjudicating these disputes that are already in existence, some going back 4 or 5 years, and if a corporation has a dispute with the Government, which started 7 or 8 years ago, about depletion and depreciation, that has got to be settled before you can determine whether or not they come under this law? Of course, the settlement of that fixes whether or not they have a deficit, because they have charged depletion and depreciation in the expenses and thereby created a deficit.

Mr. Parker. That is true.

Senator Barkley. In making out the tax return they would either have to take into consideration the disputed item or eliminate it.

Senator Byrd. The situation is this: They may think they come under this clause and then the departments will have to rule with respect to these other disputed years, and it will be probably 3 or 4 years before the corporation knows whether or not it should have this 15-percent clause.

Senator Hastings. That is the same proposition that the corporation would be in if it had a serious lawsuit against it. It has made a profit; it does not know whether it is going to win the lawsuit or not, and wise business policy demands that they set aside sufficient to satisfy any judgment that may be rendered against it. If they set it aside, that costs them 42.5 percent to set it aside, because they cannot afford to pay out any dividends because of this lawsuit. That is a similar situation. The lawsuit may be in the form of a tax claim. If they want to set it aside they are penalized to the extent of 42.5 percent.

Senator Byrd. A corporation may proceed on the theory that it comes under this clause, and then the determination of the controversy may decide that it does not come under it.

Mr. Parker. That is correct. Of course, there is an uncertainty under the present law when you make returns. You are in a dispute with the Commissioner as to the rate of depreciation on your buildings, you have been claiming 5 percent and he is claiming 4 percent, and you are in negotiation with him; you have to make out this year's returns and you do not know positively whether to take 4 or 5 percent—most corporations, of course, will put in 5 percent—and then if it is ruled otherwise as to the prior years that means you have got to pay more tax this year.

Senator Hastings. And it may have paid it out in dividends.

Mr. Parker. That is true. The difficulty is accentuated under this bill. This bill does not only affect the amount of the income on which you apply the rate, but if you increase the income it will not only increase the base but it will also increase the rate.

Senator Gerry. Are not you in this position also: You can only pay dividends out of earnings, or out of surplus, and if any dividend was paid out other than that then the directors are liable. Now, in a case like this what do the directors do? They would not know whether they had the earnings or not. Would not they be liable if they paid it out?

Mr. Parker. I think most States have such a law, but I do not think the States are very active in that matter, and I think they

accept the corporate books to a greater extent than what the Federal Government does.

Senator GERRY. I do not think you would find any board of directors that would be willing to take the responsibility of being personally liable for that tax.

Mr. PARKER. I do not believe so, and in addition there are criminal penalties sometimes provided for.

Senator CLARK. You do not think we can afford to legislate on the basis that the States would not support their own laws?

Senator GERRY. I would like to know from the Treasury how many States have laws in regard to corporations.

The CHAIRMAN. I think we will put in the record in this connection what the laws of the various States are with reference to this distribution.

(The information referred to follows.)

In the following 36 States dividends may not be paid out while the stated capital for the corporation is impaired, or if the payment of dividends would result in such impairment even though in a particular year there are earnings: Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Nevada, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania (generally from earned surplus only), Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

In the following three States dividends may be paid from net profits from preceding accounting period, notwithstanding a capital deficit and absence of surplus: California, Delaware, and Minnesota.

Five States permit payment whenever a corporation is not, and is not rendered, insolvent: Florida, Kansas, Mississippi, Massachusetts, and Texas.

Senator KING. I see what a controversy it would be to determine whether a corporation is insolvent. I might assume my ore reserves are sufficient to remove me from the borderline of insolvency, whereas it may be demonstrated I am insolvent.

The CHAIRMAN (reading):

In the following five States no statutory law on the subject applicable to business corporations generally, has been found: Alabama, Arizona, Montana, Nebraska, and New Hampshire.

The general rule is that a surplus available for dividend payments may be created by reduction of capital. Such a reduction may generally be made if the stated capital as reduced and liabilities do not exceed assets.

Further study is being made of the steps necessary to make such reduction in stated capital.

The general rule is that directors who participate, either willfully or negligently, in the declaration of improper dividends are personally liable therefor. The conditions and measure of such liability vary considerably. No statutory rule has been found in Maine, South Carolina, or Utah.

Statutes imposing criminal liability upon directors for similar action have been found in nine States: California, Georgia, Iowa, Kentucky, Maine, New York, South Carolina, Tennessee, and Vermont.

Senator BARKLEY. What proportion of corporations have controveries over depreciation and depletion in the Treasury, Mr. Parker?

Mr. PARKER. Oh, a very large number have controversies.

Senator BARKLEY. Over what period of years do those controversies run, as an average?

Mr. PARKER. They will run at least 3 years, and sometimes 8 or 10 years.

Senator KING. Let me ask you, is it not a fact that there are hundreds of cases now receiving depletion of oil, minerals, and so on, that go way back to 1917, 1918, and 1919?

Mr. PARKER. Well, we are getting a reduction in the old war-year cases, but they are being continually opened up. There are supposed to be only a few thousand pending.

Senator BYRD. Suppose a company made out a return and it showed that it had a deficit over a period of the last years of $100,000, and then the Department disputed that depreciation or depletion, and suppose that the Department is correct, how can you determine that, until that is settled, whether or not they come within this clause?

Mr. PARKER. You cannot determine it. You have just got to take the same chance as you do now when you fix your own depreciation rate.

Senator BYRD. Then the corporation may file its 15 percent and the Department may settle on some entirely different basis for the past years, and they will pay 42 percent?

Mr. PARKER. Yes.

There is one other thing that I would like to explain to the committee about this deficit situation. We computed the accumulated earnings and profits under our income-tax rule. Now, the State rule may be different. For instance, supposing we have a corporation that has $100,000 of capital stock and it builds up $100,000 of surplus, and they make a stock dividend of one share of common stock to each of the common-share holders; now, as far as their books are concerned, as far as accounting is concerned, they have distributed their earnings and profits and they have a zero surplus; I believe that most States would consider that distribution having been made under their laws, that the surplus was zero, but for the purpose of our income-tax determination, the way this bill is written, that corporation will have $100,000 surplus and we disregard that stock dividend. For instance, having done that, in the next year they make a $50,000 loss on their books, they will have a $50,000 deficit at the close of that year, but we will say, "No; you have got $50,000 surplus at the close of the year."

Senator HASTINGS. Does that go back to the very beginning of the corporation?

Mr. PARKER. It goes back to the very beginning of the corporation.

Senator BYRD. Is not this also true that the States have different rules and laws regulating depletion and depreciation than the Federal Government has?

Mr. PARKER. Yes; many of them do have different rules.

Senator BYRD. Some of them allow more depreciation and some allow less?

Mr. PARKER. That is one thing that I am not certain upon. I would like Mr. Kent to correct me if I am wrong. These laws in the States dealing with this prohibition on the declaration of dividends in most cases antedate their income-tax laws, and I do not think their income-tax rules are so important. I think they just say in very general terms you cannot declare out a dividend if you have got a deficit. I believe when you have just got that general proposition on the books, that if that thing goes into court the court is going to rely on ordinary accounting practice and procedure and take the testimony of the accountants to say whether or not there is a deficit.

Senator BYRD. And many States do not have any income-tax law.

Mr. PARKER. No; but they have got corporation laws. I haven't seen any of those laws that are very specific in their terms. Have you, Mr. Kent?

Mr. KENT. No.

Mr. PARKER. They just use the broadest terms. I believe the courts would go on the accounting practice.

Senator KING. Are there not a number of cases being prosecuted in the courts under State laws against directors because of their improvident issue of dividends?

Mr. PARKER. I have no knowledge of that. There may be some.

Mr. KENT. There are some. There are not, however, as many of them as one might expect. These statutory provisions are sometimes invoked, of course, by minority interests. In the majority of the cases they are invoked by creditors where the declaration of the dividends would create a condition that at least approached insolvency, and in their actual operation they are really laws more for the protection of creditors. There are a great many cases where no attention is paid to them if there is no interest in the corporation, creditor, or otherwise, who are likely to protest. Of course, it is fair to say that a possibility of litigation against the directors is nearly always present.

Senator CLARK. Under any laws a minority stockholder could sue the board of directors if he pleases.

Senator KING. In New York there have been a number of prosecutions. John W. Davis defended a case where his client got a new trial and finally was exculpated, but several of them were indicted, and the commissioner, a very able man, was likewise indicted, because he said he allowed credit, or something in connection with bookkeeping procedure that were violative of the rights of the stockholders and of the creditors. A number of cases have been prosecuted in the State courts and Federal courts during this depression because of their allowing too much for dividends, or what not.

Mr. KENT. Yes, Senator; I think that is true. Of course, it is an awfully difficult field in which to generalize, because there are a variety of traditions in the interpretation of the statutes.

The CHAIRMAN. Mr. Parker, explain to us this indebtedness provision.

Mr PARKER. That is in section 16.

Senator CONNALLY. Before you go into that let me ask you one general question on that. Is there a sound reason, an economic reason, aside from the desire to be merciful to these corporations, is there any reason why a corporation that goes into debt should be taxed at any different rate than one that does not? Is it not true frequently that indebtedness represents bonded indebtedness, bond issues, and things of that kind? Why should it be taxed at a different rate than individuals or anyone else?

Mr. PARKER. We have never made any allowance in the past, of course, on account of indebtedness, nor have we relieved from tax a man who had prior-year debts. We have allowed relief in the past in the case of a man or corporation that had prior-year business losses.

Senator CONNALLY. That is true. I am just trying to get into the theory of this bill, as to why we are initiating a new rule because somebody happened to be in debt. We never have heretofore.

Mr. PARKER. The reason here is, of course, that the tax rate depends on how much is paid out in dividends. Now, if a corporation has old debts which it must pay it is obvious that it cannot declare that money out in dividends to the extent necessary to pay the debt.

Senator CONNALLY. Under the State laws the more it pays out the less tax it pays.

Mr. PARKER. If they have to retain the money to pay the debt.

Senator CONNALLY. Well, they figure that in the net income, do they not, the interest?

Mr. PARKER. Just the interest, not the payment of the debt.

The CHAIRMAN. Well, explain it to us.

Mr. PARKER. Of course, it may be argued that if a corporation in debt makes some money it could declare the dividend out to the stockholders along with certain stock rights and try to get the stockholders to put the money back into the corporation. Having been put back into the corporation, it could retire the debts.

Senator GERRY. Mr. Parker, take the case of a small corporation that has a mortgage on its property, there is a certain amount of amortization; the more uncertain the finances of the corporation are the more amortization the banker will demand; now, they can deduct, as I understand it, under this bill the amount of the interest they pay on the mortgage out of their earnings.

Mr. PARKER. That is true.

Senator GERRY. That is true of the individual or the corporation, but they cannot deduct, the corporation cannot deduct the amount it has to pay back on amortization of the mortgage, is that right?

Mr. PARKER. That is correct. Under this bill the corporation cannot deduct the amount, but it does get the relief of one-fifth of the amount of that mortgage to the extent that it exceeds the accumulated earnings and profits. If the corporation has got a surplus and that surplus is bigger than the mortgage, it gets no relief under the debt provision. If it has no surplus, if it is just even and it just pays this mortgage, it may amortize it at the rate of one-fifth, but on that amount which it so amortizes it has to pay the 22.5 tax.

Senator GERRY. Of course, the trouble with that is when the fellow goes to get his mortgage the bank is going to look very much more carefully at the assets of the corporation, having in mind this very heavy taxation, on the gamble as to whether or not it grants the mortgage.

Mr. PARKER. I suppose the bank would take it into consideration.

Senator GERRY. I think it would, undoubtedly.

The CHAIRMAN. Now, Mr. Parker, give us an illustration. This goes over a period of 5 years, does it not?

Mr. PARKER. Not necessarily. That is the maximum that you can amortize under the bill. The bill gives you the privilege of amortizing the debts, that is, this excess of debt over your surplus, you can amortize that over 100 years or 50 years, or a thousand, or 20, or 6, or 5, but not less than 5.

Senator BYRD. Well now, the debt must be in excess of the surplus in order to come under this clause?

Mr. PARKER. That is right.

Mr. BEAMAN. Each particular debt does not have to be in excess of surplus.

Senator BYRD. The combined debt that the company owes has got to be in excess of the surplus in order to come under this section, does it not?

Mr. PARKER. I assumed you were talking about the combined debt, not the individual debt, of course.

The CHAIRMAN. Why won't you just give us an illustration that will assist us in understanding this matter?

Mr. PARKER. Very well. Suppose a corporation had a surplus of $100,000; on March 3 it had debts which come within the definition of the bill of $200,000; now, the excess of the debts over the surplus is $100,000; if the corporation in that year makes $100,000 it is entitled to take one-fifth of the amount of this excess of $100,000, that is $20,000, off, and there will be a tax rate of 22.5 percent on that.

The CHAIRMAN. A tax of 22.5 on $20,000?

Mr. PARKER. On the $20,000. It does not make any difference whether they pay the debt or not. We allow them that deduction just the same as the depreciation. They will be taxed 22.5 percent on the $20,000.

The CHAIRMAN. Now, on the $80,000 what would it be?

Mr. PARKER. You will not have quite $80,000. You take off the $4,500. I believe that is what 22.5 percent of $20,000 would be. Now, you have left $75,500, that would be taxed under the new plan. If you declare it out in dividends there would be no tax. If you keep 30 percent of it you pay 15 percent on that.

Senator WALSH. Why does the definition of "debts" end as of March 1936?

Mr. PARKER. That was principally to protect the revenue.

Senator WALSH. So that a corporation that is organized in the future, that goes into debt or borrows money, or issues the paper that is described here as a legal debt, that will not be allowed to that corporation?

Mr. PARKER. They will not get any relief on new debts. Of course, as far as I can see, there is just as good reason to have them relieved, because when you start up a new corporation it may be very necessary to be able to pay the debt before paying the maximum rate of tax. The trouble is, Senator, we could not find any way to make that relief apply to future debts, because it would be equivalent, in most cases, simply to allowing all corporations to pay 22.5 percent and nobody paying the 42.5, because they could just borrow money every year and say, "We need this money to pay this debt." They keep borrowing money every year, and paying, with next year's debt, and creating a new one. It is very necessary to protect the revenue.

Senator BARKLEY. The date of March 3 is set so they could manipulate the account in the future so as to escape the tax, is that not true?

Mr. PARKER. I do not think there has been any manipulating on that thing even up to date. I do not think people have created debts just to speculate in respect to this tax bill.

Senator CLARK. That line has been set to the date of the President's message?

Mr. PARKER. That is correct, Senator.

Senator CLARK. Have you ever heard in your experience where the date line was set as the date of the President's message, where it was arbitrarily set as of that date?

Mr. PARKER. We have had an arbitrary date line.

Senator CLARK. Is it not a fact that ordinarily it is the date of the passage of the act?

Mr. PARKER. That is the usual practice.

Mr. BEAMAN. Certainly not. I think there have been a good many laws passed when the committee decided on what seemed to be just; that is the time when people could have notice of what was coming to them. It might have been the date of the President's message, or it might be the date that the bill was introduced in the House and made public. It might be some other time. It depends on what seems reasonable to the committee.

Senator LA FOLLETTE. There have been some provisions of that kind when there was some change in policy in order to take advantage of a particular situation, and at the time when the legislation was passed through the Congress it completely altered the situation so they had to take advantage of a new policy.

The CHAIRMAN. It would seem to me if negotiations had substantially started before March 3, when the President's proclamation came in, and even though they were concluded before the enactment of the law they ought to come in on it. I do not see why you put 25.5 percent on them.

Mr. PARKER. It is just a matter of revenue, that is all. The debt situation is a rather big proposition. All past debts are not brought into this definition by any means.

Senator KING. Why do you discriminate?

Mr. PARKER. According to the best information we can get the bonded and mortgage indebtedness of corporations is nearly 45 billions of dollars, and we are dealing with large sums. Then we have notes, and so forth, in addition to that of about 15 billion dollars.

Senator KING. Keep in mind the fact that the Federal Government, through the R. F. C. and other agencies, are creditors and stockholders in banks and insurance companies, and various other organizations, and they are going to come within the operations of this bill to their disadvantage, and they are very much concerned about this bill.

Senator HASTINGS. I think it may be said, however, that there are very many prosperous corporations that have a great deal of indebtedness and this bill would be advantageous to them. It is not all the corporations that are in debt that it works a hardship on. It works a great disadvantage sometimes to those who have avoided going in debt.

Senator KING. Yes.

Mr. PARKER. We have struggled a long time with this provision. I do not think it is very satisfactory either, from a relief standpoint or from an equitable standpoint.

Senator BYRD. Let me ask you this question: Suppose a corporation had a surplus of $100,000 and had a debt of $90,000, and that it had contracted to pay that debt in 3 years, $30,000 each year, and it did not earn but $30,000 each one of those years, what would that company have to pay?

Mr. PARKER. It would have to pay the full rate.

Senator BYRD. 42.5 percent?

Mr. PARKER. Yes, Senator.

Senator BYRD. In other words, because they had $10,000 less debt in the surplus they were obligated to pay their full earnings out under a contract——

Mr. PARKER (interrupting). Wait just a moment. I did not understand you. They had a contract not to pay dividends?

Senator BYRD. No; a contract to pay the debt at the rate of $30,000 a year, and they only earned $30,000 a year and their debt was $10,000 less than the surplus; then they would have to pay 42.5 percent tax?

Mr. PARKER. That is right.

Senator KING. Many bonds have been issued predicated on the provision in the bond that they must set aside every year for amortization, for instance, $50,000, depending on the obligation, and that becomes a lien, really, a mortgage lien in the sense it is an obligation that may be enforcible at law, and they may declare the corporation insolvent and force it into bankruptcy if it fails to make the amortization payment as well as the interest payment. You have got State laws to consider in this respect.

Mr. PARKER. Of course, there is no relief to them. On the other hand, they do not get relief now, they have to pay the full flat tax.

Senator KING. Sure.

Mr. PARKER. Regardless of the fact that they have to use all that they earn, and more, in order to put aside the sinking fund.

Senator CLARK. They pay an extra penalty if they pay out in dividends what they owe the creditors.

Mr. PARKER. That is true.

Senator KING. Many mortgages were made on the understanding that there was a tax upon the corporation for the Federal income.

Mr. PARKER. Of course, that gets into the proposition of section 15, which is a contract not to pay dividends, and it is worded so that if you have a contract not to pay dividends you get relief. Of course, you may have contracts which are not contracts not to pay dividends but which have the same effect as a contract not to pay dividends.

Senator KING. Where there are contracts with respect to preferred stock, for instance.

Mr. PARKER. Yes; preferred stock would not be a contract not to pay dividends.

Senator HASTINGS. I did not hear the explanation that somebody from the Treasury Department gave as to the reason for the existing law that undertakes to force corporations to pay out dividends, those corporations who are trying to evade the tax, I did not quite understand what the difficulty was about that. I understood the Treasury Department said it was not a practical thing. I was wondering whether you think it is possible to draw some law that makes it possible to compel corporations who are creating a surplus to avoid the tax, to pay that money out to the stockholders. Do you think it is impossible to draw a practical law in regard to that? That seems to be the thing that started all this trouble.

Mr. PARKER. Well, of course, the thing that we have in the law that applies in general is section 102.

Senator KING. You have got two sections now that forces them to do it.

Mr. PARKER. We have got section 351 which, in the case of the personal holding company, is effective. They either have to pay the dividend or they have to pay a higher additional tax. I think section 351 has finally been worked down to be pretty satisfactory. It is not perfect, but we had some 4,000 personal holding company returns and they did not pay very much tax but they declared out $155,000,000 in dividends. That is about all they made. So I think that situation is all right. You recall, of course, that a personal holding company is one that gets an income of 80 percent from dividends, interest, and capital gains, and whose stock is held by five people.

Senator HASTINGS. Why cannot we make section 102 effective also?

Mr. PARKER. Section 102 has a different angle. That is only imposed upon a corporation where that corporation is organized or availed of for the purpose of preventing the imposition of the surtax on its shareholders. In other words, here we have a great and difficult proposition. We have to prove that that corporation has deliberately retained its earnings instead of declaring them in dividends in order to save its shareholders money in respect to the surtax.

Senator HASTINGS. Is there much difficulty in proving that?

Mr. PARKER. There is a great deal of difficulty in that provision. That is especially true in operating companies. For instance, we may have a manufacturing company which has made a great deal of money, and there may be individually rich shareholders who would pay a high surtax. The directors will meet and say, "Well, business looks pretty good, we ought to accumulate this money so that 10 years from now or 5 years from now we can build us a new factory. We will get some plans made, even." They have an architect draw up some few sketches, in fact.

When you come into court on that proposition, they have shown that they have a plan and that they have a need for this money. You cannot distinguish, you cannot tell whether it is really a bona-fide plan that is going to be carried out or whether it is not.

All of those things are very difficult. An operating company can generally put forward a lot of possibilities for which it will need money. Maybe it will have to meet certain competition. It may be perfectly valid. On the other hand it may not be. But it is almost impossible to distinguish.

Senator HASTINGS. Could you not put in some provision that if they set this money down for a certain purpose and did not use it for that purpose for a certain fixed time, that that fund would be taxable, the fund that they had accumulated would be taxable in the hands of the stockholders?

Mr. PARKER. I would not say that it was impossible to improve the effectiveness of the section 102. I think it would take considerable time and study to do it.

Senator LA FOLLETTE. Apparently, Mr. Parker, is it not true that you had the same difficulty with the personal holding companies until you found a tax device that really forced them to either pay a heavy tax on what they retained, or pay it out to the stockholders, where he would have to take it out of his personal income?

Mr. PARKER. Senator, we have had section 220 in the law since 1918, and then it has been superseded by other sections. Even in the Revenue Act of 1913, while it was not in the section, there was a very short provision dealing with this very proposition, because the originators of the original income tax of 1913 saw that that was one of the big loopholes to the income-tax law, where you have a graduated surtax on individuals, that the individual could evade the payment of those surtaxes by keeping his profits in corporate form. That has been a recognized loophole since 1913 when they put the provision in there. I never heard of the 1913 act being enforced in this respect, however.

Senator LA FOLLETTE. Of course, the higher your individual surtax brackets go, the greater the inducement.

Mr. PARKER. Exactly.

Senator LA FOLLETTE. Under Mr. Mellon's guidance, it was 20 percent, and 12½-percent flat corporation tax, and there was not much incentive.

Mr. KENT. If I may take a moment, I would like to tell you briefly about a case that we recently lost before the Board of Tax Appeals, because I think it gives a good picture of the sort of difficulties we are up against under that section. We regarded it in the office as pretty much of a test case covering a considerable group of enterprises.

In this case, an independent wealthy motion-picture producer out in California had made one or two pictures which had been very successful, and his corporation in which he owned the great majority of the stock, realized very large profits from these pictures. The corporation held a very large part of those gains in its treasury.

The Commissioner assessed a deficiency against the corporation under section 102. The facts established mostly by the cross-examination of the producer himself on the stand were about these: His only explanation for the holding of this large sum aggregating several million dollars in the corporate treasury was this, that he said that sometimes it is not easy to go out and get ready money when you need it to finance a big picture production. He admitted that he had no definite plans in mind with respect to the use of these funds. He was holding it there because he thought that sometime in the future—he was very vague and indefinite—he might want to make a big picture and it would be handy to have these funds in the corporate treasury to finance the production. Of course, he could have declared out the amount in dividends, he could have paid his tax and could have set aside the considerable portion which remained, in a bank somewhere and held it there for the same purpose.

The Board decided the case against us. The case is now on appeal out in the ninth circuit, and I hope the Board will be reversed. We are not at all confident about it. If we cannot win that sort of a case——

Senator CONNALLY (interposing). You assessed this additional levy on the theory that he was holding it for the avoidance of taxes?

Mr. KENT. Yes, sir.

Senator CONNALLY. The burden is upon you to prove it?

Mr. KENT. Yes, sir.

Senator CONNALLY. And is it almost impossible to prove the motive?

Mr. KENT. Yes, sir.

Senator CONNALLY. You could prove that he was withholding it, but you could not prove why.

Senator LONERGAN. Pardon me. Was the stock in that company closely held or was there a general distribution?

Mr. KENT. Most of it was held by this one man. I do not remember the exact percentage, Senator, but I am certain that the controlling interest was held by him.

Another picture producer did about the same thing, but there was this additional fact present. He made this mistake. After this large sum had been accumulated in the corporate treasury, the corporation began to make what purported to be loans out of this surplus to this producer who held the big majority of control in the company. The Board sustained the Commissioner's determination of a deficiency under section 102.

So that, where that additional fact is present, we have been pretty successful, but if they just leave the money in the corporate treasury and do not do anything with it, it has been almost impossible for us to sustain the burden of proof. Of course, any man can come in and can say, "Well, there may be some situation arise in the future when we need to use this money. We may want it for undertaking of an expansion 5 or 10 or 15 years from now", and if the courts accept that as an adequate business reason——

Senator KING (interposing). Could you not amend section 102 by saying that the retention of a certain amount is prima-facie evidence of a purpose to evade the tax? I think that prima-facie declaration would be entirely valid.

Mr. KENT. I think that might be helpful, Senator, but on the other hand our experience has been that it does not take very much evidence, in the view of the Board and the courts, to upset a prima-facie presumption; in other words, if they have a little more than a scintilla of evidence by way of explanation, the presumption disappears from the case and you are back right where you started.

Senator HASTINGS. Could you not overcome that difficulty by making it apply to corporations that are closely held, where a certain percentage of the stock is held by a certain number of people?

Mr. KENT. I think that might be helpful. I do not say that section could not be straightened. But as long as liability depends on proving purpose or intent, the utility of the section will necessarily be limited.

Senator GERRY. Could you not put a time limit on it too? Where they were holding it for a certain time?

Mr. KENT. Of course, we already have one provision in the law, you may recollect, with respect to involuntary conversion of property, where the law permits the corporation or the taxpayer to set up a reserve for the reinvestment of the proceeds in similar property, and if that reinvestment takes place within the specified period of time—what is that period, Mr. Parker; is that 5 years? I do not remember offhand what the period is.

Mr. PARKER. I think it is 5 years.

Mr. KENT. Then the taxpayer is not required to pay the tax from any capital gains he may have realized by reason of the involuntary conversion.

Senator HASTINGS. It seems to me that you should provide that that corporation, if it withheld those funds and did not distribute them, and he gave as a certain reason why he did not do it, then if you could provide in that law that the next year, for instance, he might be subjected to that same thing with a penalty, you would not find him taking so much chance. He would be paying it out. I think that section could be greatly improved.

Mr. KENT. I do not think it would be fair to make the statement that section 102 has not been of some value. Its value is difficult to estimate in statistical terms. It is quite possible, or even probable that many corporations, because of the presence of section 102 in the act, have made dividend distributions that they would not otherwise have made, but there is no way of telling how extensive that effect has been.

Senator KING. Mr. Chairman, it is my opinion that we ought to determine if we can whether we are trying to reform this bill or proceed upon some different theory.

The CHAIRMAN. Do you want this taken down?

Senator KING. No; this need not go on the record.

(The remainder of the proceedings of this day was not reported:)

(The following testimony was made in executive before the committee on May 13, 1936.)

The CHAIRMAN. Proceed, Senator Bone.

STATEMENT OF HON. HOMER T. BONE, UNITED STATES SENATOR

Senator BONE. I want to discuss one aspect of this reciprocal agreement with Canada which affects the lumber interests of our country. Senator Dill came down with me, because he is more familiar with the technical aspects of the matter than I am. The reason that I invited Senator Dill, our former colleague, to come down, grows out of a provision in the reciprocal agreement with Canada, and a particular provision that we are interested in is paragraph 1760 of the agreement.

I would like to preface what I have to say, and I want to be extremely brief, by calling the attention of the committee to the shingle situation in my State and in the State of Oregon.

The shingle business out there at one time was a large business, and it went to pot years ago, primarily because of the competitive conditions with Canada. Right north of Washington and Oregon lies British Columbia, probably the greatest lumber producing section in all of Canada, and unfortunately for us, a good many Americans owned large stands of lumber in Canada and had no objection to being competitive with the mills on the American side.

In recent years—I do not know how many—it would be impossiple for me to even hazard a guess—shingle mills in enormous numbers went broke out there because they were not able to compete with the Canadian mills, which were employing Hindus, large numbers of whom are in Canada, and Chinamen. These Chinamen and Hindus went into Canada, apparently, without any restriction.

So when this agreement was drawn up, the President was very well aware of the situation out there, and a provision was put into the treaty giving the United States certain reserved powers, which have never been exercised, with respect to shingles. This reservation was put in definitely because it was brought so forcibly to the attention of the Tariff Commission, and I presume they talked to the President about this, and this provision was put in here, and the language is very significant.

It reserves to the United States the right to set up a quota arrangement on the amount of shingles that can be introduced into the United States. When this was subsequently brought to the attention of the President by myself and others who were interested—I am not certain that Senator Dill talked to him—the matter was submitted, as I understand, to the State Department, and there for the first time some slight doubt was expressed as to the right of the President to exercise the power which seems to be reserved here.

So now, the whole purpose I have in mind is to suggest to the committee that it at least give an apostolic blessing here to a little provision which I think should be tacked on to the tax bill, because it seems to me that that is the logical place to put this sort of a provision.

The CHAIRMAN. What is the amendment?

Senator BONE. I will read it in just a second—which clearly establishes the right of the United States through the President to exercise this reserved power.

This paragraph 1760 provides that the United States reserves the right to limit the total quantity of red cedar shingles which may be entered or withdrawn from warehouse for consumption during any given half of any calendar year to a quantity not exceeding 25 percent of the combined total of shipments of red cedar shingles by producers in the United States and the imports of such shingles during the preceding half year.

I would rather Senator Dill, who has been very much interested in this, would briefly explain the legal significance of this.

The proposed amendment for insertion in the revenue act is this:

> Whenever any organization or association representing the producers of more than 75 per centum of the red cedar shingles produced in the United States during the previous half-year period shall request the President to limit the importation of red cedar shingles from Canada under paragraph 1760 of the reciprocal trade agreement entered into with the Dominion of Canada under date of November 15, 1935, and the President finds from available statistics that the total quantity of red cedar shingles produced in the Dominion of Canada which is entered. or withdrawn from warehouse, for consumption in the United States, during any given half of any calendar year exceeds or will exceed 25 per centum of the combined total of the shipments of red cedar shingles by producers in the United States and the imports during the preceding half year, the President shall issue an order limiting for the six months immediately following the half of the calendar year in which said excess occurred, the quantity of red cedar shingles to be imported from Canada to 25 per centum of the combined total of the shipments and imports of red cedar shingles for such preceding half calendar year. The President shall issue a new order for each half of the calendar year thereafter during the continuation of the operation of the reciprocal trade agreement entered into with the Dominion of Canada, under date of November 15, 1935, with the same limitations as hereinbefore set forth.

Senator CONNALLY. How can we change any treaty that has already been made?

(Off the record.)

Senator BONE. As I understand, this does not change an iota the amount of shingles that Canada can introduce into the United States.

Senator HASTINGS. I think it ought to be submitted to the State Department.

The CHAIRMAN. Your contention, as I understand it, is that under this agreement, the President has a right to do this.

Senator BONE. We had thought so when it was adopted.

The CHAIRMAN. That is your construction of the agreement?

Senator BONE. Everybody thought so.

The CHAIRMAN. There may be some doubt about it, and you want a clarification of it?

Senator BONE. We want to remove that doubt, which seems to exist in everyone's mind. I would like to have Senator Dill if he will, state it briefly.

STATEMENT OF HON. C. C. DILL

Senator DILL. I do not want to take up much time, but I want to say this, that it was stated by the officials of the Canadian Government and by our own officials that the purpose of putting this in was to have the proceducers of the two countries regulate this important proposition so that it would not be necessary for the Government to interfere, and we immediately began to try to work out an agreement with the Canadian producers of shingles to get them to agree to limit the imports to 25 percent. We have not been able to get that agreement, but they have up to this time limited the imports so that they have not exceeded 25 percent, but our danger and our fear is, and we think it is justified, when Congress is gone, they may not observe it; they may proceed to send in any numbers they want of the shingles, and the reason for the 25 percent is this, that under the N. R. A. the Tariff Commission made an investigation and found that over the period of 30 years the average imports of shingles from the Canadian mills was about 25 percent of our consumption. During 1932–33, it had exceeded that considerably and gone up to 30 and 35 percent. That was because of the depressed condition on this side of the line and theirs too, probably.

Under the N. R. A., when the President, with his power to embargo, received this report, the Canadians made an agreement with our producers, and from October 1934, until the N. R. A. was declared unconstitutional, this agreement was in effect, and the Canadians actually limited their shipments of shingles to the United States to 25 percent and it worked so satisfactorily to both sides that we appealed to the Tariff Commission and to the State Department when they drew up this treaty to write that 25 percent provision in the trade agreement, and it was because of that appeal and the facts set forth and the background of history which I have only generally stated, that they put in this provision.

After it was put in, some doubt was expressed as to whether or not the President actually has the power to limit them to 25 percent

if they exceed it, and it was our purpose to have a provision written here that would give him that authority. I may say also that I am attorney for the shingle industry. I want the committee to understand that. I have represented them through this entire matter, and I am their attorney now and I come here as their attorney.

This provision which Senator Bone has read has been prepared after consultation with Mr. Elliott of your legislative drafting service here, so I think the language reasonably covers what we intended to cover.

(Discussion off the record.)

Senator DILL. We have no reliable statistics. We have had to depend upon our own reports from our own producers to tell how many shingles were being consumed, and the Canadians have objected to taking our statistics and, we agreed, rather properly so.

At the suggestion of the State Department, I took the matter up with the Census Bureau, and under the law the Census Bureau has the power to collect statistics on the production of red cedar shingles provided we pay for it, and we have advanced the money now to pay for the collection of the statistics beginning January 1 of this year. That, of course, will furnish reliable statistics for the President to act upon in case it were necessary.

The CHAIRMAN. Let me suggest, Senator Bone, that you offer your amendment on the floor of the Senate. When that is done, the clerk will immediately take it up with the State Department to get their views with reference to the proposal and whether they have any objection to it. I do not know anything else that we can do at this time.

We will recess to meet again tomorrow morning at 10 a. m.

(Whereupon, at 11:45 a. m., a recess was taken until Tuesday, May 12, 1936, as above noted.)

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